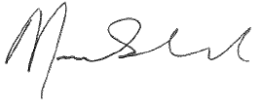




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 14, 2024
SUBJECT/REPORT NO:	City of Hamilton Response to the Province's Proposed "Amendments to Reduce Records of Site Condition That Are Not Supporting Brownfields Redevelopment" - Amendments to Ontario Regulation 153/04 under the <i>Environmental Protection Act</i> (PED25017) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Phil Caldwell (905) 546-2424 Ext. 2359
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council receive Report PED25017 as the basis for written comments respecting proposed amendments to Record of Site Condition requirements under Ontario Regulation 153/04, including the submission letter to the Province, attached as Appendix "A" to Report PED25017;
- (b) That Council adopt the submission and Recommendations as presented in Report PED25017 respecting Proposed Amendments to Record of Site Condition requirements under Ontario Regulation 153/04;
- (c) That the General Manager of Planning and Economic Development be authorized and directed to confirm the submission made to the Province, attached as Appendix "A" to Report PED25017;
- (d) That should the proposed amendments to Record of Site Condition requirements under Ontario Regulation 153/04 come into force, staff be directed and authorized to prepare a draft amendment to the City's Official Plans and

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schedule a Statutory Public Meeting for Council’s consideration at a future Planning Committee.

EXECUTIVE SUMMARY

Contamination of properties (commonly referred to as brownfields) is a real and significant barrier to the redevelopment, reuse and intensification of historically developed areas of the City as the presence of contamination requires property owners/developers to remediate a site to meet applicable Provincial Site Condition Standards when a change to a more sensitive land use is proposed (such as an industrial or commercial site changing to a residential, parkland or institutional use). In such instances, the site must comply with various environmental regulations including that the owner successfully file a Record of Site Condition with the Province which confirms the site’s soil and groundwater meet the required site condition standards for the proposed use. These measures are intended to protect human health and ensure historical contamination and environmental impacts are rectified as sites become subject to redevelopment/reuse.

On November 20, Environmental Registry of Ontario Posting 019-9310 was published seeking comments on proposed amendments to Ontario Regulation 153/04 (the Regulations) regarding Provincial requirements for the filing of Record of Site Condition Standards. The proposed amendments are generally understood to consist of the following:

- Prohibiting the submission of a Record of Site Condition where a Phase One Environmental Site Assessment has been undertaken which has not identified potential environmental impacts that would require further investigation through a Phase Two Environmental Site Assessment. This amendment would prevent third party’s, such as municipalities or financial lenders, from requiring the property owner to submit a Record of Site Condition in such an instance but would not prevent a property owner who willfully seeks to file a Record of Site Condition for their own property;
- Modifying current Record of Site Condition exemptions by:
 - a) Removing the six-storey cap on existing buildings which may be exempted from Record Site Condition filing requirements when being converted from a commercial or community use to one containing residential or other sensitive uses above the ground floor; and,

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- b) Permitting additions to the exterior of a commercial or community use building, including the creation of additional stories above the ground floor that expand beyond the existing ground floor footprint for residential or more sensitive land uses, from Record of Site Condition filing requirements.

Staff prepared and submitted comments to the Province prior to the closing of the commenting period on January 10, 2025, a copy of which is provided in Appendix “A” to this Report PED25017. Staff’s comments are supportive of the amendments being proposed as they have the potential to improve the feasibility of office/commercial to residential conversion projects in the City to support new housing opportunities, expediate the approvals process and potentially allow Provincial staffing resources to be better directed to supporting remediation and redevelopment efforts on true brownfields.

It was further noted in the submitted comments to the Province that the City continues to support all efforts by the Province to identify additional opportunities to best utilize existing Provincial staffing resources and any new Provincial investments that would support efficient environmental approvals to facilitate brownfield remediation and redevelopment.

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Not Applicable.

Staffing: Not Applicable.

Legal: Not Applicable.

HISTORICAL BACKGROUND

Environmental Regulations in Ontario respecting Record of Site Conditions

Contamination of properties (commonly referred to as brownfields) is a real and significant barrier to the redevelopment, reuse and intensification of historically developed areas of the City as the presence of contamination requires property owners/developers to remediate a site to meet applicable Provincial Site Condition Standards when a change to a more sensitive land use is proposed (such as an industrial or commercial site changing to a residential, parkland or institutional use).

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In such instances, the site must comply with various environmental regulations including that the owner successfully file a Record of Site Condition with the Province which confirms the site’s soil and groundwater meet the required site condition standards for the proposed use.

The Province’s regulatory regime is important to ensuring risks associated with contamination are mitigated in the community and do not pose a future health hazard. In particular, Record of Site Conditions are vitally important to creating an environment in which brownfields are viewed as viable opportunities for new development as the successful filing of a Record of Site Condition reduces the liability of property owners, municipalities, and others from potential environmental orders while also providing certainty to investors, future purchasers/tenants and the community that a property meets science-based standards for health and safety.

It is important to note that redevelopment of a property where there is no proposed change to a more sensitive land use, such as a site that is currently residential being redeveloped for a residential use, regardless of whether there is a change to the intensity/density of the use, are not subject to the Regulations. However, notwithstanding that the Regulations do not apply in such instances, property owners will commonly voluntarily adhere to the Regulations, remediate sites, and file Records of Site Condition to address potential liability concerns and/or abide by requirements of financial enders to mitigate project risk.

To provide context to the proposed Regulation changes discussed in this Report, a high-level summary of key studies and steps leading to a successful filing of a Record of Site Condition under current Regulations is provided (note that the following are required to be undertaken with the oversight of a Qualified Person as defined under the Regulations):

- Phase One Environmental Site Assessment - a desktop review of historical records to identify past and current uses on or in the vicinity of the subject site. Based on these findings, and common historical characteristics associated with certain uses/activities, the Qualified Person may identify Areas of Potential Environmental Concern and, if deemed a potential risk in terms of potentially having contaminated the site, recommend that a Phase Two Environmental Site Assessment be undertaken. When a Phase Two Environmental Site Assessment has been recommended, a Record of Site Condition cannot be filed based on the results of the Phase One Environmental Site Assessment only;

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- Phase Two Environmental Site Assessment – this study includes the drilling of boreholes on a property to take soil samples and install groundwater monitoring wells to complete analytical testing. This testing confirms the condition of the site relative to the site condition standards required for the proposed use. Based on the testing, the Qualified Person will make a final determination as to whether site remediation will be required. If the results of the testing show the site meets the Province’s applicable standards for the proposed use, the property owner may proceed with filing a Record of Site Condition. If the results show the site does not meet required Site Condition Standards, a Record of Site Condition cannot be filed until the site is remediated to the satisfaction of the Province;
- Remedial Action Plan/Remediation - If a site is found to be contaminated for the purposes of a proposed use, the qualified person will develop a Remedial Action Plan outlining their recommended approach to addressing the contamination. This can include one or more of the following: excavation and disposal of soil at a licensed landfill (referred to as ‘dig and dump’), various forms of in-situ remediation or the undertaking of a Risk Assessment whereby site specific standards are established based on the nature and location of the contamination and allowing some or all of the contamination to be left in place, at the Province’s discretion, with health and safety measures addressed through a combination of risk mitigation measures incorporated into the site/building; and,
- Filing of a Record of Site Condition with the Province – the last step which certifies that the site has been remediated to the applicable Site Condition Standards required for the planned use. Record of Site Conditions filed with the Province are available for public information on the Province’s Access Environment webpage.

Currently under the Regulations, exemptions from Record of Site Condition filing requirements for changes in use to an existing commercial or community use building are provided if the following criteria are met:

- After the change, the property will continue to be used for commercial or community use, but with the addition of residential use, institutional use, or both;
- Before and after the change, the building will have no more than six storeys;
- The change in use (i.e., the intended residential or institutional uses) must be restricted to the floors above the ground floor;

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- The property on which the building is located cannot be, and cannot have been historically, used for an industrial use, a garage, a bulk liquid dispensing facility, or for the operation of dry-cleaning equipment; and,
- The building envelope will not change and there will be no additions to the exterior portions of the building.

Environmental Registry of Ontario Posting 019-9310 “Amendments to Reduce Records of Site Condition That Are Not Supporting Brownfields Redevelopment”

On November 20, 2024, Environmental Registry of Ontario Posting 019-9310 was published seeking comments on proposed amendments to the Regulations regarding Provincial requirements for the filing of Record of Site Conditions. The proposed amendments are generally understood to consist of the following:

- 1) Prohibiting the submission of a Record of Site Condition where a Phase One Environmental Site Assessment has been undertaken which has not identified potential environmental impacts that would require further investigation through a Phase Two Environmental Site Assessment. This amendment would prevent third party’s, such as municipalities or financial lenders, from requiring the property owner to submit a Record of Site Condition in such an instance but would not prevent a property owner who willfully seeks to file a Record of Site Condition for their own property;
- 2) Modifying current Record of Site Condition exemptions by:
 - a) Removing the six-storey cap on existing buildings which may be exempted from Record Site Condition filing requirements when being converted from a commercial or community use to one containing residential or other sensitive uses above the ground floor; and,
 - b) Permitting additions to the exterior of a commercial or community use building, including the creation of additional stories above the ground floor that expand beyond the existing ground floor footprint for residential or more sensitive land uses, from Record of Site Condition filing requirements.

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It is understood that proposed amendment 1) above is dependent on an enabling legislative amendment also being proposed as part of Bill 227, *Cutting Red Tape, Building Ontario Act, 2024* and could only be undertaken if the related legislative amendment is passed.

The commenting period for the posting closed on January 10, 2025, with staff having submitted the comments attached as Appendix “A” to Report PED25017 prior to the closing date. Staff have noted in the comments submitted that Council may choose to amend or add to the attached comments via a subsequent letter upon considering the comments at Planning Committee and City Council meetings occurring subsequent to the commenting period closing.

Past City Correspondence with the Province respecting Environmental Approval Timelines and Delays

As part of Council’s approval of an updated Environmental Remediation and Site Enhancement Community Improvement Plan and associated financial assistance programs for brownfields on April 26, 2023, City Council further passed the following resolution:

- “(e) That the City of Hamilton request the Province of Ontario invest provincial staff resources as required to avoid unnecessary provincial delays to the construction of new housing by ensuring timely approval of remediated sites in alignment with municipal approval timelines.”

A letter by the Mayor, on behalf of Council, was sent to the then Minister of Environment, Conservation and Parks and Minister of Municipal Affairs and Housing on May 14, 2023.

A copy of this letter is referenced in the comments submitted to the Province and contained in Appendix “A” to Report PED25017, this report.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Regulations respecting Records of Site Condition are established, and enforced by, the Province. Municipalities in Ontario, including Hamilton, are responsible for implementing and adhering to the requirements as it relates to proposed developments/changes of use on its own lands as well as requiring that Record of Site Conditions be filed when required under Regulation as a condition of approval under *Planning Act* applications as well as prior to issuing applicable Building Permits.

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The City’s Urban and Rural Hamilton Official Plans contain policies respecting requirements for Records of Site Condition. Planning Division staff have noted that existing policies are largely in compliance with the current and proposed Regulations and would not need amending should the proposed amended Regulations come into force, with the exception of minor clarifications and the following Policy:

“B.3.6.1.3 The City shall continue to identify other circumstances pertaining to specific development or redevelopment proposals where the filing of a Record of Site Condition may be required beyond those circumstances contemplated in Policy B.6.1.2. These circumstances may include the age of a building proposed for redevelopment, historic land use, and potential off-site sources of contamination.”

This Policy identifies other circumstances where the filing of a Record of Site Condition may be required by the City beyond that required under Provincial Regulations. It does not appear the circumstances listed are identified in the existing or proposed Regulations nor the *Environmental Protection Act*. As such, this Policy may need to be amended or deleted should the proposed amended Regulations come into force.

Direction for staff to undertake the required Official Plan amendment and bring forward to a future statutory public meeting of the Planning Committee are contained in Recommendation (d) to this Report PED25017.

RELEVANT CONSULTATION

A request for comment on the proposed amendments and submission letter was circulated by staff to various Divisions and Sections within the Planning and Economic Development, Public Works and Healthy and Safe Communities Departments including the Building Division, CityHousing Hamilton, Corporate Real Estate, Engineering Services, Environmental Services, Growth Management, Housing Secretariat, Light Rail Transit Project Office, Municipal Land Development Office, Planning Division and Transportation Planning. Staff were also encouraged to forward the circulation for comment to any other section/division which may be impacted but was not circulated.

Comments received have been incorporated into this Report and in the submission letter to the Province contained in Appendix “A” to Report PED252017, this report.

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ANALYSIS AND RATIONALE FOR RECOMMENDATION

Staff recognize that when the current Record of Site Condition process is utilized unnecessarily or required by the Province in situations where risk to health and safety are very low, it can become burdensome and lead to Provincial resources being redirected from true brownfields resulting in delays in the remediation and redevelopment of lands for productive land uses.

As such, staff’s comments submitted to the Province were supportive of the amendments being proposed as they have the potential to improve the feasibility of office/commercial to residential conversion projects in the City to support new housing opportunities as well as potentially allow Provincial staffing resources to be better directed to supporting remediation and redevelopment efforts on true brownfields.

It has been further noted in the submitted comments to the Province that the City continues to support all efforts by the Province to identify additional opportunities to best utilize existing Provincial staffing resources and any new Provincial investments that would support efficient environmental approvals to facilitate brownfield remediation and redevelopment.

ALTERNATIVES FOR CONSIDERATION

Council may amend the staff-level comments attached as Appendix “A” to Report PED25017 or supplement the staff-level comments with additional comments.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED25017 – City of Hamilton comments to the Province on Proposed Amendments to Record of Site Condition requirements under Ontario Regulation 153/04