REGION OF OTTAWA-CARLETON | REPORT

RÉGION D'OTTAWA-CARLETON | RAPPORT

File/ Réf. 43-00-0124

DATE 25 May 2000

TO/ DEST. Co-ordinator
Planning & Environment Committee

FROM/ EXP. Commissioner, Planning & Development Approvals

SUBJECT/ OBJET **PUBLIC MEETING TO CONSIDER DRAFT REGIONAL OFFICIAL PLAN AMENDMENT 10 ~ CONTAMINATED SITES**

DEPARTMENTAL RECOMMENDATION

That, subject to the public meeting, the Planning and Environment Committee recommend that Council enact a by-law to adopt Regional Official Plan Amendment 10 to the 1997 Regional Official Plan, attached as Annex A to this report.

PURPOSE

This report presents proposed Amendment 10, the purpose of which is to revise the Development Constraints policies (Section 11) of the Region's Official Plan. Specifically, the existing policies in Section 11.4 - Contaminated Sites, require updating to reflect completion of a Historical Land Use Survey, as well as a revised process for the review and approval of planning applications under the Planning Act.

The amendment consists of changes to the following areas of the Regional Official Plan:

- Inserting two new policies in Section 11.4 ~ Contaminated Sites to replace existing policies. These new policies further define the process for reviewing development applications for potential site contamination; and
- Deleting existing policies in Section 11.4 - Contaminated Sites that are no longer required.

In addition, this report examines financial incentives related to the redevelopment of contaminated sites. In particular, the suggestion by the City of Vanier that Regional development charges might be reduced or waived for such sites is reviewed as one possible form of financial incentive.

BACKGROUND

Issues of environmental contamination are administered by the Ministry of the Environment (MOE) under provisions of the Environmental Protection Act and the Ontario Water Resources Act. These Acts enable the MOE to deal with situations where there is an actual adverse impact, or the likelihood of an adverse impact, related to the presence or discharge of a contaminant. To better define the environmental review process and its role in that process, the MOE released the document: *Guideline for Use at Contaminated Sites in Ontario*, (Revised February 1997). The MOE's primary interest is in ensuring proper site remediation, but it will also provide support to review agencies (municipalities) on specific development applications.

Under the Memorandum of Agreement with the Province, the Region is responsible for screening applications for possible soil contamination as part of its review of comprehensive zoning by-laws, subdivisions, severances and part-lot control applications. Screening for potential site contamination enables problem sites to be identified, and adverse impacts on human health and the environment to be mitigated. Given the specialized expertise required in dealing with soil contamination, the Province has retained responsibility for determining who will assess and decommission sites where soil contamination has been detected.

Existing Official Plan policies (Section 11.4) outline a sequential review process intended to identify potential contamination and to ensure remedial site restoration prior to development approvals. Initially, a Phase 1 Environmental Site Assessment (ESA) is required to determine if any contamination is likely to be found on the subject lands. If the Phase 1 ESA indicates the possibility of contamination, then a Phase 2 ESA is undertaken involving on-site sampling to confirm the existence, nature and extent of any contamination. If the Phase 2 results confirm contamination, a process of clean-up and restoration begins, rendering the lands suitable for their intended use.

To affirm the conclusions of a Phase 2 ESA, or that site remediation has been completed properly, a 'Record of Site Condition' (RSC) is then prepared. A RSC is a form completed by the property owner and environmental consultant to indicate by way of a sworn affidavit that the site assessment or restoration work is complete. Acknowledged on receipt by MOE staff, the RSC may also be used later as the basis for an MOE audit, which allows the process to be monitored, and to possibly identify where changes might be required to improve the overall process. Therefore, a RSC is the key document in confirming whether a site does not require cleanup, or a site exhibiting evidence of contamination has been restored to MOE standards acceptable for the intended use.

Previously, available information about where contamination is likely to exist in the Region was incomplete and out of date. To better compile this information, the Official Plan (Policy 7 of Section 11.4 - Contaminated Sites) reflected Council's intent to prepare a Historical Land Use Survey. This survey has now been completed and it has produced a detailed inventory of the type and location of past land uses that might have caused soil or groundwater contamination.

Historical Land Use Survey

The consulting firm Duke Engineering & Services (Canada) Inc. was retained to undertake this study. Their task was to conduct historical research of public records in order to identify and compile a detailed database of historical land use activities which had the possibility to have caused contamination. The range of activities identified in the database is quite extensive, totalling 6,004 activities, and involving over 7,570 companies. As expected, the older areas of the Region contain the largest proportion of historical activities (pre-1990). Older suburban and rural areas exhibit a near even mix of current (post 1990) and historical activities.

As a screening tool for reviewing development applications, this Historical Land Use Inventory (HLUI) database can be used to help identify sites where there is some potential for contamination. In addition, the HLUI can be used to assist environmental consultants in their efforts to prepare Phase 1 ESAs.

Aside from its use in safeguarding human health through the review of land development applications, the HLUI database can also be used by the Corporation to:

- Assist in implementing the Region's health mandate;
- Aid in the determination of pollution sources;
- Help reduce unforeseen costs and/ or delays affecting infrastructure projects; and
- Potentially reduce risks associated with property acquisitions.

DISCUSSION

Proposed Development Approvals Process

A new approach to development approvals is possible to reflect this improved information base. To date, only subdivision applications have been subject to comprehensive review for possible contamination, requiring the submission of a Phase 1 ESA for all applications. This practice was begun in order to deal with a lack of reliable information on possible site contamination. On a related note, it has now become standard practice for financial institutions to require a Phase 1 ESA as a precondition to extending financing to subdivision developments.

Experience has shown that actual submission of a Phase 1 ESA is no longer required in every instance. Instead, subdivision applications can now be accompanied by an affidavit, sworn by the principal environmental consultant who completed the Phase 1 ESA. The affidavit would be used to confirm the preparation of a Phase 1 ESA and its findings; whether or not there are issues of actual or potential environmental concern with respect to contamination. If there are no such issues, then no further work will be required. Conversely, if issues of potential environmental concern are evident, then further investigation will be required involving completion of a Phase 2 ESA, and where applicable, proper site remediation. In these latter cases, a Record of Site Condition will be required to confirm proper

completion of the environmental review process. Where required, conditions of approval and development agreements will be used to enforce these requirements.

Using the HLUI database (as well as other information sources), it will now be possible to screen other planning applications for potential site contamination. The onus will remain the applicant's to provide whatever information is necessary to screen applications for this purpose. For instance, review of land severance applications, site plans and rezonings can now include a check of the HLUI database. If the site in question appears on the database, then a thorough environmental review process can be initiated. In practice, this requirement for an in-depth environmental review of a property would apply only when available information indicates some potential for site contamination. It is expected that the majority of planning applications will not have to undertake an ESA, and that actual issues of contamination will be encountered in a very small percentage of applications. Furthermore, it is expected that certain minor types of planning applications will not be affected by this more comprehensive environmental review process. Examples of such applications include: those where there is no change in use, severance applications involving lot line adjustments or for mortgage purposes, and minor variance applications. Procedural guidelines will be developed in conjunction with municipal planners and the Ottawa-Carleton Homebuilders Association to further detail the day-to-day review procedures for the various types of planning applications.

COMMENTS FROM THE CIRCULATION

Draft Amendment 10 was circulated to a number of agencies including local municipalities, regional departments, community associations and provincial ministries. The following comments were received:

Members of the Ottawa-Carleton Homebuilders' Association met with staff and submitted comments. While voicing support for the revised development approvals process discussed above, they also provided written concerns about the environmental review process being extended to include other planning applications such as severances and rezonings, citing instances where some clarification is required on certain details of the revised approvals process. They also suggest that all landowners whose properties are listed in the HLUI should be so notified.

Response:
Detailed procedural guidelines will be needed which will set out the internal review and processing of different development applications. This will occur over the balance of the year, and will likely be completed by the new City administration. Certainly, the O-C Homebuilders' Association will be welcome participants in developing these guidelines. As to informing all landowners, the HLUI is a compilation of publicly available records, such as city directories, that indicate the previous use of a property; it is not a confirmation of contamination. As an information database, it is intended to be used as a screening tool to assist the development approvals process. If a current landowner wishes to enquire about their property, the database can be checked for them. The database does not record the current landowner of a parcel, it only lists the activity and the company who operates or used to operate the activity identified in the search of public records.

Comments were also received from the cities of Gloucester, Cumberland and Ottawa. Collectively, they raised questions about how the environmental review process will be applied to other planning applications. City of Ottawa staff suggested some minor wording changes to Amendment 10 and expressed immediate interest in using the HLUI database in their review of planning applications. Cumberland staff, using examples of different planning applications, wondered when and how the environmental review process would apply in practice. And Gloucester staff expressed concerns about procedural details, suggesting the new policies be more explicit, providing detailed criteria for reviewing different types of planning applications.

Both City of Kanata Council and Osgoode Township Council indicated their support for Amendment 10.

Response:
As mentioned above, the next steps in this process will involve meetings with key municipal staff involved in development approvals (together with input from others ~ developers and consultants), and the preparation of more detailed procedural guidelines for the environmental review of applications. Policies in Amendment 10 have been drafted to establish a general environmental review process that is more comprehensive and improves upon current practice. That is, the policies attempt to strike a balance between sufficient detail required to define the public interest in reviewing applications for contamination, with enough flexibility for determining a procedural approach to reviewing different planning applications. Developing a successful approach will depend on the input and expertise of staff involved in the development approvals process.

Finally, the Environmental Health Advisory Group (EHAG) noted the HLUI to be a useful tool but it does not go far enough in identifying issues associated with the migration of contaminates. EHAG also questions the expertise of environmental consultants and suggests that in the case of an Environmental Site Assessment, that a second study be prepared to validate the conclusions of the first. Their final point is that site remediation is not always possible and in such situations development should not be permitted.

Response:
EHAG raises another issue, which is the migration of contamination. A separate database of known contamination and possible migration patterns was beyond the scope of the HLUI project. The Ministry of the Environment compiles information on known contamination. Further, any site remediation that is carried out and documented in a Record of Site Condition is kept in MOE files which are available for public enquiries.

The revised development approvals process outlined in this report attempts to implement a process that is based on available information, yet not overly onerous to applicants. To require a second study to validate another consultant's work is considered too onerous and expensive. The sworn affidavit required of an applicant's consultant includes a statement that the Phase 1 ESA has been prepared according to the prevailing industry standard, which is the Canadian Standards Association's standard

Z768-94. The Official Plan policy also requires this. In addition, the HLUI database will be available for environmental consultants to augment the completeness of their work.

RELATED DISCUSSION ~ FINANCIAL INCENTIVES

On those sites where contamination is found (commonly labelled as "brownfields"), the challenge is proper site remediation to render the site suitable for its intended use. Depending on the method chosen, remediation costs can be significant. In severe instances, high clean-up costs can forestall the proposed redevelopment of a brownfield site. One local example of this is the former Dominion Bridge site in Vanier.

In an attempt to grapple with high remediation costs that impede redevelopment, some form of financial incentive has been proposed as a way to promote redevelopment. Two approaches will be considered here:

- Exemptions to development charges; and
- Tax incremental equivalent financing.

Development Charges Exemption

Upon the redevelopment of land, the current Regional Development Charges By-law would only require charges payable on the incremental increase in dwelling units or floor area of non-residential space. In the case of demolition, credits representing the amount of development existing on the site are used to offset the development charges. While this may apply to some redevelopment projects, it does not apply to situations where buildings no longer exist, as in the case of the former Dominion Bridge site in Vanier.

When the Region's Development Charges review was undertaken in the spring of 1999, it was decided that possible exemptions for the redevelopment of contaminated sites would be examined as part of this review of Official Plan policies. This possibility was raised by the City of Vanier whose interest lies in promoting the redevelopment of contaminated lands, in particular, the Dominion Bridge site.

In reviewing this possibility, the Region's Legal Department concluded that the enabling legislation would not permit an exemption or a credit for any commercial enterprises. The Municipal Act provisions against bonusing serve to prohibit an exemption to development charges. However, an exemption for development charges may be granted in respect of lands owned by a non-profit organization. Credits towards development charges are not possible in either instance (commercial or non-profit) since removal of contamination is not a service provided by the municipality.

Tax Incremental Equivalent Financing

Tax incremental financing (TIFs) has been explored with some success primarily in U. S. jurisdictions. It involves calculating the difference between the existing tax revenue generated by a brownfield site and the potential increase in tax revenue expected from redevelopment of the site. This amount (or a portion

thereof) is then made available to the proponent as an incentive grant for a period of time. At present, Ontario does not have any legislation to permit a similar approach. However, some Ontario municipalities have been able to offer financial incentives equivalent to TIFs under the provisions of a Community Improvement Plan (CIP) adopted under section 28 of the Planning Act.

An approved Community Improvement Plan enables a local municipality to provide incentive grants and/ or loans to property owners for identified community improvement projects. Examples of financial incentives offered by some Ontario municipalities include: underwriting interest rates on project financing, providing low interest or no interest loans, and waiving application fees and parkland dedication requirements. The normal Municipal Act prohibition on providing financial bonusing does not apply to CIPs. In practice, a CIP would define an area in the municipality to which the intended community improvement policies would apply. In the case of brownfields, eligibility criteria could be applied to these areas, identifying them as the target areas for improvement. Then a range of financial incentives could be outlined in the CIP that would help promote brownfield redevelopment.

However, the Planning Act only permits local municipalities to adopt Community Improvement Plans, not upper-tier municipalities like the Region. This requirement suggests that a Community Improvement Plan dealing with brownfield sites could be a new policy initiative undertaken by the new City of Ottawa. At present, the Ministry of Municipal Affairs and Housing is working on guidelines to assist municipalities who are interested in this approach.

CONSULTATION

Public notice of the proposed Regional Official Plan amendment was published in the *Ottawa Citizen*, *Le Droit*, and *Ottawa Sun* on 19 May 2000. In addition, notice of the public meeting was mailed to affected agencies, community associations and other interested parties. Information sessions on the HLUI database were held with local municipalities when that survey was completed. A meeting was held with the Ottawa-Carleton Homebuilders Association to review the revised development approvals process.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this Regional Official Plan amendment. Some costs will be incurred in making the HLUI available on the Region's network for staff reviewing development applications.

CONCLUSION

Amendment 10, attached as Annex A, introduces revised policies 2 and 3 (replacing existing policies), which provide a policy context for the more comprehensive approvals process outlined above.

Furthermore, existing policies 6 and 7 are no longer required and will be deleted by this amendment. Policy 6 outlined requirements for the environmental study of LeBreton Flats in advance of any developments, which have now been completed; and policy 7 dealt with the need to undertake the Historical Land Use Survey.

Preparation of workable procedural guidelines on site contamination will depend on the contributions of all parties involved in the review of development applications.

Regarding financial incentives for promoting the redevelopment of contaminated sites, the limited RDC exemption allowed only for non-profit organizations suggests that the broader approach possible under a Community Improvement Plan is preferable. Preparation of a CIP could be started by a local municipality before the end of the year, but it is perhaps more suitable for the new City of Ottawa to consider such an initiative as part of its future work program.

Approved by
N. Tunnacliffe, MCIP, RPP

NT/SM/

Attachment: Annex A ~ Draft Regional Official Plan Amendment 10

DRAFT

AMENDMENT 10

OFFICIAL PLAN (1997) OF THE REGIONAL MUNICIPALITY OF OTTAWA CARLETON

PURPOSE

The purpose of Amendment 10 is to revise the Development Constraints policies (Section 11) of the Regional Official Plan. Specifically, the existing policies in Section 11.4 - Contaminated Sites, require updating to reflect completion of a Historical Land Use Survey, as well as a revised process for the review and approval of planning applications under the Planning Act.

The amendment consists of changes to the following areas of the Regional Official Plan:

- Inserting two new policies in Section 11.4 ~ Contaminated Sites to replace existing policies. These new policies further define the process for reviewing development applications for potential site contamination; and
- Deleting existing policies in Section 11.4 - Contaminated Sites that are no longer required.

BASIS

Issues of environmental contamination are administered by the Ministry of the Environment (MOE) under provisions of the Environmental Protection Act and the Ontario Water Resources Act. These Acts enable the MOE to deal with situations where there is an actual adverse impact, or the likelihood of an adverse impact, related to the presence or discharge of a contaminant. To better define the environmental review process and its role in that process, the MOE released the document: *Guideline for Use at Contaminated Sites in Ontario*, (Revised February 1997). The MOE's primary interest is in ensuring proper site remediation, but it will also provide support to review agencies (municipalities) on specific development applications.

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Existing Official Plan policies (Section 11.4) outline a sequential review process intended to identify potential contamination and to ensure remedial site restoration prior to development approvals. Initially, a Phase 1 Environmental Site Assessment (ESA) is required to determine if any contamination is likely to be found on the subject lands. A Phase 1 ESA documents the previous uses of the property and provides an assessment of the site to identify actual or potential soil or groundwater contamination. If the Phase 1 ESA indicates the possibility of contamination, then a Phase 2 ESA is undertaken involving on-site sampling to confirm the existence, nature and extent of any contamination. If the Phase 2 results confirm contamination, a process of clean-up and restoration begins, rendering the lands suitable for their intended use.

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Previously, available information about where contamination is likely to exist in the Region was incomplete and out of date. To better compile this information, the Official Plan (Policy 7 of Section 11.4 - Contaminated Sites) requires the preparation of a Historical Land Use Survey. This survey has now been completed and it has produced a detailed inventory of the type and location of past land uses that might have caused soil or groundwater contamination.

Historical Land Use Survey

The consulting firm Duke Engineering & Services (Canada) Inc. was retained to undertake this study. Their task was to conduct historical research of public records in order to identify and compile a detailed database of historical land use activities which had the possibility to have caused contamination. The range of activities identified in the database is quite extensive, totalling 6,004 activities, and involving over 7,570 companies. As expected, the older industrialized areas of the Region contain the largest proportion of historical activities (pre-1990). Older suburban and rural areas exhibit a near even mix of current (post 1990) and historical activities.

As a screening tool for reviewing development applications, this Historical Land Use Inventory (HLUI) can be used to help identify sites where there is some potential for contamination. In addition, the HLUI can be used to assist environmental consultants in their efforts to prepare Phase 1 ESAs.

Proposed Development Approvals Process

A new approach to development approvals is possible to reflect this improved information base. To date, only subdivision applications have been subject to comprehensive review for possible contamination, requiring the submission of a Phase 1 ESA for all applications. This practice was begun in order to deal with a lack of reliable information on possible site contamination. On a related note, it has now become standard practice for financial institutions to require a Phase 1 ESA as a precondition to extending financing to subdivision developments.

Experience has shown that actual submission of a Phase 1 ESA is no longer required in every instance. Instead, subdivision applications can now be accompanied by an affidavit, sworn by the principal environmental consultant who completed the Phase 1 ESA. The affidavit would be used to confirm the preparation of a Phase 1 ESA and its findings; whether or not there are issues of actual or potential environmental concern with respect to contamination. If there are no such issues, then no further work will be required. Conversely, if issues of potential environmental concern are evident, then further investigation will be required involving completion of a Phase 2 ESA, and where applicable, proper site remediation. In these latter cases, a Record of Site Condition, filed with the MOE, will be required to confirm proper completion of the environmental review process.

Using the HLUI database (as well as other information sources), it will now be possible to screen other planning applications for the potential of site contamination. The onus will remain the applicant's to provide whatever information is necessary to screen for this purpose. For instance, review of land severance applications, site plans and rezonings can now include a check of the HLUI database. If the site in question appears on the database, then a thorough environmental review process can be initiated. In practice, this requirement for an in-depth environmental review of a property would apply only when available information indicates some potential for site contamination. It is expected that the majority of planning applications will not have to undertake an ESA, and that actual issues of contamination will be encountered in a very small percentage of applications. Furthermore, it is expected that certain minor types of planning applications will not be affected by this more comprehensive environmental review process. Examples of such applications include: those where there is no change in use, severance applications involving lot line adjustments or for mortgage purposes, and minor variance applications. Procedural guidelines will be developed in conjunction with municipal planners and the Ottawa-Carleton Homebuilders Association to further detail the day-to-day review procedures for the various types of planning applications.

Conclusion

Policies 2 and 3 of Section 11.4 - Contaminated Sites require modifications to reflect the revised approvals process outlined above. Amendment 10 introduces updated policies to this effect. Furthermore, policies 6 and 7 are no longer required and are deleted by this amendment. Policy 6

outlined requirements for the environmental study of LeBreton Flats in advance of any developments, which have now been completed; and policy 7 dealt with the need to undertake the Historical Land Use Survey.

THE AMENDMENT

1. Section 11.4 ~ Contaminated Sites, is hereby amended by deleting the existing Policies 2 and 3 and substituting therefor, the following new policies:

    "2. When reviewing planning applications, require the applicant to demonstrate that the environmental condition of the property is suitable for the intended use. For plan of subdivision applications, the applicant shall indicate that a Phase 1 Environmental Site Assessment (ESA) has been completed and what its findings are with respect to whether or not issues of potential environmental contamination exist on the property. A Phase 1 ESA documents the previous uses of the property and provides an assessment of the site to identify actual or potential soil or groundwater contamination. The Phase 1 ESA shall be undertaken using the requirements, methodology and practices described in the Canadian Standards Association's *Phase 1 Environmental Site Assessment, CSA Standard Z768-94*, as updated from time to time.

    When reviewing other planning applications, require the applicant to indicate that a Phase 1 ESA has been completed and what its findings are with respect to whether or not issues of potential environmental contamination exist on the property, only when available information indicates a potential for contamination on the property.

    3. Require for all applications, where available information reveals the site has issues of actual or potential contamination, the applicant to submit a Record of Site Condition (RSC), duly completed and acknowledged by the Ministry of the Environment, to demonstrate that the site is suitable for the proposed use. Submission of a RSC would occur at the conclusion of the environmental site assessment review process, either after a Phase 2 ESA, or upon completion of site remediation as set out in policy 5. A Phase 2 ESA provides a sampling and analysis of the property to confirm and delineate the presence of soil or groundwater contamination at the site, or confirm the absence of such contamination at the site."

2. Section 11.4 ~ Contaminated Sites is hereby amended by deleting Policies 6 and 7.
3. Section 11.4 ~ Contaminated Sites is hereby amended by correcting reference to the Ministry of the Environment in Policy 5 by deleting the words: "and Energy."