

Brownfield Modernization

Planning Services Division

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Background

The Environmental Protection Act provides for the protection and conservation of the natural environment. Recently, the Provincial government has proposed amendments to Brownfield's legislation, through EBR posting 013-2774.

In November 2018, the Provincial government, through the Ministry of Environment, Conservation and Parks (MECP), posted "Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan" which was available for public comment until January 28, 2019. This plan includes an action plan to increase the redevelopment and clean-up of contaminated lands through the revision of the brownfields regulation and the record of site condition (RSC) guide to reduce barriers to redevelopment, as well as proposed amendments to make it easier to reuse excess soil. In January 2019 staff brought a report in general support of the changes and Council directed staff to forward those comments on as the City's submission to the Environmental Bill of Rights Registry (EBR).

Recently, the Province announced that the brownfield modernization amendments came into effect on December 2, 2019.

Discussion

Records of Site Condition

Ontario has a comprehensive framework to manage human health and risk associated with adaptive reuse or redevelopment projects. The framework is set out in the Environment Protection Act, with complementary changes to the Planning Act, Provincial Policy Statement and Ontario Building Code. Generally, any project that is changing from a "less sensitive" (e.g. industrial or commercial) to a sensitive (e.g. residential, parkland) use requires a Record of Site Condition.

A Record of Site Condition (RSC) summarizes the environmental condition of a property, based on the completion of environmental site assessments. A Record of Site Condition must be filed to the Environmental Site Registry by a qualified professional certifying that the property meets the applicable site condition standard or a standard specified in a risk assessment for the intended use.

Phase 1 environmental site assessments are required for all records of site condition. The qualified professional must identify any potentially contaminating activity in the study area and determine whether a Phase 2 environmental site assessment is required.

Phase 2 environmental site assessments determine the location and concentration of one or more contaminant and take actions to reduce the concentration if a standard has been exceeded and/or complete a risk assessment to develop property specific standards that are safe for the intended use.

A RSC is mandatory before changing the property to a more sensitive use. The mandatory filing provisions are applicable law under the *Building Code Act, 1992* as defined by the *Environmental Protection Act*, and requires that a RSC be filed prior to the issuance of a building permit by the municipality.

The need for a RSC can represent additional time, cost and uncertainty from a development perspective. In a rural and northern context, this requirement can determine whether a developer will proceed with a project or not. For this reason, and others, City Council approved the Brownfield Strategy and Community Improvement Plan to help stimulate the revitalization of brownfields.

Policy and Regulatory Framework

Brownfields are subject to the following policy and regulatory framework:

- 2014 Provincial Policy Statement
- 2011 Growth Plan for Northern Ontario
- Official Plan for the City of Greater Sudbury
- Environmental Protection Act
- O.Reg. 153/04: Records of Site Condition
- Brownfield Modernization Amendments – O.Reg. 407/19
- Brownfield Strategy and CIP

Environmental Protection Act and O.Reg 153/04:

The Province's Brownfield modernization program includes several changes that will make it easier to re-use or redevelop brownfields in Greater Sudbury.

The amendments to O.Reg. 153/04 relevant to land use planning are summarized as follows:

Second Floor Conversions: There is no longer a requirement for a RSC when converting upper floors of low rise commercial buildings (six storeys or less) to residential use. The rationale for this change is that undertaking assessments when a building not being taken down is difficult, and would allow for easier renovation of buildings. The exemption would not apply to larger buildings, or where the property was used for industrial or specified commercial uses such as garage, bulk liquid dispensing facility,

gasoline outlet or dry cleaner. This change should have positive implications for the Downtown, Town Centres and Nodes and Corridors which are the focus of revitalization.

Conversion of Religious Buildings:

Buildings that were formerly used for institutional uses, such as religious buildings are encouraged to be adaptively reused. The amendments to the regulation have made such adaptive reuse easier.

- The amendment permits existing religious buildings to be converted to residential use without the requirement for a RSC.
- There is no longer a requirement for a RSC to change the use of a property from industrial, commercial, or community to a building used for indoor gatherings of people for religious purposes. However, there is a prohibition on converting such a religious building to residential in the future.

Since 2012 the City has had five (5) applications for rezoning that pertained to the conversion of religious buildings to residential uses. The applications required an RSC, which would no longer be required. Similarly, of the eleven (11) building permits issued by the City that required a RSC, three (3) would not have required the RSC.

Non-standard Delineation: Vertical delineation of contaminants of concern as part of Phase 2 ESA has been identified as a challenge. The Director (MECP) may provide relief based on specified conditions including: all contaminants of concern are identified; maximum concentrations are identified for all contaminants of concern; all reasonable efforts to delineate the applicable site condition standards were undertaken; the property is appropriately characterized; additional delineation will not lead to an improved understanding of the distribution of contaminants; there are no practical or negative environmental reasons that are impediments to further delineation to the applicable site condition standards. In the City of Greater Sudbury the requirement to delineate a contaminant to the full extent of the plume can be costly and is not feasible in certain circumstances, such as a Downtown context where the plume may extend across properties and under adjacent buildings.

Conclusion and Next Steps

The amendments that came into effect on December 2nd are consistent with what was proposed in 2018. When viewed within the context of Greater Sudbury, these changes would support Council's strategic goals to revitalize the Downtown, Town Centres Nodes and Corridors and encourage the adaptive re-use of surplus institutional properties. The changes will facilitate the conversion of upper floors on low-rise commercial buildings to residential which support the goals of the City's Official Plan and Council's Strategic Plan. The amended regulation will create an environment that is open for business and easier to develop which supports intensification, use of existing infrastructure.

The Ministry of Environment, Conservation and Parks (MECP) has indicated that additional training material on the changes will be available early in 2020. Staff will keep Planning Committee apprised of any additional changes or amendments relevant to land use planning. Consultation with development community will be undertaken to communicate Modernization changes to the regulation once training material has been made available.

References

Ministry of the Environment, Conservation and Parks, 2018, Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Plan

<https://news.ontario.ca/ene/en/2018/11/ontario-releases-plan-to-protect-the-environment.html>

Environmental Bill of Rights Registry Number 013-0299, <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTMyMzMw&statusId=MjA1NjMy&language=en>

City of Greater Sudbury's Brownfield Strategy and Community Improvement Plan, 2013
<https://www.greatersudbury.ca/linkservid/BC874905-FD36-3989-E4A00284073C255B/showMeta/0/>

Amendment 1 to the City of Greater Sudbury's Brownfield Strategy and Community Improvement Plan, 2013,
<https://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&agenda=report&itemid=1&id=607>

Sudbury Soils Study, <http://www.sudburysoilsstudy.com/>

O.Reg. 407/19: Records of Site Condition – Part XV.1 of the Act
<https://www.ontario.ca/laws/regulation/r19407>