



City of
Peterborough

To: **Members of the Planning Committee**

From: **Ken Hetherington, Manager, Planning Division**

Meeting Date: **January 20, 2014**

Subject: **Report PLPD14-001
New Central Area Community Improvement Plan Program
Municipal Brownfields Rehabilitation Grant Program**

Purpose

A report to recommend an amendment to the Central Area Community Improvement Plan to add the Municipal Brownfields Rehabilitation Grant Program.

Recommendations

That Council approve the recommendations outlined in Report PLPD14-001 dated January 20, 2014, submitted by the Manager, Planning Division, as follows:

- a) That the Central Area Community Improvement Plan be amended by adding the Municipal Brownfields Rehabilitation Grant Program, as attached as Exhibit B to Report PLPD14-001.
- b) That Council delegate authority to approve applications made under the proposed Municipal Brownfields Rehabilitation Grant Program to the Director, Planning & Development Services.
- c) That any agreement for an application approved under the Municipal Brownfields Rehabilitation Grant Program be signed by the Mayor and the City Clerk.

Budget and Financial Implications

The proposed Municipal Brownfields Rehabilitation Grant Program (MBRGP) offers grants which are based upon the increase in the municipal taxes resulting from post rehabilitation reassessment. No capital funding is required for this program. Through this tax reassessment based program, the City will forego the increased taxes in the short term, however a redeveloped property will eventually contribute a higher level of taxation.

Background

Anti-bonusing and Community Improvement Plans

Section 106 of the *Municipal Act* specifically prohibits a municipality from extending financial assistance to a person, group or body, except under specific circumstances. The *Planning Act*, however, provides municipalities with the opportunity to adopt community improvement plans in order to achieve a range of defined objectives that the municipality establishes, thereby overriding the bonusing prohibition contained within the *Municipal Act*. Adopting a Community Improvement Plan (CIP) to support rehabilitation efforts in the Central Area gives the City the authority to issue favourable loans and grants, as well as provide tax incentives for such activities.

CIP adopted by Council in 2011 included BTAP

In 2011, Council approved the Central Area Community Improvement Plan (PLPD11-062). This plan outlined five incentive programs for the Central Area. One such program was the Brownfields Tax Assistance Program (BTAP). BTAP encourages the remediation and rehabilitation of Brownfield sites by essentially 'freezing' the property taxes on a property that is undergoing or has undergone remediation and development to assist with payment of the cost of environmental remediation. The BTAP is based on the provincial Brownfields legislation. A full background on the Central Area CIP, the Affordable Housing CIP and related programs are outlined in PLPD11-062 and attachments therein.

Some administrative issues with current BTAP

While the current BTAP has been successful in the redevelopment of 2 properties, staff have experienced some administration difficulties with the current program. The existing BTAP is based on the existing provincial legislation, which provides for a cancelation of municipal property taxes and education taxes. However, there are certain requirements that must be met, including Ministry of Finance approval for the education tax portion of an application to be eligible.

Currently, in order for a property to be eligible for assistance through the existing 'Brownfields Tax Assistance Program' (BTAP), a property must be within the Central Area Target Area and a Phase II Environmental Site Assessment (ESA) must be conducted. The Site Assessment must demonstrate that the property does not meet the required standards of the *Environmental Protection Act* to permit a Record of Site Condition (RSC) for the proposed use to be filed in the Environmental Site Registry.

Generally, if a property is being used partly or wholly for commercial, industrial or community uses, a RSC is required before the use is changed to one or more of the following: institutional, residential, parkland, agricultural or other uses. This process relies on the trigger of a change in use for certain uses. Therefore, site remediation of a property that is presently commercial that is being redeveloped into a new commercial use would not necessarily trigger the requirement of a RSC. This same property may still be subject to contamination that would need cleanup in order to enable development, however it would not qualify for the incentives associated with BTAP.

The eligibility of a property under the existing BTAP relies on subparagraph 4i of Section 168.4(1) of the *Environmental Protection Act* which relates solely to contaminated soils and groundwater. Therefore a contaminated building (i.e. one containing asbestos materials) would not be eligible for cleanup assistance under the current program.

The intent is to have a second Brownfields program in place that will extend tax assistance to properties that undergo site or building cleanup that does not necessitate presenting a RSC as per 168.4(1) 4i of the Environmental Protection Act.

Second Brownfields Program recommended

As a result of some of the technical requirements under the existing BTAP, staff are proposing the adoption of a **second** Brownfields Program that will further enhance redevelopment opportunities of contaminated sites and buildings, completely administered by the City. The financial basis of the MBRGP is identical to the BTAP. The proposed MBRGP is intended to help supplement the existing suite of incentive programs by extending eligibility to different properties/structures within the target area.

The equivalent of the tax increase associated with a reassessment of a property that has undergone cleanup will be granted back to the applicant annually until the eligible costs outlined in an agreement between the City and the Applicant are recovered. This is essentially a cancellation of the municipal property tax increase until eligible costs are recovered. The proposed work and redevelopment must meet the intent of the goals and objectives outlined in the Central Area Community Improvement Plan and is subject to an application process administered by the Planning Division.

It is expected that the majority of brownfield redevelopments will apply for funding under the new MBRGP because of the flexibility associated with the administration and because it is completely handled by the City. While the BTAP will be less utilized, it is important to keep because there will be instances when it will be applicable and there could be future changes to the provincial legislation that will provide increased flexibility. Table 1 below briefly summarizes the differences and similarities between the two programs.

Table 1 – Comparison of the existing BTAP and proposed MBRGP Brownfields Programs

	BTAP	MBRGP
Name	Brownfields Tax Assistance Program	Municipal Brownfields Rehabilitation Grant program
Status	Existing	Proposed
Eligible Location	Central Area Target Area	Central Area Target Area
Taxes	Municipal and Education	Municipal
Contamination	Ground, Soil	Ground, Soil, Structure
RSC	Yes	No
Administration	City and Province	City

Approval Authority for MBRGP Applications

The approved council resolution in report PLPD12-044 delegated approval authority for applications made under the Central Area Community Improvement Plan Programs. Council delegated authority for approval of BTAP and Central Area Revitalization programs to the Director, Planning & Development Services and that any agreements made therein are to be signed by the City Clerk and the Mayor. A similar approach is proposed for the new MBRGP to help streamline implementation of the new program, matching current administrative procedures for each of the other Central Area CIP Incentive Programs. Details pertaining to the reasoning and procedure in place for delegating authority to staff are available in PLPD12-044.

Public Meeting required to add MBRGP

Section 5.3 of the Central Area CIP states that additional grant or loan programs shall require an amendment to the plan, in accordance with the *Planning Act*. Therefore, the attached new Municipal Brownfields Rehabilitation Grant Program has been reviewed by standard commenting agencies and is the subject of a formal public meeting under the Planning Act. The January 20, 2014 Planning Committee meeting has been advertised as the required public meeting.

Agency Comments

Staff received feedback from the Ministry of Municipal Affairs and Housing regarding the proposed Municipal Brownfields Rehabilitation Grant Program. Their feedback focused on ensuring that the program is set up in a way that clearly indicates that multiple Incentive Programs are not used for the same eligible costs. Appropriate language has been included in the program policy and will also be included in any subsequent agreement.

Summary

Staff recommend the approval of the proposed 'Municipal Brownfields Rehabilitation Grant Program' under the Central Area Community Improvement Plan. This program will provide tax assistance for eligible costs associated with cleanup of structures and properties not currently eligible to receive assistance in the Central Area Target Area. This program is in keeping with the Central Area Community Improvement Plan and will have the effect of stimulating investment in underutilized properties and structures resulting in an increased assessment over time.

Submitted by,

Ken Hetherington
Manager, Planning Division

Malcolm Hunt, Director
Planning & Development Services

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Attachments:

- Exhibit A – By-law to adopt the Municipal Brownfields Rehabilitation Grant Program to add to the Central Area Community Improvement Plan
- Exhibit B – Municipal Brownfields Rehabilitation Grant Program

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THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 14-_____

**BEING A BY-LAW TO ADOPT THE MUNICIPAL BROWNFIELDS
REHABILITATION GRANT PROGRAM TO ADD TO THE CENTRAL AREA
COMMUNITY IMPROVEMENT PLAN**

WHEREAS By-law No. 11-117, being “A By-law to Designate the Central Area Community Improvement Project Area” pursuant to Section 28(2) of the *Planning Act*, was passed by Council on the 12th day of September, 2011;

AND WHEREAS By-law No.11-115, being “A By-law to adopt a Central Area Community Improvement Plan, was passed by Council on the 12th day of September, 2011;

AND WHEREAS a public meeting was held on January 20, 2014 with respect to the Municipal Brownfields Rehabilitation Grant Program attached to this by-law and marked as Schedule “A”;

NOW THEREFORE the Council of the Corporation of the City of Peterborough, pursuant to Section 28 of the *Planning Act*, R.S.O. 1990, enacts as follows:

1. That the Municipal Brownfields Rehabilitation Grant Program consisting of the attached explanatory text and appendices, is hereby adopted. The Central Area Community Improvement Plan is amended with the addition of this Program. The Municipal Brownfields Rehabilitation Grant Program is attached as Schedule “A”.
2. That this by-law have effect immediately upon final passing.

By-law read a first, second and third time this _____ day of _____, 2014.

Daryl Bennett, Mayor

John Kennedy, City Clerk

Municipal Brownfields Rehabilitation Grant Program

a) Background

The 'Municipal Brownfields Rehabilitation Grant Program' (MBRGP) encourages the remediation, rehabilitation and adaptive re-use of Brownfield sites and structures.

The City will grant the equivalent of the tax increase back to the applicant to cover eligible costs associated with the cleanup. This grant may continue on an annual basis until the eligible costs are recovered. This program benefits the City with increased private investment, increased tax assessment, adaptive re-use of existing properties and structures, providing overall improvement of the Central Area.

The legislative authority for the Municipal Brownfield Rehabilitation Grant Program is established under Section 28 of the *Planning Act*. Subsection 7 indicates that a municipality can make grants or loans to pay for whole or part of the eligible costs associated with the Community Improvement Plan. Subsection 7.1 outlines what are considered eligible costs. This includes environmental site assessment and environmental remediation for rehabilitation of lands and buildings.

This program is set up similarly to the 'Brownfields Tax Assistance Program' (BTAP). However, eligible sites under BTAP are only those that require a Record of Site Condition as per Provincial Law. The proposed MBRGP extends benefits of receiving assistance for eligible rehabilitation costs to those sites and structures not necessarily covered by BTAP (such as the safe removal of asbestos from a structure). The MBGRP enables proposed redevelopment where a RSC is not required by Provincial Law.

The same rehabilitation costs cannot be covered by multiple community improvement plan incentive programs.

Once the total amount of grants received from the Brownfields Rehabilitation Grant Program equal the agreed upon eligible rehabilitation costs outlined in the agreement between the Applicant and the City, the applicant is no longer eligible for grants under MBRGP.

b) Program Assistance

This program provides grants to property owners who remediate or rehabilitate contaminated properties or structures in the Central Area Target Area. The amount of the grant is a function of the increase in the municipal taxes due to increased assessment of the property and shall not exceed the eligible rehabilitation costs.

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The property owner would be responsible for the full payment of taxes, after which the City would provide the grant.

The total value of the rehabilitation work, plus the amount of the municipal taxes paid prior to and after the redevelopment, would have to be known. “Municipal taxes” under the program refers to only the general portion of municipal taxes of the total taxes paid and would not include any other taxes or amounts, including but not limited to, education taxes and all servicing charges and general tax rate increases.

The program length is a function of the costs associated with rehabilitation and the reassessed municipal taxes. These are established at the time of drafting the agreement. In the Central Area Target Area, the grant amount for this program shall not exceed 100% of the increase in the municipal portion of the taxes in any given year and total grant provided shall not exceed the eligible rehabilitation costs.

- i) An “eligible property” for the Municipal Brownfields Rehabilitation Grant Program is one that is not eligible under the BTAP and requires remediation or rehabilitation to enable redevelopment when a RSC is not required by provincial law. This may include land or structures within the property.

When benefits from the Municipal Brownfields Rehabilitation Grant Program end, the Central Area Revitalization Grant Program (CARP) may begin, provided that reassessment of the property has taken place, and the property owner has paid the property taxes in full for the year in which the grant is to be provided.

- ii) A property owner may register their intent to participate in the grant program by filing an application at the time of Building Permit application. For the purposes of drafting an agreement between the applicant and the City, the amount of municipal taxes paid prior to works would be required. Upon completion of the works, the municipal taxes to be paid as a result of the reassessment by the Municipal Property Assessment Corporation (MPAC) would be calculated. The municipal tax difference between pre and post rehabilitation work would be the portion eligible for a grant under this program.

The Building Permit application is the “trigger” for establishing participation in the program. At this time, the approximate value of the rehabilitation work to be undertaken can be determined. As indicated above, the total value of the grant will not exceed the eligible rehabilitation costs. At the Building Permit stage, the construction value of the project is known, since this is what establishes the cost of the permit. In some cases, an audit may be required to confirm the construction value.

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- iii) This program would not exempt property owners from an increase in municipal taxes due to a general tax rate increase or in a change in assessment for any other reason after the property has been improved, except by reason of an assessment appeal. This program does not cover education property tax assistance.
- iv) Applications will be processed and approved on a first come, first serve basis, subject to availability of funding as approved by Council, with a higher priority being placed on applications for sites where planning approvals are not required or sites where planning applications have been submitted. Review and evaluation of an application and supporting materials against program requirements will be completed by City staff, which will then make a recommendation to City Council or council's designate.

c) Eligibility Requirements

- i) Any property owner within the target area must apply in writing at the time of making an application(s) for Building Permit approval.
- ii) The subject property shall not be in a position of property tax arrears.
- iii) Outstanding Work Orders from the City's Fire Services or Building Division and requests to comply shall be addressed prior to grant approval.
- iv) Remediation or rehabilitation work is needed at the subject property prior to successful adaptive re-use of Brownfield sites and structures

d) Eligible Rehabilitation Costs

- v) Cannot be costs covered by the 'Brownfields Tax Assistance Program'; the same eligible costs cannot be doubly counted for in a subsequent application of the Central Area Revitalization Tax Increment Grant.
- vi) Environmental remediation; including remedial action plans, risk management plans and implementation costs.
- vii) Removal of hazardous materials from a site or structure, waste transfer to landfill and tipping fees for contaminated materials.
- viii) Fill and grading to replace contaminated soils.
- ix) Partial demolition.

APPENDIX ____

Municipal Brownfields Rehabilitation Grant Program Administration

Step 1 - Application Submission

Applicants will be required to have a pre-application consultation meeting with staff in order to determine program eligibility, proposed scope of work, eligibility with other CIP incentive programs and project timing.

Staff will perform an initial site visit(s) and inspection(s) of the building/property (if necessary).

Before accepting an application, staff will screen the proposal and application. If the application is not within the Community Improvement Project Area, or the application clearly does not meet the program eligibility criteria, the application will not be accepted. If City staff determines that the application is not acceptable for one or more of the above noted reasons, the application will be returned to the applicant with a letter explaining the reason for not accepting the application.

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

Applications submitted to the City shall be accompanied by a Phase II ESA and/or Remedial Work Plan and/or Risk Assessment prepared that identifies and details estimated eligible costs and a work plan and budget for the proposed remediation. It needs to be demonstrated that environmental rehabilitation of lands or buildings is required to enable redevelopment of the site. The City may also require submission of a Business Plan for the proposed redevelopment project.

Step 2 - Application Review and Evaluation

Applications and supporting materials and documentation are reviewed by a City staff committee against program requirements. City staff will determine the eligible works and costs.

City staff will utilize the actual pre-project City property taxes and estimated post-project assessed value and applicable tax rates to calculate the estimated post-project property taxes, increase in City property taxes, and the estimated annual and total grant amount to be provided.

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A recommendation report will be prepared by City staff. If this report recommends approval of the application, a grant agreement satisfactory to the City Solicitor and City Treasurer will also be prepared. This agreement will contain conditions to ensure that the project is commenced and completed in a timely fashion. This agreement will be forwarded to the applicant to be dated and signed. Once the signed agreement has been returned to the City, the municipal approval process can commence.

Step 3 - Application Approval

The recommendation report along with the grant agreement (if report recommends approval) is forwarded to Council or Council's designate for consideration. If Council or Council's designate approves the application and grant agreement, the agreement is executed (signed and dated) by City officials and a copy is provided to the applicant.

Step 4 - Payment

Prior to payment of the grant, the applicant must provide the City with:

- a) photographic evidence of the completed project satisfactory to the City;
- b) other documentation proving completion of the project, e.g. engineer's report (if required);
- c) all final reports and documentation as required.

City staff will conduct a final building/site inspection (as necessary) to ensure that the project has been completed. Once the project is complete, an occupancy permit has been issued, and the property has been revaluated by the Municipal Property Assessment Corporation, the property owner will be sent a new tax bill. After the property owner has paid in full the new property taxes for one year, the City will check to ensure that:

- a) the applicant has not filed any assessment appeals; and
- b) all program and grant agreement requirements have been met.
- c) all work has been completed in accordance with the grant application and agreement.

If all program and grant agreement requirements have been met to the City's satisfaction, then the City will calculate the actual tax increment and grant payment. The City will then issue payment of the grant in the form of a cheque in the amount specified as per the calculation of the actual grant payment.

City staff will monitor the project, periodically checking that the project is in compliance with all program and grant agreement requirements. City staff will take appropriate remedies as specified in the grant agreement if the applicant defaults on the agreement.

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Figure ____ : Municipal Brownfield Rehabilitation Grant Program Administration

Step 1 Application Submission	Step 2 Application Review and Evaluation	Step 3 Application Approval	Step 4 Payment
<p>1) Pre-application meeting between City staff and applicant.</p> <p>2) Staff inspects building/site (if necessary).</p> <p>3) If proposal is eligible for funding, applicant is provided with:</p> <p>a) Program Guide;</p> <p>b) Application Form;</p> <p>4) Applicant submits application including all required supporting documentation.</p> <p>5) Application fee is collected (if applicable).</p>	<p>6) Staff checks application to ensure conformity with all program eligibility requirements.</p> <p>7) Staff review and evaluate application and supporting documentation.</p> <p>8) Staff calculates an estimated maximum amount of municipal property tax assistance.</p> <p>9) Staff prepare a recommendation report and an agreement</p> <p>10) Grant agreement is signed by applicant and returned to City staff.</p>	<p>11) A recommendation on the application and the agreement (dated and signed by the applicant) are forwarded to Council (or Council's designate) for consideration.</p> <p>12) If Council or Council's designate approves the grant application and agreement, the agreement is executed by the appropriate City officials and a copy is provided to the applicant.</p>	<p>13) Applicant provides the City with proof of completion of project, including:</p> <p>a) photographic evidence of the completed project satisfactory to the City;</p> <p>b) actual cost of project;</p> <p>c) other documentation proving completion of the project, e.g. engineer's report (if required);</p> <p>d) all final reports and documentation as required.</p> <ul style="list-style-type: none"> • Staff conduct building/site inspection (if necessary). • Staff review all final reports and documentation submitted for conformity with program and grant agreement requirements. • After property revaluation by MPAC and once property taxes have been paid in full for one year, staff check to ensure applicant has not filed any assessment appeals and all program and grant agreement requirements have been met.

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			<ul style="list-style-type: none">• Staff calculates actual grant payment.• Payment of approved grant is made to applicant or assignee.• Each year, grant payment is recalculated and made to applicant or assignee after City checks to ensure all program and grant agreement requirements have been met.• Project is monitored to ensure all program and grant agreement requirements continue to be met.
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