

**DATE:** March 30, 2004

**TO:** Chairman and Members of the Planning and Development Committee

**FROM:** Edward R. Sajecki, Commissioner of Planning and Building

**SUBJECT:** **Cleaning up the Past, Building the Future:  
A National Brownfield Redevelopment Strategy  
for Canada**  
**MEETING DATE: April 19, 2004**

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**ORIGIN:** Planning and Building Department

**BACKGROUND:** On February 25, 2004, the National Round Table on the Environmental and Economy (NRTEE) held an information session on two recent publications dealing with the environmental quality of Canada's cities:

- *State of the Debate Report-Environmental Quality in Canadian Cities: the Federal Role;*
- *Cleaning Up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada.*

This report provides an overview of the "*National Brownfield Redevelopment Strategy for Canada*" and its implications for Mississauga. A second report on the "*State of the Debate Report*" will be brought forward in the near future. Attached as Exhibit 1, is a report titled "*Cleaning up the Past, Building the Future, A National Brownfield Redevelopment Strategy for Canada: Review of the Implications of the National Round*

*Table on the Environment and Economy Report*" which includes an overview of status of Brownfields in Mississauga, the status of Provincial Regulations for Brownfields and a summary of the NRTEE report.

**COMMENTS:**

The National Round Table on the Environment and the Economy (NRTEE) is an organization created to "play the role of catalyst in identifying, explaining and promoting, in all sectors of Canadian society and in all regions of Canada, principles and practices of sustainable development". The agency, consisting of members from across Canada, including representatives of business, academia, environmental groups, identifies issues that have both environmental and economic implications, explores these implications and attempts to identify actions that will balance economic prosperity with environmental preservation.

In December 2001, the Federal Budget mandated NRTEE to prepare a National Brownfield Redevelopment Strategy. NRTEE convened a multi-stakeholder task force consisting of representatives from across the country, three levels of government, the private sector and the environmental community. The work of the stakeholder group is summarized in the publication titled "*Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy*" released in 2003. It builds on work previously underway by Canadian communities and provinces and makes a number of recommendations to assist in the redevelopment of brownfields.

NRTEE stressed that in order for a national strategy to be successful all participants in the brownfield redevelopment process, both public and private sector must participate, as well as financial and insurance communities are essential partners.

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### **NRTEE Brownfield Classifications**

Brownfields "are contaminated lands that lie unused and unproductive throughout Canada. Left as they are, brownfields can harm local economics and pose threats to human health and environmental quality. Redeveloped and returned to productive use, they can generate significant economic, environmental, and social benefits."

The report categorized brownfields into three tiers.

- The top tier describes those whose market value greatly exceeds the cost of remediation, which accounts for approximately 15-20 percent of all contaminated sites in Canada. These require no special attention or outside assistance.
- The bottom tier is another 15-20 percent of sites where the cost of clean up far exceeds the value of the land after remediation. The high clean up costs and uncertainty exceed any market interest. These tend to be in rural or remote areas with no realistic prospects for redevelopment in the near future.
- The middle tier describes 60-70 percent of sites where the cleanup costs are high, but where there is potential for redevelopment. According to NRTEE, these brownfields are likely to be in established urban areas and along transportation corridors where municipal services are readily available. The market value of the land itself, once cleaned up, may be slightly above or below the combined cost of land and clean up. However, these sites will not become useful or productive urban land uses because they face too many hurdles for conventional market forces to overcome in the absence of strategic intervention to address barriers to redevelopment.

### **Major Issues Identified by NRTEE**

The issues surrounding contaminated sites fall into three categories:

**Financial:** Brownfield redevelopment is hindered by lack of access to capital from traditional sources. NRTEE noted that lenders are reluctant to lend money for brownfield redevelopment due to concerns for the ability to liquidate a property if they are holding it for security or lending on the property. Also there are fears that they may be exposing themselves to regulatory and civil liability in the event they come into possession of an unremediated site.

In addition, the rates of return on brownfields may not be as great as compared to greenfields due to the lengthy turnaround times. Even though many brownfield sites are fully serviced, there are time delays and expenses incurred prior to development to undertake soil investigations to determine the nature and extent of contaminants and then undertake the necessary site clean up. These are considered to be pre-project, upfront costs which can make these sites undesirable.

**Liability:** Under current provincial and federal legislation, owners of contaminated sites or any proponents of the redevelopment may have on-going liability even if a site is remediated to the current standards of the day. According to NRTEE, "each participant is exposed to potential joint and several regulatory and civil liabilities. Each could be individually exposed to the total of all the liability that might emerge when land use changes from vacant or idle to active and occupied".

This aspect of liability affects existing owners because they will always be held responsible if standards change in the future or if another owner remediates the property. Under the existing legislation, it is not possible to transfer the liability. Lenders may be unwilling to finance such ventures. Municipalities feel

compelled to impose strict environmental requirements as the approval agency and require indemnities to reduce liability. Finally, ultimate end users may be reluctant to purchase the project due to concerns that they will share in the liability.

NRTEE notes that the liability issue arose out of the "polluter-pays" principle, which is aimed at addressing contamination resulting from current industrial activity. It also ensures that a polluter does not simply "walk away" in the event of an action that results in an "adverse impact" on the environment. The difficulty with brownfield sites is that many of the activities that caused the contamination happened over a century ago and the polluters can no longer be located. In the absence of the original polluter, the polluter-pays principle results in any future parties involved in the site may be assigned liability. NRTEE feels there needs to be a resolution of this for parties who clean up sites or for other parties who become owners of the site such as municipalities through non-payment of taxes or lenders who have to foreclose.

**Regulatory Framework:** NRTEE has noted that often provincial and municipal approvals require that brownfields meet generic clean up standards when a site specific risk assessment (SSRA) would be appropriate adding additional requirements. In Ontario, the *Guidelines for Use at Contaminated Sites* allow for the use of SSRA and in the City of Mississauga, the Corporate Policy and Procedures for Development on Potentially Contaminated Lands, September 1997 allows for the use of SSRA on a case by case basis. NRTEE also noted that in some areas there is a duplication of government review and inconsistent requirements. This has not arisen as an issue in Mississauga as the Province does not review Environmental Site Assessments or approve clean up plans.

#### **NRTEE Strategic Directions**

Based on successful projects in Ontario, British Columbia,

Quebec and the Maritime provinces, NRTEE developed a set of strategic directions to transform brownfields into vibrant communities. Attached as Appendix I to Exhibit I is a table summarizing NRTEE's National Strategy Recommendations.

The strategies fall under three areas:

### **Applying Strategic Public Investments To Address Upfront Costs**

The recommendations contained under these strategic directions address the financial barriers to brownfield redevelopment by removing tax impediments; providing loans, grants and mortgage guarantees to lever private capital; and, establishing an effective mechanism through which the federal, provincial/territorial and municipal governments can provide financial incentive to qualifying brownfield redevelopments.

### **Establishing an Effective Public Policy Regime for Environmental Liability and Risk Management**

The recommended actions provide all participants in brownfield redevelopment with a clear, fair, and consistent public policy regime to bring greater certainty and efficiency to the question of liability and risk management and to promote a co-ordinated effort on liability and risk management among all levels of government. None of the recommendations, except one (the use of SSRA) are within the responsibility of municipalities.

### **Building Capacity for a Community Awareness of Brownfield Redevelopment**

The strategies in these recommendations are to build awareness to the benefits and challenges of brownfields and to establish shared objectives and forage partnerships.

#### **CONCLUSION:**

The report titled "*Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*" prepared by the National round Table on the Environmental and Economy (NRTEE) is a comprehensive overview of state of brownfields in Canada. The redevelopment of these sites, consistent with the goals and objectives of the respective levels of government, will assist in community revitalization and achieving smart growth targets. Although all of the brownfields redeveloped to date in Mississauga are part of the first tier brownfield sites, in the future, there may be sites identified as the middle tier as defined by NTREE and may require strategic intervention by one or many levels of government.

In order to ensure that any intervention is fair, transparent and constitutes an effective use of the City's resources, the use of the tools advocated by the NRTEE report such as Tax Increment Financing should be investigated to determine the feasibility and advisability of the involvement of the City. Further if the utilization of such financing tools, is desirable, a comprehensive review process could be established and endorsed by City Council. A working committee with representatives from each of the City's departments should be established to address this issue further and a report brought forward for City Council's consideration.

**RECOMMENDATIONS:**

1. That the recommendations of the National Round Table on the Environmental and Economy (NRTEE) report titled "Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada" be endorsed by City Council.
2. That the report titled "Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada" dated March 30, 2004 from the Commissioner of Planning and Building be circulated, by the City Clerk, to the Ontario Ministry of Municipal Affairs, the Ontario Ministry of the Environment, the National Round Table on the Environment and the Economy, to the Federation of Canadian Municipalities and to the Association of Municipalities of Ontario.
3. That a working committee be established with representatives from each of the City departments to investigate the feasibility of the City using the financial incentives contained in the National Round Table on the Environmental and Economy (NRTEE) report titled "Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada".

Original Signed By:

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Commissioner of Planning and Building