

CUR POLICY SEMINAR: OVERCOMING BARRIERS AND FACILITATING BROWNFIELDS REDEVELOPMENT IN THE GTHA

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George Boire
Environmental Practice Leader
Marsh Canada

Lender Concerns of Environmental Liability related to Commercial Real Estate (incl. Brownfields)

- Began in/around early 1990s related to changes in environmental regulations across Canada
- Main Lender concerns :
 - Potential for direct liability to lenders
 - Potential for pollution conditions to affect value of security taken in support of commercial real estate loans
 - Potential for costs related to pollution conditions to affect the borrowers ability to repay their loan
 - Reputational risk
- Regulatory Protection for Secured Creditors
 - Regulations spell out under what circumstances secured creditors can be potential liable
 - Province by Province

Lender Considerations when Lending Against Brownfields

- Merits of the pro-forma/development plans
- Loan Amount and Loan to Value Ratio
- Relationship with the Borrower
- Type/amount of environmental information available about the site in question
 - Choice of consultant (ie on the “list”?)
 - Type/level/extent of contamination
 - Proposed Remedial Action Plan
- Availability of long term financing once site developed/remediated
- Location (Location, Location.....)
- Alternate sources of repayment/security

To Risk Assess or Not Risk Assess.....

- A risk assessment in lieu of cleanup to generic standards was once the “kiss of death” for getting a property financed
- Many lenders are now more comfortable with sites that have implemented site/project specific risk assessments that have been “approved” by the regulator
 - Depends on the lender and what resources they have in house and/or they are willing to engage to get the deal done
 - That said, most lenders likely still prefer a full depth cleanup to generic standards
- Some lenders may accept risk assessments that have not been formally reviewed/approved by the regulatory if it has gone through a peer review by a bank approved consultant
 - This type of process has been formalized in BC for the review of some sites (eg low to moderate risk sites)

How Can you help a Lender say “YES”?

- Make sure you have a clear business plan for your project including:
 - Details of your experience with similar projects/sites
 - Clear plans for repayment of the loan
 - Clear plans for management of any contamination
 - Clear plans for regulatory sign-off (if necessary) and long term liability protection
- Look at risk transfer strategies including:
 - Indemnity agreement with vendor
 - Escrow/holdbacks or other forms of financial assurance
 - Environmental Insurance

Thanks!

QUESTIONS?

George Boire

Environmental Practice Leader

Marsh Canada Limited

George.boire@marsh.com

416-349-4791



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