A Practical Guide to Brownfield Redevelopment in Ontario
important note to users:

The Province of Ontario has developed this guide to help users understand Ontario's brownfield redevelopment process. This guide summarizes complex matters and reflects legislation, practices and projects that are subject to change. Users are responsible for making decisions, including compliance with any applicable statutes or regulations.

For these reasons, the information in this guide should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter. We recommend that users obtain independent legal or professional advice when they develop or evaluate any brownfield project or initiative.

While every effort has been made to ensure the accuracy of the information in this guide, the Province of Ontario does not accept any legal responsibility for the contents of the guide or for any consequences, including direct or indirect liability, arising from its use.

Ministry of Municipal Affairs and Housing
ISBN 978-1-4249-5249-6 (Print)
ISBN 978-1-4249-5251-9 (PDF)
© Queen's Printer for Ontario, 2007
1300-10/07
Disponible en français
Guide pratique du réaménagement des friches contaminées en Ontario
Fall 2007

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who should read this guide?

This guide has been developed for professionals involved in the environmental or development field, such as real estate professionals, insurance providers, lenders, municipal leaders (elected officials and staff), community development advocates, consultants, land developers, builders, housing providers, environmental practitioners and lawyers. The aim is to provide an understanding of the benefits of brownfield redevelopment and guidance on the process for remediation and redevelopment in Ontario. In particular, this guide aims to:

- Identify the roles and responsibilities for various parties in the regulatory process governing brownfield remediation and redevelopment in Ontario
- Provide useful tips and resources
- Help make complex concepts easy to translate into everyday practices.

the basics

This section explains what a brownfield is and why redeveloping brownfields has become an important issue here in Ontario.
what is a brownfield?

Brownfield properties are lands that are potentially contaminated due to historical, industrial or commercial land use practices, and are underutilized, derelict or vacant. Brownfields are often situated in key areas throughout a community, such as the downtown or along the waterfront. The key to these properties lies in their value - not just their monetary value, but their cultural heritage value and social value as well. For instance, a building or structure on a brownfield property may have cultural heritage value because it's an example of an early type of construction or because it's associated with an event that is significant to a community. The redevelopment of brownfield properties can also increase community pride, encourage economic investment, and contribute to the health and vitality of a community.

While brownfield properties are more complex to develop than traditional greenfield properties (properties which have never been previously developed), the benefits of redevelopment far outweigh the costs. In fact, in many cases, leaving these properties idle presents liability risks and financial losses, not to mention the potential impacts to the environment and human health.

Communities across Ontario are beginning to realize the benefits of brownfield redevelopment. Properties which stood vacant for years are being redeveloped into vibrant new developments. New jobs are being created in communities, while heritage buildings are being conserved through reuse or adaption to new uses. Interest in brownfields across Ontario comes with the realization that successful brownfield redevelopment projects meet provincial objectives such as intensification and the protection of valuable green space and agricultural land. Municipal objectives such as the utilization of existing infrastructure (including water, sewer, transit and community facilities), increasing property values and the local economic base can also be met through brownfield redevelopment.

did you know?

It is estimated that 40% of all potentially contaminated properties across Canada are found in Ontario.

Source: Environmental Careers Organization (ECO) Canada, 2007 "Who will do the Cleanup?"

did you know?

Every hectare developed in a brownfield project saves up to an estimated 4.5 hectares of greenfield land from being developed in an outlying area.

Ontarians are increasingly concerned about their natural environment and are looking for more sustainable ways of developing their communities. There are obvious environmental benefits associated with the redevelopment of brownfield properties, and the remediation of contaminated land. Given the often strategic location of already built-up areas, redeveloped brownfield properties can also take advantage of existing infrastructure including schools, community facilities, and public transit and help to reduce development pressure on greenfield lands. Furthermore, redeveloping brownfield properties offers an opportunity to include environmental sustainability in a project by incorporating energy efficient technologies, building materials, water and waste management.

For information on brownfield redevelopment activities, visit:
- Canadian Brownfields Network (CBN) at www.canadianbrownfieldsnetwork.ca
- National Brownfield Associations (NBA) at www.brownfieldassociation.org

For information on the National Brownfield Redevelopment Strategy and associated reports, visit the National Round Table on the Environment and the Economy (NRTEE) at www.nrtee-trnee.ca

For information on leading edge brownfield redevelopment projects, visit the Canadian Urban Institute for past Brownie Award winners at www.canurb.com

For information on successful residential brownfield redevelopment projects, visit Canada Mortgage and Housing Corporation (CMHC) at www.cmhc-schl.gc.ca

For information on Leadership in Energy and Environmental Design (LEED®) certification, visit The Canada Green Building Council, the licensed holder for LEED® in Canada at www.cagbc.org

For information on the workforce needs for brownfields redevelopment across Canada, visit Environmental Careers Organization (ECO) Canada at www.eco.ca

The Ontario Tool Kit is a series of guides designed to help municipal councils, municipal staff, municipal heritage committees, land use planners, heritage professionals, heritage organizations, property owners and others understand the heritage conservation process in Ontario. For more information, visit www.culture.gov.on.ca

**did you know?**
Developing a brownfield property can increase your score within the Leadership in Energy and Environmental Design (LEED®) rating system. For example, under the LEED® system points are given for “sustainable sites”, including the redevelopment of a contaminated property.

**resources**

- For information on brownfield redevelopment activities, visit:
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The success of any redevelopment effort is often a result of putting together an effective team of individuals (public and private) with the capability to address all facets of the redevelopment process. Community involvement and participation can also help facilitate and enhance any redevelopment project by obtaining community buy-in and support.
Municipalities are a key partner in the success of any brownfield redevelopment project. With political and staff support, willing municipalities can remove some of the barriers to redevelopment and create a brownfield vision for the community. Municipalities can play a lead role in successfully redeveloping brownfields into new sustainable developments the entire community can take pride in. This section will suggest the different ways municipalities can facilitate brownfield redevelopment while strategically meeting other community goals.

**internal team**

The easier it is for property owners and developers to receive necessary approvals, the more attractive a brownfield becomes for redevelopment. Municipalities can help reduce time delays by preventing the “cubicle shuffle” where proposed projects are left in limbo while acquiring multiple municipal approvals. Depending on the size of the municipality and the resources available, there are a variety of ways to build internal capacity.

- **Internal Working Group:** Made up of representatives from various departments which have a stake in the redevelopment of brownfields, this group receives every brownfield proposal and addresses the various strengths and weaknesses of a proposal. A group like this eliminates delays by having all internal players come together early on and helps streamline the approval process.

- **Project Lead:** A brownfield coordinator or knowledgeable staff can be a valuable tool in helping developers and property owners through the redevelopment process. They can provide useful tips and act as a constant point of contact in case any questions or concerns are raised regarding the approval process or municipal incentives.

- **Political Champion:** A political representative can play a major role in promoting brownfield redevelopment within a community. They can start the dialogue about brownfields redevelopment within a community, help create public support for a brownfield vision, and create community excitement for potential redevelopment projects.

**did you know?**

The Ontario Municipal Brownfields Redevelopment Toolbox assists municipalities in understanding, developing and implementing a brownfields redevelopment vision for their community. The process is broken down into 5 steps: Community Readiness; Evaluation; Transaction; Implementation; and Site Management. Learn more at www.aboutremediation.com

**creating value**

Historic inaction on brownfield properties and the stigma associated with potential contamination can be overcome when new property owners see the potential for value in redevelopment. A municipality can create value for a brownfield property by engaging local citizens and providing a sense of certainty and clarity about the future of an underutilized area. Creating a common vision for an area can also create local support about its future use.

For instance, a brownfield property found along a former industrial waterfront close to the main street may not currently be the most desirable location, but a vision for the area which connects the main street to the waterfront and allows for a mixture of commercial and residential activity may entice people to the area.

Similarly, employment lands which over the years have seen businesses close down or relocate and have received little interest from new companies because of the location stigma could benefit from a municipally-supported vision of its transformation into an eco-business area.

Developing and supporting the municipal vision for brownfield redevelopment in an underutilized area can occur in a variety of ways.

**more affordable housing**

Municipalities can address the lack of affordable housing and promote brownfield redevelopment by encouraging the development of affordable housing on appropriate remediated properties, supported by a proximity to downtown and other amenities or services. A new group of residents attracted to the area can help spur the development of other neighbouring brownfields properties and lead to community rejuvenation.

**did you know?**

As a result of the Canada-Ontario Affordable Housing Program, almost 400 units were allocated on former brownfield sites in 2007.
more open space

The desire for more open space within a community can be addressed by turning existing underutilized municipal land or abandoned brownfield properties into open space. Areas such as parks, boardwalks, or trails can strengthen the neighbourhood, increase the value of neighbouring properties and make it a more attractive place to live, work and play. By turning brownfields into public open spaces, municipalities can not only increase the quality of life within a neighbourhood but also make neighbouring brownfield properties more attractive to developers.

address abandoned properties

For properties that have gone into tax arrears for the period specified under the Municipal Act, 2001, a municipality can initiate a tax sale of the property.

By advertising the tax sale of a brownfield property, a municipality may stimulate new interest in the redevelopment of the property. In many cases these properties were used for industrial and commercial activities and were located in strategic areas. In some communities, former tax sale properties have become home to new businesses and residential developments.

If a property fails to sell at the time of tax sale, the municipality has the option of assuming ownership of the property. Some municipalities have partnered with the private sector through a Request For Proposal (RFP) process to ensure development occurs on the assumed property in keeping with their municipal vision for the area.

protecting cultural assets

Historical buildings or structures found on brownfield properties that have played a major role in the early days of a community may now be left abandoned or in poor condition. Restoring these buildings, rather than demolishing them, can help rejuvenate community pride. Adaptive reuse in brownfield redevelopment may attract businesses such as microbreweries, marketing firms, art studios and upscale restaurants. Such creative businesses tend to open up in these restored structures and breathe new life into communities.

land-use planning approaches

The land-use planning system in Ontario provides municipalities with a number of tools that allow them to take a proactive approach to promoting the revitalization of underutilized areas of the community. By working with owners, prospective developers and the public early in the process, municipalities can provide guidance in their planning documents on the long-term vision for an area and the types of uses that will support this vision. This can help save property owners’ time and money by providing greater certainty in the planning process and reducing the risk of future appeals.

One of the planning tools available to municipalities is the development permit system (DPS) which provides a streamlined approach to the development process and combines three approval processes into one. The DPS provides flexibility in redevelopment situations by enabling municipalities to specify minimum and maximum development standards and by allowing for a range of conditions of approval related to these. For example, conditions could relate to matters required to be addressed for public health and safety, such as property remediation and noise reduction in redevelopment situations.

did you know?

Ontario Ministry of Finance policy, when adopted, would allow municipalities to advertise eligible brownfield properties as “free and clear” of all provincial crown liens upon sale to help improve the chances of selling at the time of tax sale.

new tools under the Planning Act

As of January 2007, municipalities now have new planning tools to promote sustainable development and revitalize their communities. Municipalities may:

- Regulate the external design of buildings, and require sustainable streetscape improvements (e.g. landscaping, street furniture) on boulevards adjoining development sites
- Set minimum height and density standards
- Require transit-supportive pedestrian-oriented design elements (e.g. bicycle paths, walkways, and public transit rights of way adjacent to streets/highways) in new subdivisions.
For information on the Canada-Ontario Affordable Housing Program, visit www.mah.gov.on.ca.

For information on the Heritage Property Tax Relief Measure and other resources related to adaptive reuse, visit www.ontario.ca/culture.

For information on land use planning reforms and the development permit system (DPS), visit www.mah.gov.on.ca.

For information on The Ontario Municipal Brownfields Redevelopment Toolbox, visit www.aboutremediation.com.

Municipalities that are committed and knowledgeable about brownfields are often identified as a critical component of any redevelopment project. Financial incentive packages can play a valuable role in assisting developers overcome some of the hurdles that can be encountered in the redevelopment process.
Property owners interested in brownfield redevelopment continue to find upfront financing costs and accessing traditional sources of development capital difficult barriers to overcome. Municipal financial incentive packages can encourage property owners to engage in brownfield redevelopment. In some cases, the incentives offered can significantly affect the business case of a potential project, as will be discussed in section five. Brownfield incentives are also a signal that a municipality is a ready and willing host for brownfield redevelopment.

**municipal financial incentives**

In Ontario, many municipalities provide financial assistance to the private sector through a Community Improvement Plan (CIP). A CIP is an expression of a community’s intention to facilitate revitalization, and may include financial incentives to help stimulate investment and offset redevelopment costs. Through a CIP, a community in need of rehabilitation and revitalization can provide financial incentives in the form of grants, loans or tax assistance to properties in a specific area or category. Tax assistance and grants are the most commonly offered incentives for remediation and redevelopment:

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<th>Type of Incentive</th>
<th>Percentage</th>
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<tr>
<td>Grants</td>
<td>33%</td>
</tr>
<tr>
<td>Loans</td>
<td>6%</td>
</tr>
<tr>
<td>Other</td>
<td>4%</td>
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<tr>
<td>Fee exemptions, reductions, and parkland dedications</td>
<td>24%</td>
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![Incentive Pie Chart](chart.png)

Source: Ministry of Municipal Affairs and Housing. 2007 Survey "Evaluating the Impact of Municipal Brownfield Incentives".

Under a CIP, a municipality may use grants to support property owners. For example, a municipality can provide a grant to cover a portion of the costs associated with Environmental Site Assessments (ESA) or environmental remediation.

Another incentive offered by municipalities is property tax assistance. Tax assistance may partially offset the remediation costs undertaken on an eligible brownfield property. The municipal portion of property taxes may be matched, if the Minister of Finance approves, on a proportional basis with the education portion under the provincial **Brownfields Financial Tax Incentive Program (BFTIP)**. For properties designated under the **Ontario Heritage Act**, municipalities may also provide a 10% to 40% reduction in property taxes under the **Heritage Property Tax Relief Measure**.

Depending on the resources of a community, a municipality may also provide other incentives that can have a substantial impact on the financial viability of a brownfield project. For example, a development charge by-law can provide exemptions or discounts for certain geographic areas, such as those targeted for redevelopment. Under a CIP, municipalities may offer developers grants for development costs to encourage brownfield redevelopment.

**getting it right**

Municipalities need to find the mix of incentives that meet local needs. Ideally, any incentive program should be in place before interest arises from the private sector. The best incentive package is developed by the municipality in consultation with lenders, local businesses, property owners, and the public. Programs should be adequately funded, easy to understand, well-marketed and targeted to areas of greatest need.

As interest in brownfields redevelopment grows in a community, it is important for a municipality to monitor the impact of their incentive programs. This can help ensure the incentives offered remain effective in encouraging redevelopment and help provide the rationale for continued municipal council support of the program.

**did you know?**

As part of the tax assistance that may be available to a property owner, an upper-tier municipality has the option of providing for the cancellation or deferral of all or a portion of taxes levied for upper-tier municipal purposes as part of a lower-tier municipality’s program.
### SCENARIO | TYPE OF FINANCIAL INCENTIVE | WHY OFFER THESE GRANTS & INCENTIVES?
--- | --- | ---
Former drycleaner located within the downtown core being redeveloped into commercial space. | *Façade improvement grants*<br>*Feasibility grants for Phase II ESA* | In an effort to improve the look and feel of the downtown core, a façade improvement grant can be used to help the property owner offset the costs of updating the external area of the building.

Abandoned gas station being redeveloped into new town homes. | *Feasibility grant for Phase II ESA* | These grants can prove to be useful when it comes time to examine the extent of potential contamination on a property.

Former mill located along the waterfront being restored to include new shops and residential units. | Heritage Property Tax Relief | If the property is designated under the Ontario Heritage Act, the municipality may offer property tax relief.

Abandoned industrial warehouse being redeveloped into a new industrial facility. | Development charge discount | Based on the scale and scope of the project, the municipality can offer a discount on development charges.

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* Incentives provided under a Community Improvement Plan (CIP)

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**resources**

- For information on the Brownfields Financial Tax Incentive Program (BFTIP), contact your local Municipal Services Office:
  - Central (Toronto) (416) 585-6226 or 1-800-668-0230
  - Southwest (London) (519) 873-4020 or 1-800-265-4736
  - East (Kingston) (613) 545-2100 or 1-800-267-9438
  - Northeast (Sudbury) (705) 564-0120 or 1-800-461-1193
  - Northwest (Thunder Bay) (807) 475-1651 or 1-800-465-5027

- For information on the Heritage Property Tax Relief Measure and other resources related to adaptive reuse, visit [www.ontario.ca/culture](http://www.ontario.ca/culture)

- For information on community improvement planning, consult the Community Improvement Planning Handbook, available at [www.mah.gov.on.ca](http://www.mah.gov.on.ca)
This section describes the legislative and regulatory requirements for assessing the environmental conditions of a property, the remediation process and the filing of Records of Site Condition on the Brownfield Environmental Site Registry. It is intended to provide property owners, consultants, municipalities, building officials, the public and other interested parties with an overview of the regulatory requirements under the Environmental Protection Act and other acts.
**record of site condition (RSC)**

The Province sets the environmental standards that must be met for remediation, as well as the assessment and processes required to demonstrate that a property is safe for redevelopment. Completing this process is mandatory before redevelopment in many circumstances (further described below). These processes are identified in Ontario Regulation 153/04 (O. Reg. 153/04). The Record of Site Condition (RSC) is a “report card” on the environmental condition of a property at a particular point in time, based on the condition of the property and intended use.

In Ontario, the investigation and remediation of a property is largely driven by property owners (historic owners or new purchasers), with the work being carried out by a Qualified Person (QP) on their behalf. Professionals are considered “qualified” if they meet the requirements as set out in provincial regulation O.Reg. 153/04. A QP is responsible for ensuring that a property has been remediated to the appropriate standards for the intended use.

Each step of the remediation process is unique, requiring a different set of skills from a QP. A QP should be chosen based on the complexity of the assessments and remediation work required. For example, an Environmental Site Assessment (ESA) requires different skills than the completion of a Risk Assessment (RA).

Once a QP demonstrates that the property meets provincial standards, the RSC is filed with the Ministry of the Environment (MOE) by the QP on behalf of the property owner. RSCs are mandatory when the use of a property changes to a more sensitive use (e.g. from industrial or commercial to residential). Should the use of the property be changed in the future, another RSC may be required.

After a QP files a RSC, they will receive written acknowledgement from the MOE that the RSC has been posted on the Brownfield Environmental Site Registry (BESR). The BESR is a publicly accessible web-based registry that is searchable by location, filing owner, etc. While the BESR can be a useful first step, all parties involved in brownfield transactions are encouraged to conduct their own due diligence of the environmental condition of any property.
environmental site assessment (ESA)

If a property proposed for redevelopment is suspected to be contaminated based on past historical activities, a property owner should have an Environmental Site Assessment (ESA) completed. An ESA is required if a RSC is to be filed.

There are two phases in an ESA. A Phase I ESA explores the likelihood that one or more substances have contaminated all or part of a property. The previous use of the property is reviewed by studying a variety of sources such as fire maps, aerial photos, directories, maps, and even interviewing past and current owners.

did you know?
An archaeological assessment by a licensed archaeologist may be required for a brownfield property, if there is physical evidence such as existing heritage buildings, structures with cultural heritage value or interest, or if the area is considered to have archaeological potential.

If it’s been determined that there is a likelihood that one or more contaminants have affected all or part of the property, a Phase II ESA is necessary (i.e. properties with a history of industrial or specified commercial uses or where contamination is indicated). A Phase II ESA must be carried out by an appropriate QP in order to file a RSC. This study provides a characterization of the location and concentration of one or more contaminants. This may include property investigation, sampling and analysis of building materials, stored substances, soil, vapours, groundwater and/or air quality.

meeting the standard

In Ontario, a typical brownfield project either meets appropriate regulated soil sediment and groundwater remediation standards for the contaminants present (generic approach) or property owners obtain approval from the MOE for property-specific standards developed through a Risk Assessment (RA). Both the generic and property-specific approaches take into account human and ecological health.

generic approach

The generic approach considers all the ways people, animals and plants on a property may become exposed to contamination. The standards were developed with the idea that any person, animal or plant may come into contact with a contaminant, regardless of how the contact may occur and whether it does in any specific case. These standards are developed for the unique geography and climate of Ontario to allow their application at the vast majority of properties.

did you know?
The health and safety of workers should be taken into account when accessing a property that may be potentially contaminated.

property-specific approach (risk assessment)

In some cases, it may be difficult for a property to be remediated to the generic property condition standards set out by the MOE. In these situations, the property owner could consider the property-specific approach. This approach incorporates information regarding the conditions and characteristics of a specific property to develop property specific standards. Information about the property and potential uses may indicate that certain types of exposure are unlikely to occur.

Potential Exposure Pathways

![Potential Exposure Pathways Diagram]

- Plants
- Mammals and Birds
- Soil Vapour
- Direct Contact and Ingestion
- Drinking Water
- Contaminated Soil
- Groundwater Vapour
- Aquatic Life
- Groundwater
things to consider when doing a risk assessment (RA)

- The Pre-Submission Form (PSF) stage should be considered a consultation process with the Ministry of the Environment (MOE). Obtaining feedback from the MOE early can help increase the likelihood of acceptance. The more information you bring to the PSF stage, the better.
- Consistency in your PSF and risk assessment report will help expedite the process. Wherever possible, make sure the same Qualified Person (QP) completes and signs both documents.
- Consider how your conceptual model differs from the assumptions used to develop the generic standards and be able to defend your position.
- Don’t leave public communication to the last minute. Municipal staff, elected officials, adjacent neighbours and the general public need to understand the potential impacts of your project and that property specific standards are protective of human health and ecology.
- In conducting a Risk Assessment (RA), an accredited laboratory must be used and proper analytical procedures must be followed.
- Don’t get delayed by administrative details - only the property owner can submit a RA to the MOE. Make sure to provide proof of business name and property ownership and sign in all required areas.

certificate of property use (CPU)

Measures used to protect both users and the environment over the long term can include installing and operating equipment, such as a groundwater pump and treatment system, or limiting the use of the property. If risk management measures are required, the MOE may issue a Certificate of Property Use (CPU) to help ensure that over time the property owner manages ongoing risk to acceptable levels. The MOE may also issue an order requiring the certificate to be registered on the property title, or require financial assurance if the ongoing measure involves ongoing monitoring or expenditure of some kind. Whenever a CPU is issued, altered, revoked, the MOE is required to give notice to the municipality in which the property is located.

did you know?

Building officials must be sure that they check for restrictions on the use of property found in a CPU which is registered on property title.

when is a record of site condition (RSC) required?

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.

Property owners may wish to file a RSC beyond those circumstances where it is mandatory under the Environmental Protection Act. For example, property owners may be required to provide a RSC to meet a condition of sale, secure financing, obtain municipal development approval or become eligible for municipal financial incentives.

The Planning Act does not provide any explicit instructions to municipalities for when and where to request a RSC. Municipalities may decide to request a RSC to ensure environmental concerns are being addressed when asked to approve a land use planning application or in considering their official plan policies. As brownfields also represent a potential risk if ignored, municipalities need to balance their future environmental concerns with the potential for redevelopment. The RSC may assist the municipality to identify major infrastructure changes needed, provide assurance a development is appropriate, or help lead to the conclusion a proposal is simply untenable. Municipalities may not ask for a RSC before issuing a building permit if there is not a more sensitive property use proposed or as condition of site plan approval.
### Scenario | Is a RSC Required? | Why?
---|---|---
New residential units being built on a former gas station. | Yes  Yes  Maybe | A RSC is mandatory because it is a change to a more sensitive use as defined by the EPA (O.Reg 153/04) and will be a requirement of a building permit. The municipality may also require a RSC sooner if a planning approval is required (i.e. zoning change). A lender may also require a RSC as a condition of financing.
A former dry cleaner is being redeveloped into a new three storey structure with first floor shops and offices and residences above. | Yes  Yes  Maybe | A RSC is not mandatory under the EPA (O.Reg 153/04) when the use changes from industrial to commercial. A municipality may require a RSC if planning approvals are needed.
A former industrial property is redeveloped for commercial use. | No  Maybe  Maybe | Under the EPA (O.Reg 153/04), this is not a change in use. The municipality cannot require a RSC as a condition of site plan approval or building permit. The lender may require a RSC as a condition of financing.
An abandoned industrial complex is being redeveloped to support a new industrial operation. | No  No  Maybe |  

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**limits on environmental liability**

In Ontario, the scope of potential environmental liability, after a property has met appropriate standards and a RSC has been filed, has been recognized as a barrier to brownfield redevelopment. In 2001 and 2007, Ontario passed legislation clarifying and limiting liability associated with brownfields redevelopment. This legislation covers a broad range of parties: owners, others in charge, management or control of a property; municipalities; secured creditors; receivers and trustees in bankruptcy; fiduciaries; as well as property investigators and remediators.

Owners, occupants and others involved in a property ("charge, management or control"), receive limited protection after a RSC for the property is filed. This limited protection is provided from environmental orders that would require further cleanup of historic contaminants remaining on the RSC property. It would not apply if the RSC contained false or misleading information, and in some other limited circumstances. Protection is also not provided for contaminants discharged to the property after the certification date in the RSC. When implemented, legislative changes passed in 2007 will extend liability protection to non-polluting parties in relation to historic contaminants that flow to adjacent properties below relevant standards after the RSC is filed. Additional requirements, including completion of certain groundwater assessments, must be met to receive this additional level of protection.

Municipalities and secured creditors are protected from environmental orders for historic contaminants at a property they do not own. This protection applies where a municipality undertakes certain activities that could be construed as taking control of that property, including securing a property, collecting rents, or undertaking assessments and other actions toward filing a RSC. These parties are also protected from responsibility for historic contaminants in relation to a five-year period after they take ownership through a failed tax sale or through foreclosure, except in exceptional circumstances. To facilitate coordination of approvals under the Planning Act and issuance of building permits with
environmental requirements, municipalities have also been provided protection from civil court actions arising solely from inaccuracies in a RSC related to these municipal activities.

 Receivers and trustees in bankruptcy associated with a brownfield property are generally protected from environmental orders. There is no time limit on this protection. The protection afforded these parties, as well as municipalities and secured creditors, does not apply in a situation of gross negligence or willful misconduct, or certain exceptional circumstances.

 Fiduciaries of a property, such as an executor of an estate, are potentially responsible for environmental conditions at a property, but this responsibility is limited to the net value of the assets being administered.

 Current legislation also clarifies that property investigators and remediators are not, because of their investigation or remediation activities alone, considered to be responsible for the property and would not be subject to environmental orders concerning the historic condition of the property.

resources

- **Environmental legislation and regulations** are available at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)
  - Environmental Protection Act
  - Ontario Water Resources Act
  - Records of Site Condition Regulation (O.Reg. 153/04)
  - Planning Act

- For **information and guidance on the Records of Site Condition (RSC) process**, consult the following documents, available at [www.ene.gov.on.ca](http://www.ene.gov.on.ca)
  - A Guide on Site Assessment, the Cleanup of Brownfield Sites and the Filing of Records of Site Condition
  - Procedures for the Use of Risk Assessment under Part XV.1 of the Environmental Protection Act
  - Protocol for Analytical Methods Used in the Assessment of Properties under Part XV.1 of the Environmental Protection Act
  - Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act

- For information on **archaeological assessment**, consult the Archaeological Assessment Technical Guidelines, available at [www.culture.gov.on.ca](http://www.culture.gov.on.ca)

- For information on **companies that provide environmental goods and services including remediation, legal support and insurance**, visit the Ontario Environment Business Directory at [www.envirodirectory.on.ca](http://www.envirodirectory.on.ca)

- For contact information on the various **companies and organizations representing the environment industry** in Ontario, visit the Ontario Environment Industry Association at [www.oneia.ca](http://www.oneia.ca)

- For information on **companies active in property remediation**, visit [www.aboutremediation.com](http://www.aboutremediation.com)

- For information on **worker health and safety**, visit [www.labour.gov.on.ca](http://www.labour.gov.on.ca)
Stakeholders involved in the redevelopment process look for different things when creating a successful business case for a project. However, all stakeholders share a common interest: the value of the property. This section examines the various interests in, and perspectives on, the redevelopment process.
Developers and municipalities have traditionally focused on “greenfield” developments at the edge of urbanized areas as they were seen as cheaper and easier to develop than brownfields. However, in recent years, professionals have started to recognize the profitability of brownfield properties. Knowing upfront the risk involved, the cost of potential remediation and the time required for completion are all extremely important to any brownfield redevelopment project.

**project viability**

Investigating the risks involved during the remediation process is an important consideration when determining potential profit, and ultimately, project viability. The potential profit must be worth the unforeseen risks involved in remediation and redevelopment, such as discovery of new contamination, cost increase in remediation and delays in acquiring approvals.

<table>
<thead>
<tr>
<th>Future Use</th>
<th>Current Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller’s Perspective on Land Value</td>
<td>Purchaser’s Perspective on Land Value</td>
</tr>
<tr>
<td>Remediation Cost</td>
<td>$$$</td>
</tr>
</tbody>
</table>

Appropriate incentive programs as well as information on the environmental condition of the property can move a brownfield property from one category to another. There are a number of financing options available to prospective brownfield purchasers and prospective developers at different stages in the brownfield remediation and redevelopment process. When considering a brownfield project, proponents should explore the variety of financing available, and at what point they are available in the process. Successful brownfield projects may potentially incorporate a layering of self financing, equity, debt from financial institutions and government funding sources. A layered approach can also help address concerns about potential financial risks.

**did you know?**

For every $1 invested in brownfield redevelopment, $3.80 is invested in the economy.


The strength of the local real estate market is a significant factor in any particular brownfield redevelopment project. In analysing the strength of the market, attention is paid to the demand for the proposed end use (e.g. town homes, condominiums, shops, mixed use development). The stronger the demand, the more likely the redevelopment project will go ahead. Municipalities and others can help create market demand by providing affordable housing, open space or addressing abandoned properties in an area to generate interest amongst perspective brownfield redevelopers (*See section two of this guide for ways municipalities can facilitate brownfield redevelopment.*)

Not all brownfield sites are alike. In some cases, remediation is relatively straightforward and/or the market demand for the location is high. Other brownfield sites are more challenging. Those actively involved in the brownfield sector, therefore, categorize brownfield sites as “easy”, “difficult” or “very hard”.

brownfields ontario
Redeveloping a brownfield property often takes more time and money than a traditional development project. Whenever possible, reducing process delays for remediation and any required municipal and/or regulatory approvals can make a brownfield property more attractive for redevelopment.

<table>
<thead>
<tr>
<th>Project Cost</th>
<th>Profit</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Delay</td>
<td></td>
</tr>
<tr>
<td>6 - Month Delay</td>
<td></td>
</tr>
<tr>
<td>12 - Month Delay</td>
<td></td>
</tr>
<tr>
<td>18 - Month Delay</td>
<td></td>
</tr>
</tbody>
</table>

Ultimately, at the end of the brownfield redevelopment process, the objective is to redevelop the property into something that is sustainable, breathes new life into the community, enhances environmental and human health and increases the value of the actual property and those surrounding it. In order to do this, a partnership between the community, municipality, developers, lenders and property owners is necessary early on in the redevelopment process.

Many brownfield properties are sold below actual market value due to the perceived risk of being contaminated. In situations where contamination has been confirmed, brownfield properties can still be very profitable pieces of land due to their proximity to services, market demand and existing infrastructure.

**Clean Market Value**

*(What property would likely be worth without contamination)*

- **Carrying Cost**
  (taxes, insurance, maintenance, and security)
- **Environmental Liability**
  (cost to remediate the property and the reduction due to stigma)
- **Other Liability**
  (Cost to secure title, tax, legal, financial, physical, demolition)

**Purchaser would also consider:**
- Transaction Cost *(due diligence)*
- Reposing Cost *(cost to secure incentives)*
- Cost for Capital *(interest, rate of return plus risk premium)*

**Seller would also consider:**
- Incentives *(Municipal)*

**Adjusted Market Value**

*(Property value adjusted for cost associated with contamination)*

**liability**

Depending on your involvement in a brownfield redevelopment project – whether it be as the lender considering financing a project, the environmental practitioner evaluating options for remediation, the developer weighing the costs and benefits of a brownfield redevelopment project, or the municipal staff person making a decision on a proponent’s application – you will have a different perception of the risks involved. Understanding and managing the financial and environmental risks in a brownfield redevelopment project is absolutely key to the success of the project.
The level of risk a project has will vary depending on the type of property contamination, the method of remediation employed and the tolerance level of those involved. For example, a property where there is a high degree of certainty that all contamination has been addressed will likely be perceived to have a low level of environmental “risk” by lenders, developers and property owners. A property where the contamination is complex and will require on-going management to prevent off-site migration will likely be perceived differently. Similarly, if this is the first brownfield property encountered by a municipality, a lender, or a prospective brownfield purchaser, there will likely be a lower tolerance for any risk at all, regardless of the remediation options available.

Where brownfield properties are significantly more challenging than other development opportunities, the market will modify and adjust for that risk, or the development will not go forward. There are various mechanisms today to mitigate concerns about risk, for example:

- the parties involved will complete solid market research and environmental due diligence in advance of completing any transaction
- risk will be quantified in the price of the property as part of a purchase/sale agreement
- contractual agreements are used to clarify the future response of parties involved
- insurance products are used to cap costs of remediation or address the potential for future liability (short term).

Ultimately, any brownfield redevelopment project carries with it some degree of financial uncertainty and environmental liability. With good information and the right team, those risks can often be managed effectively and a strong business case can be made for moving forward on a brownfield project.
To find legal professionals specializing in environmental law, visit the Ontario Bar Association – Environment Law section at www.oba.org.

To find real estate professionals with experience in brownfield transactions, visit the Ontario Real Estate Association at www.orea.com.

For information on available municipal financial incentives for a particular project, contact your local municipality.

For information on developing municipal financial incentives, contact your local Municipal Services Office:
  - Central (Toronto) (416) 585-6226 or 1-800-668-0230
  - Southwest (London) (519) 873-4020 or 1-800-265-4736
  - East (Kingston) (613) 545-2100 or 1-800-267-9438
  - Northeast (Sudbury) (705) 564-0120 or 1-800-461-1193
  - Northwest (Thunder Bay) (807) 475-1651 or 1-800-465-5027