

APPENDIX D

8.4 Downtown Hamilton / West Harbourfront Remediation Loan Program (RLP)

8.4.1 Purpose

The purpose of this program is to help remove a serious financial impediment to brownfield redevelopment efforts. Because it is often difficult to secure traditional financing for the remediation of contaminated properties, the City, by providing a low interest loan, is offering financing assistance and the economic stimulus for the remediation of properties being developed/redeveloped as residential or residential/commercial use within the defined areas of Downtown Hamilton and the West Harbourfront.

8.4.2 Program Description

The Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program (RLP) has been developed to stimulate residential or residential/commercial development/ redevelopment on properties requiring remediation (i.e. brownfield properties) that are located within Downtown Hamilton (Area 4) or the West Harbourfront (Area 3) as defined through the ERASE Community Improvement Project Area and which have also been approved under either the ERASE Redevelopment Grant Program or Hamilton Tax Increment Grant Program.

The Program offers a loan for the remediation of properties being developed/ redeveloped for residential or residential/commercial use. The Program will provide financial assistance through a low interest loan equal to 80% of the cost of remediating a property within the defined areas to a maximum of \$400,000 per property/project. The loan is to be a ‘bridge’ until such time as the property owner receives their ERASE Redevelopment Grant or Hamilton Tax Increment Grant.

The development arising from this Pilot Program must be consistent with the policies, principles and design themes contained within the Official Plan, Downtown Hamilton Secondary Plan, the West Harbourfront Secondary Plan, relevant Urban Design Guidelines, Zoning By-laws and Site Plan Control requirements and approvals as well as any other City Council approved policy/regulation.

The Program is offering financial assistance for qualifying projects through a low interest loan equal to 80% of the remediation costs of the property, up to a maximum loan per property/project of \$400,000.

The Program is not intended to provide a loan for the total development/ redevelopment of the property but solely for the remediation costs that qualify under the criteria of the ERASE Redevelopment Grant Program, excluding LEED eligible component costs. Actual costs for which the City loan is being provided may be subject to audit (at applicants cost).

Applications will be recommended for approval only if they meet the criteria specified in this Plan and any other requirements of the City including that the property and property owner are in good standing with the City in terms of all City By-laws that apply to the property and project, all laws that govern the construction and development of the project and the payment of all taxes.

The loan under this Program, once approved, will be provided to the owner, in progress payments

based on 80% of the actual qualifying remediation costs incurred as evidenced by copies of paid invoices. Such progress payments will be advanced within 30 days of submission of the property owner's request for a loan draw. There will be a limit of six draws, spaced no less than 30 days apart.

The loan provided under this Program will be subject to a Loan Agreement with terms and conditions in conformity with this Program and such additional terms and conditions as determined by the General Manager of Planning and Economic Development and City Solicitor in their sole discretion. The loan will be specifically secured by an assignment of the grant payments under the ERASE Redevelopment Grant Program or Hamilton Tax Increment Grant Program. Payments under the ERASE Redevelopment Grant will be applied directly to the remediation loan until such time as the loan is repaid, and any balance in the grant will then and only then flow directly to the owner.

The owner must secure the loan by an assignment of the grant payments under either the ERASE Redevelopment Grant Program or Hamilton Tax Increment Grant Program. City Council at its sole discretion may cease grants under the Hamilton Tax Increment Grant Program if property ownership changes. The Hamilton Tax Increment Grant Program shall not be transferred if the development/redevelopment of the property is incomplete.

Remediation of the property will commence no longer than one (1) year following City Council's approval of the loan commitment and be completed no longer than two (2) years following City Council's approval of the loan commitment. The one and two-year periods may be extended by City Council at its absolute discretion.

Redevelopment/development of the property will commence no longer than three (3) years following City Council's approval of the loan commitment and be completed no longer than four (4) years following City Council's approval. The three and four-year periods may be extended by City Council at its absolute discretion.

Grant payments under the Hamilton Tax Increment Grant Program or ERG Program must be assigned to repay the outstanding loan first and will be fully amortized over a maximum five (5) year period calculated from the first full year in which the property is reassessed by MPAC. 100% of the grant amount will be applied to the repayment of the loan until the loan is fully repaid and which shall also result in a reduction in the applicable amortization period. In the event that assigned grant payments are not sufficient to repay the loan in its entirety within the required amortization period, supplemental payments will be a requirement of the applicant in an amount required to repay the loan in its entirety within the applicable amortization period. Where the property owner intends to utilize the ERG Program's Development Charge Reduction Option (9.0) ("DC Reduction Option"), the value of the ERG grant payments to be assigned to repay the loan will be based on that remaining after the DC Reduction Option is utilized.

In the event that the development of the property has not proceeded within one year of the remediation being completed or, the owner invalidates their qualification under the ERASE Redevelopment Grant, the loan will be capped immediately (unless alternate security acceptable to the City is provided) at the drawn amount and shall be repaid in annual installments over no longer than a five (5) year period calculated from the date City Council approved the loan commitment.

That the interest rate for the Loan Program be 0% and the loan repayment period be a maximum five (5) years.

In order to support the development within the defined areas, the remediation loan may be received by an owner in conjunction with any other available municipal incentive program.

In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the property or portion thereof by the owner, the City shall have sole, absolute and unfettered discretion to request the full or partial repayment of any outstanding loan under this Program.

In the case where the owner is a corporation, the owner covenants and agrees that in the event that there is a change in the effective control of the majority of the voting shares of the owner, the City shall have absolute discretion to request the full repayment of any outstanding loan under this Program.

Regardless of whether or not an Applicant otherwise satisfies the requirements of the Program, the City may reject any application received from an applicant where, in the opinion of Council, the commercial relationship between the City and the Applicant has been impaired by, but not limited to, the applicant being involved in litigation with the City. Applicants are individuals; corporate entities and individuals behind the corporation (Officers/Directors/Shareholders).

Finally, for the purposes of clarity a ‘project’ consists of the redevelopment site. The redevelopment site may include multiple properties with more than municipal address.

8.4.3 Eligibility Requirements

- a) Qualifying owners are owners of properties who qualify for financing under the ERASE Redevelopment Grant Program.
- b) Qualifying properties are properties that fall within the Downtown Hamilton (Area 4) or West Harbourfront (Area 3) as identified by the ERASE Community Improvement Project Area.
- c) Eligible program costs are the same as those established for the ERASE Redevelopment Grant Program, excluding LEED eligible component costs, and include:
 - i) environmental remediation (i.e., the cost of any action taken to reduce the concentration of contaminants on, in or under the eligible property to permit a Record of Site Condition (RSC) to be filed for the proposed use by a Qualified Person, including costs of preparing and filing of an RSC and Certificate of Property Use (CPU), cost of clean fill, grading and compaction to replace contaminated soils;
Eligible environmental remediation costs do not include construction/development costs that would be required regardless of the presence of contamination.
 - ii) Phase II ESAs, Risk Assessments and Remedial Action Plans not covered by the ERASE Study Grant program;
 - iii) installing environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or CPU;
 - iv) monitoring, maintaining and operating environmental and/or engineering controls/works related to environmental remediation, as specified in the Remedial Action Plan and/or Risk Assessment and/or CPU;
 - v) Designated Substances and Hazardous Material Survey and their removal and

abatement in accordance with the *Occupational Health and Safety Act* and Ontario Regulation 278/05 (where applicable) in current/closed Institutional use buildings (Area 3 and 4 only);

- vi) Designated Substances and Hazardous Material Survey and their removal and abatement in accordance with the *Occupational Health and Safety Act* and Ontario Regulation 278/05 (if applicable) as part of the rehabilitation and restoration of heritage buildings/properties designated under Part IV or V of the *Ontario Heritage Act* (Area 3 and 4); and
- vii) In addition to the above, the following costs will be considered eligible when incurred on a site requiring remediation/rehabilitation and located in the applicable geographic area:
 - A. demolition costs not covered by demolition charge credits (Areas 3 only);
 - B. the removal, replacement and/or upgrade of capacity for existing infrastructure (water services, sanitary sewers and storm sewers) up to a maximum of 25% of the cost of said improvement provided the improvement is located on the property and will support the rehabilitation and reuse of the property (Area 3 only); and,
 - C. certain relocation/removal costs for existing and operating industrial manufacturing and transportation uses, where such costs relate to or contribute directly to the actual remediation and rehabilitation of the site (Area 3 only);
- d) Notwithstanding 8.4.3 c) above, eligible costs shall not be considered to be eligible if incurred prior to the date an application has been submitted under this program and accepted by the City with the exception of studies which were the subject of an approved ERASE Study Grant (ESG) Program (8.1) application. Previous grant payments provided under the ESG Program for a study(s) which are also to be accepted as eligible costs under this Program will be deducted from the approved eligible costs;

The following terms specifically apply:

- a) The improvements made to buildings and/or land shall be made pursuant to a Building Permit, constructed in accordance with the Ontario Building Code and in compliance with all applicable Official Plan, Zoning By-Law and Site Plan Control requirements and approvals; and,
- b) All owners receiving approval for a City loan under this Program shall be required to enter into a loan agreement with the City.

8.4.4 Administration

The Economic Development Division will be responsible for administering the RLP, in consultation with other division/departments as necessary. Applications shall be submitted to the Economic Development Division and shall be accompanied by a Phase II ESA and/or Risk Assessment and Remedial Action Plan undertaken by a Qualified Person (as defined under Ontario Regulation 153/04) and/or Designated Substances and Hazardous Materials Survey (where applicable). For sites undertaking environmental remediation, the work plan and cost estimate shall be in the form of a Remedial Action Plan prepared by a Qualified Person. Said work plan and cost estimate will be supported by a Phase II ESA and/or Risk Assessment undertaken by a Qualified Person. Studies/Plans submitted shall:

- a) Identify the extent of the environmental remediation and any installation, monitoring, maintaining and operating environmental and/or engineering controls/works required for the eligible property; and,
- b) Provide a detailed work plan and cost estimate for said environmental remediation which includes the installation, monitoring, maintaining and operating environmental and/or engineering controls/works.

For other non-remediation eligible works under this program, a written contractor's estimate shall be provided which shall be supported by any applicable studies (such as Designated Substances and Hazardous Materials Survey) to the City's satisfaction. The City may also require the submission of a Business Plan for the proposed development.

Applicants will be required to have a pre-application consultation meeting with City staff in order to determine program eligibility, proposed scope of work, project timing, etc.

Before accepting an application, City staff will screen the application. If the application is not within Areas 3 or 4 of the ERASE Community Improvement Project Area or the application clearly does not meet the program eligibility requirements, the application will not be accepted.

Acceptance of the application by the City in no way implies loan approval.

Program eligibility will be determined by the Economic Development Division, in consultation with other divisions/departments as necessary. Applications will be recommended for approval only if they meet the criteria specified in this Plan and any other requirements of the City including that the property and property owner are in good standing with the City in terms of all City By-laws that apply to the property and project, all laws that govern the construction and development of the project and the payment of all taxes

A recommendation on the application (including estimated eligible costs) and loan agreement will be forwarded to City Council (or Council's designate) for consideration. Once City Council (or Council's designate) approves the Application, the loan agreement will be forwarded to the applicant for signature. Once the applicant has signed the agreement, the agreement will then be executed by City officials and a copy will be provided to the applicant. The City may require the applicant to register the agreement on title immediately upon execution of the agreement.

Securities required to be provided by the applicant will be determined by the City in its sole discretion which shall be in addition to security or assignment of grants under the ERG or Hamilton Tax Increment Grant Program.

For sites subject to environmental remediation, the property owner shall submit to the MOECP a signed Record of Site Condition (RSC) prepared by a Qualified Person, and the property owner shall submit to the City an acknowledgement of receipt of the RSC by the MOECP. The City reserves the right to require the submission to the City's satisfaction, of environmental reports and documentation showing the subject property has been remediated to the appropriate levels for the proposed use. The RSC filed with the MOECP must conform to the latest Ontario Regulation 153/04 standards. Where the submission of a signed RSC is not required under the *Environmental Protection Act* to permit the brownfield redevelopment and provided that the owner of the property within the ERASE Community Improvement Project Area undertakes a Risk Assessment and remediates the property to a standard that would enable the owner to submit a RSC, the owner may instead provide the City with a Risk Assessment prepared by a Qualified Person for Risk Assessment (as defined in the *Environmental Protection Act* and Ontario Regulation 153/04, as

amended), subject to a peer-review by a Qualified Person for Risk Assessment, who is acceptable to the City. This peer-review must certify that the property has been remediated to the appropriate levels for the proposed use in accordance with the Risk Assessment, to the satisfaction of the City. The cost of the peer-review will be an eligible cost.

A loan will not be provided unless a written request for the initial loan advance has been made by the owner. If a request for the loan payment is not made within three (3) years of the year in which the initial loan is payable the agreement shall terminate and without limiting the generality of the foregoing the City shall not be obligated to provide the loan payments.