

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development / Downtown and Community Renewal

TO: Chair and Members General Issues Committee	WARD(S) AFFECTED: WARDS 1, 2 and 3
COMMITTEE DATE: April 11, 2011	
SUBJECT/REPORT NO: Hamilton Downtown / West Harbourfront Remediation Loan Pilot Program Expansion and Continuance (PED09263(a)) (Wards 1, 2 and 3)	
SUBMITTED BY: Tim McCabe, General Manager Planning & Economic Development Department	PREPARED BY: Brian Morris 905-546-2424 x5602 Hazel Milsome 905-546-2424 x2755
SIGNATURE:	

RECOMMENDATION

- (a) That the revised Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program description and terms, attached as Appendix 'A' to Report PED09263(a), be approved and continued for an additional two (2) year period following the date of approval;
- (b) That staff be authorized to prepare and process the necessary amendments to the Environmental Remediation and Site Enhancement (ERASE) Community Improvement Plan, as required under the Planning Act, to implement the revised Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program; and
- (c) That staff report back to the General Issues Committee in the Summer of 2013 on the success of the program and its continuance or expansion.

EXECUTIVE SUMMARY

City Council, at its meeting held October 14, 2009, approved Report PED09263 that introduced the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program; a program designed to provide an economic stimulus for the remediation and redevelopment of properties located within the defined areas of Downtown Hamilton and the West Harbourfront. Recommendation c) of Report PED09263 directed staff to report back on the success of the program and its continuance or expansion.

Report PED09263(a) provides such feedback and recommends that: i) the loan be adjusted to equal 80% of the cost of remediation to a maximum of \$400,000, as opposed to the current 75% of the cost of remediation, to a maximum amount of \$100,000; ii) that the program be continued for a duration of two (2) additional years from the date of approval; and, iii) that staff report back after the two year duration on the success/continuance of the program. The revised program description and terms for the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program are attached as Appendix 'A'.

Alternatives for Consideration – See Page 5

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: Loans provided through the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program will be funded by creating a receivable on the City's balance sheet. As loan repayments are made, the receivable is reduced. Funding provided through the Downtown and Community Renewal Division's program budget is used to subsidize the interest rate charged on the loans. Funding to subsidize the interest rate charged on the loan is funded from Project ID# 8200903900.

Staffing: The administration of the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program can be accommodated within the existing staff complement of the Planning and Economic Development Department and Corporate Services Department.

Legal: Section 28 of the Planning Act permits a municipality, in accordance with a Community Improvement Plan, to make loans and grants which would otherwise be prohibited under Section 106(2) of the Municipal Act, to registered/assessed owners and tenants of lands and buildings. A Community Improvement Plan can only be adopted and come into effect within a designated Community Improvement Project Area. Changes to a Community Improvement Plan or Community Improvement Project Area require formal amendments as dictated by the Planning Act.

Through the Brownfields Statute Law Amendment Act, 2001, legislative and regulatory amendments have been made to the following Acts to encourage the revitalization of

underutilized and often contaminated land: the Environmental Protection Act; the Ontario Water Resources Act; the Pesticides Act; the Municipal Act, 2001; the Planning Act; and, the Education Act.

Legal Services staff will be involved in the ongoing review and drafting of any agreements, as may be required, to deliver the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program. Legal will also be responsible for ensuring that the security requirements, as may be required from the proponents, are fulfilled in order to best protect the interests of the City, in accordance with the program. Agreements are executed by the General Manager of Planning and Economic Development in accordance with Recommendation (e) of Report PED09263.

HISTORICAL BACKGROUND

City Council, at its meeting held October 14, 2009, approved Report PED09263 that set out the terms and conditions of the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program, and authorized staff to prepare and process the necessary amendments to the respective Community Improvement Plans (CIP) and hold public meetings, as required under the Planning Act, to implement the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program. Recommendation (c) of Report PED09263 directed staff to report back to Council in the Spring of 2011 on the success of the program and its continuance or expansion.

The program provides a financial incentive for owners of contaminated properties to move forward with the remediation of their properties for the purpose of developing/redeveloping the property for residential or residential/commercial use within the Downtown Hamilton Community Improvement Project Area and the West Harbourfront as defined by the Setting Sail Secondary Plan boundaries. The program is administered through the Economic Development and Real Estate Division and delivered as a component to the Environmental Remediation and Site Enhancement (ERASE) CIP.

City Council, at its meeting held March 10, 2010, approved Report ECO05009(a) that outlined amendments to the ERASE CIP, including the authorization to implement and administer the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program and, Report PED10044 that outlined amendments to the Downtown and Community Renewal CIP. One of the amendments to the Downtown and Community Renewal CIP was the allowance of an applicant under the Hamilton Downtown Property Improvement Grant Program to assign their grant to the City of Hamilton as repayment of the applicant's loan under the Hamilton Downtown/West Harbourfront Remediation Loan Program.

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To date, there have been several inquiries into the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program; however, no applications have been formally accepted.

POLICY IMPLICATIONS

The program is consistent with the goals and objectives of the ERASE and Downtown and Community Renewal Community Improvement Plans and supports brownfield redevelopment, as well as residential intensification targets and objectives established by the Province in the Places to Grow Growth Plan and Provincial Policy Statement.

RELEVANT CONSULTATION

Staff from the Finance and Administration Division, Corporate Services Department and the Legal Services Division of the City Manager's Office, were consulted and concur with the recommendations included in Report PED09263(a).

ANALYSIS / RATIONALE FOR RECOMMENDATION

The Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program currently offers a low interest loan, equal to 75% of the cost, to remediate a property to a maximum of \$100,000 per property/project. The annual interest rate on the loan is 1% below the prime rate, as established by the Royal Bank of Canada. Such rate is to be established at the time the first instalment of the loan is advanced by the City. The loan provided is subject to a Loan Agreement between the property owner and the City of Hamilton. The loan is a 'bridge' until such time as the property owner receives ERASE Redevelopment Grant money or Hamilton Downtown Property Improvement Grant money. The owner will assign the grant money to the City of Hamilton for repayment of the loan, until such time as the loan is paid in full. The grant will then, and only then, flow directly to the owner.

Eligible costs funded under the program include:

- 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 the RSC;
- Phase II and Environment Site Assessments (ESAs), risk assessments or remedial work plans not covered by the ERASE Study Grant Program;
- Installing environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or Certificate of Property Use; and

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- Monitoring, maintaining and operating environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or Certificate of Property Use.

Report PED09263(a) recommends that the Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program be continued for an extended period of two years from the date of approval. The program description and terms will remain the same with the exception of an increase in the loan amount, equalling 80% of the cost of remediation (from the current 75%), and an increase to the maximum loan amount per project/property to \$400,000 (from the current \$100,000). The reasons for the suggested changes and continued implementation of the program are as follows:

- The initial allotted pilot program period of one year was not sufficient for the program; particularly, in light of the global economic downturn.
- The West Harbour area is part of the Setting Sail Secondary Plan that is pending approval through an Ontario Municipal Board Hearing(s). Upon final approval, staff is optimistic that development projects in the West Harbour area will proceed and may require funding for the remediation of lands.
- The Ontario Government passed new legislation regarding brownfield redevelopment on Dec. 31, 2009. The amendments to Ontario Reg. 153/04 – Brownfields Record of Site Condition – included updated (and in some cases, more rigorous) standards and the brownfield industry is cautious, moving forward on projects, until the effective date of July, 2011 for the amended regulations.
- In conversation with brownfield industry stakeholders and potential applicants/property owners, it became evident that the maximum amount of \$100,000 is not sufficient to encourage a prospective landowner to purchase a brownfield property and undertake remediation.
- The average estimated cost of remediation for projects/redevelopments that have applied and been approved for ERASE Redevelopment Grant funding, equals \$533,326.
- Since the ERASE Redevelopment Grant Program is a tax increment based grant that offers a rebate of 80% of the municipal tax increase over a ten year period (or up to eligible cost), the increase in the loan amount to 80% of remediation cost under the program is to offer consistency in the administration of the program.

The initiative aligns with the mandate of the Downtown and Community Renewal Division and Economic Development & Real Estate Division, which includes fostering the renewal and regeneration of Downtown Hamilton and the West Harbourfront.

ALTERNATIVES FOR CONSIDERATION

There are a number of alternatives for consideration: i) non-acceptance of the recommendations contained in Report PED09263(a); ii) continuing the program with the

existing terms for an additional period of time; and, iii) cancelling the program and asking staff to report back on where the funds for Capital Project ID# 8200903900 could be redirected. However, the aforementioned alternatives are not recommended as they would undermine downtown renewal and west harbourfront efforts in general.

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ More innovation, greater teamwork, better client focus

Financial Sustainability

- ◆ Effective and sustainable Growth Management
- ◆ Generate assessment growth/non-tax revenues

Growing Our Economy

- ◆ Newly created or revitalized employment sites
- ◆ Competitive business environment
- ◆ An improved customer service

Environmental Stewardship

- ◆ Aspiring to the highest environmental standards
- ◆ Reduce the impact of Hamilton's industrial, commercial Private and Public operations on the environment

Healthy Community

- ◆ Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix 'A' to Report PED09263(a) – "Hamilton Downtown / West Harbourfront Remediation Loan Pilot Program" (Amended Program Description)

BM/cMc

HAMILTON DOWNTOWN / WEST HARBOURFRONT REMEDICATION LOAN PILOT PROGRAM

PROGRAM DESCRIPTION:

The Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program has been developed to stimulate residential or residential/commercial use development, and/or redevelopment on properties requiring remediation (i.e. brownfield properties) that are located within the Downtown Hamilton or the West Harbourfront. Downtown Hamilton is defined as the Downtown Hamilton Community Improvement Project Area (as such boundaries are presently defined). The West Harbourfront is defined by the boundaries of the Setting Sail Secondary Plan. The Program is an "add on" to the existing ERASE Community Improvement Plan implemented by the Economic Development Division.

Because it is 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.

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 Downtown Property Improvement Grant money.

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

TERMS OF THE PROGRAM:

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. Actual costs for which the City loan is being provided may be subject to audit.

Prior to a loan being approved, realty taxes are required to have been paid in full, as billed each year, and remain in good standing throughout the development/redevelopment of the property.

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, and will be specifically secured by an assignment of the grant payments under the ERASE Redevelopment 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. In the event that the development/redevelopment of the property has not proceeded within five (5) years of the remediation being completed, or, the owner invalidates their qualification under ERASE Redevelopment Grant, the loan will be required to be repaid in annual instalments over no longer than a three (3) year period. The owner has the option of securing the loan by an assignment of the grant payments, under the City of Hamilton's Hamilton Downtown Property Improvement Grant Program, if eligible. Note: The ERASE Redevelopment Grant may be transferable to new property owners. City Council, at its sole discretion, may cease grants under the Hamilton Downtown Property Improvement Grant Program if property ownership changes. The Hamilton Downtown Property Improvement Grant Program shall not be transferred if the development/redevelopment of the property is incomplete.

Remediation will commence no longer than one (1) year following City Council's approval of the loan, or the loan will be cancelled. Development/redevelopment of the property will be completed no longer than seven (7) years following City Council's approval of the loan, or the loan will be cancelled and, the loan will be required to be repaid in annual instalments over no longer than a three (3) year period.

The annual interest rate on the loan will be 1% below the prime rate, as established by the Royal Bank of Canada. Such rate shall be established at the time the first instalment of the loan is advanced by the City.

All applicants receiving approval for a City loan, under this Program, shall be required to enter into a Loan Agreement with the City and execute a General Security Agreement. The City may request other security, which may be appropriate in the circumstance. In the instance where a personal guarantee is required a personal net-worth statement may also be required.

The loan, together with interest, can be repaid in full by the owner without notice, penalty or bonus at anytime.

Approval of loan applications is at the absolute discretion of City Council and subject to availability of funds.

In order to support the redevelopment/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 by the owner, the City shall have absolute discretion to request the full repayment of any outstanding loan under this Program together with interest accrued to date.

In the case where the owner is a corporation, the owner covenants and agrees that in the event 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, together with interest accrued to date.

ELIGIBILITY REQUIREMENTS:

Qualifying owners are owners of properties, who qualify for financing under the ERASE Redevelopment Grant Program and/or the Hamilton Downtown Property Improvement Grant Program.

Qualifying properties are properties that fall within the Downtown Hamilton or West Harbourfront, as defined by the Downtown Hamilton Community Improvement Project Area or the boundaries of the Setting Sail Secondary Plan.

Eligible program costs are the same as those established for the ERASE Redevelopment Grant Program. Eligible costs include:

- 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 the RSC;
- Phase II and Environment Site Assessments (ESAs), risk assessments or remedial work plans not covered by the ERASE Study Grant Program;
- Installing environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or Certificate of Property Use;
- Monitoring, maintaining and operating environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or Certificate of Property Use;
- Demolition not covered by demolition charge credits (Area 3 only of ERASE CIP);

- Removal of existing on-site infrastructure, prior to replacement up to a minimum of 25% of construction/improvement costs for on-site public works (water services, sanitary sewers and storm sewers) (Area 3 only of ERASE CIP); and,
- 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 of ERASE CIP).

The following terms specifically apply:

- The improvements made to buildings and/or land shall be in accordance with the Ontario Building Code and in compliance with all applicable City by-laws, official plans, zoning requirements and site plan approvals; and
- All owners receiving approval for a City loan under this Program shall be required to enter into a Loan Agreement with the City.

ADMINISTRATION:

The Hamilton Downtown/West Harbourfront Remediation Loan Pilot Program is administered by the Economic Development Division of the Planning and Economic Development Department.

An application fee of \$255 must accompany the application. All fees will be authorized through a user-fee by-law passed by City Council. The rate of the fees may be changed from time to time as approved by City Council.