

The Benefits of Brightfields Developments for Municipalities

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By

The increasing viability and importance of distributed energy resources, and the content of the provincial government's policies on climate change, make the use of brownfields sites for brightfields developments a compelling option for municipalities.*

Brightfields are a form of brownfield development, and may be understood as the use of vacant or contaminated lands for renewable energy projects.

By way of background, the framework for brownfields developments was provided by three legislative changes. The first was amendments to the *Environmental Protection Act*¹ that provided protection from administrative orders if a record of site condition was obtained. A record of site condition was available if the owner of a property could establish that the nature and extent of any contamination had been appropriately investigated and, if required, remediated. The second was amendments to the *Planning Act*², which allowed municipalities to designate all or a portion of their territory as a community improvement project area. For lands so designated, municipalities could create community improvement plans and, in turn, make grants or loans to cover the costs of development. Finally, amendments to the *Municipal Act*³, and to the *City of Toronto Act*⁴, allowed municipalities to pay subsidies, in the form of deferred municipal or school taxes, to support the development of brownfields sites.

Many municipalities have enacted by-laws creating community improvement project areas and community improvement plans, and have made funding available to support brownfields developments. Some of those by-laws, for example, those of the City of Toronto⁵, target certain kinds of developments, such as those which generate employment, as the ones eligible for financial support.

While the availability of financial incentives has assisted in brownfields developments, the developments themselves as a general rule have had to be financially self-supporting, that is they must pay a reasonable return on investment. For that reason, brownfields developments are typically for residential, commercial or industrial uses.

While brightfields offer municipalities, in particular, a number of significant benefits, they do not, again as a general proposition, offer the same financial return as do conventional brownfields developments. As a result, the use of brownfield sites for brightfields developments faces a number of impediments.

To begin with, municipal by-laws creating community improvement plans are often designed to encourage the use of land for residential, commercial or industrial development, rather than for renewable energy projects.

The second impediment is that those by-laws, as a condition of the provision of financial assistance, may require the complete remediation of contamination. The nature of renewable energy projects is such that they often do not require full remediation.

Finally, renewable energy projects do not, absent subsidy, typically earn a level of return comparable to other forms of development,

for example, for residential, commercial or industrial purposes. For that reason, developers may not be attracted to brightfields developments.

While brightfields may not be attractive to developers because of lower financial returns, they are attractive to municipalities because they offer energy savings and public policy benefits that conventional brownfields developments do not. Like other forms of brownfields developments, brightfields offer the use of vacant or underused sites that would otherwise remain that way because they are contaminated. Brightfields may supplement, or even replace, a portion of a municipality's electricity supply, with the concomitant potential benefits of increasing the reliability of electricity supply and lowering the cost of that supply. Brightfields may assist municipalities in complying with the provincial government's targets on reducing greenhouse gases. The municipalities which own, in whole or in part, an electricity distribution utility may find that encouraging brightfields developments is a way to assist those utilities in responding to the challenges posed by the increasingly widespread implementation of distributed energy resources.

Brightfields offer an additional benefit, in that they help to curb the so-called energy sprawl. Renewable energy projects are often located on land that could otherwise be used for agricultural purposes. By locating renewable energy projects on underused or contaminated urban properties, brightfields protect greenfields from being used for wind or solar installations. In the process they may reduce public resistance to their development.

Given the benefits that brightfields developments offer to municipalities, it may be time to revisit the provisions, in existing community improvement plan by-laws which, directly or by necessary implication, limit the attractiveness of brightfields developments. In particular, by-laws that designate community improvement plan areas should encourage brightfields developments, and ensure that there are adequate financial incentives to encourage those developments.

It unfortunately remains the case that the economics of brightfields developments are such that subsidies are still required. To this point, the provincial government, and its regulatory agency, Independent Electricity System Operator (IESO), have not provided those subsidies. However, providing subsidies for brightfields developments would seem a logical, even a necessary, component of the province's climate change policies. The provision of such subsidies could, together with changes in the approach which municipalities have to date taken for the development of brownfields sites, make brightfields developments an attractive alternative for municipalities.

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[1] *Environmental Protection Act*, RSO 1990, c E.19, parts XV.1 - , XV.2.

[2] *Planning Act*, RSO 1990, c P.13, s 28.

[3] *Municipal Act*, 2001, SO 2001, c 25, s 365.1

[4] *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A, s 333

[5] For example, City of Toronto, By-law No 1323-2012, which, among other things, encourages brownfields developments for uses which generate employment.

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