



**City of Kingston
Report to Council
Report Number 19-265**

To: Mayor and Members of Council
From: Peter Huigenbos, Acting Commissioner, Community Services
Resource Staff: Paul MacLatchy, Environment Director
Date of Meeting: October 15, 2019
Subject: Initiation of Brownfield Tax Increment-Based Rebates for 655 Princess Street

Executive Summary:

The property at 655 Princess Street was approved as a project under the City's Brownfield Community Improvement Plan (CIP). The property developer and owner at the time, Jay Patry Enterprises Ltd. (JPE), undertook environmental remediation and construction of a high density residential complex on the property.

Fulfilment of the conditions of the brownfield site agreement between the City and JPE have now been substantially satisfied with only minor interior parking matters related to zoning remaining. This report recommends that upon confirmation of compliance with remaining planning matters, that commencement of incremental property tax rebates made through the Tax Increment Based Redevelopment Grant Program (TIRGP) to the registered property be authorized, as per the Brownfield Site Agreement entered into by the City.

The property was sold in 2017 by JPE to the present owner, WCPT Princess Inc. In accordance with the rules of the Brownfield CIP and the Brownfield Site Agreement, and in the absence of an approved assignment of benefits from WCPT to JPE, future tax rebates enabled by the recommended by-law will be provided to the current owner.

In accordance with the Brownfield Site Agreement, staff recommends that Council passes a by-law that initiates the payment of rebates to the property owner. The rebates will be equal to 80% of the annual incremental municipal taxes paid, up to a total rebate maximum of \$1,408,939.

Two readings of the authorizing by-law are recommended. The third reading and commencement of rebates is recommended once confirmation has been received that all matters of compliance with respect to planning approvals have been achieved. Once matters of

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compliance have been achieved, the by-law will be placed on the next available Council meeting agenda for third reading.

Recommendation:

That the by-law, attached as Exhibit A to Report Number 19-265, be presented to Council to initiate the Tax Increment-Based Redevelopment Grant rebates to the owner of the approved brownfield property at 655 Princess Street, Kingston, Ontario; and

That third and final reading be withheld pending confirmation from staff that the property owner has completed all remaining planning compliance issues.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Peter Huigenbos, Acting
Commissioner, Community
Services**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

**Lanie Hurdle, Interim Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	OK
Sheila Kidd, Commissioner, Transportation & Public Works	Not required
Deanne Roberge, Acting Commissioner, Corporate Services	Not required

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Options/Discussion:

At its June 18, 2013 meeting, City Council approved an application for brownfield financial benefits and completion of a brownfield site agreement with JPE for the property presently known as 655 Princess Street. Based on the estimates for environmental remediation provided and reviewed, a maximum benefit of \$1,516,627 was approved, consisting of an Initial Study Grant of \$20,000, pre-development tax cancellation made through the Brownfields Financial Tax Incentive Program (BFTIP) of \$87,688, and post-development incremental tax rebates made under the TIRGP of \$1,408,939.

The remediation and redevelopment of 655 Princess Street has been completed and the occupancy of residential units has proceeded.

A Brownfield Site Agreement between the developer (JPE) and the City was completed and remains in force. As per the terms of this agreement, before TIRGP rebates can commence the following key compliance items must be met to the satisfaction of the City:

- Completion of environmental remediation and provision of a Record of Site Condition
- Development completion and occupancy
- Payment of at least one year's municipal taxes post-development
- Compliance with terms of planning agreements
- Property is not in tax arrears
- Submission of proof of costs incurred accompanied by documentation of third party project audit

Occupancy was approved in 2016. Compliance with the terms of the project's various planning agreements is a requirement for initiation of brownfield tax rebates and has required additional time but is also now substantially complete. While some matters related to requirements for permit close-outs, line painting and allocation of space within the parking garage remain, these are considered to be minor, and the property owner is cooperating with the City to have them rectified while the City continues to maintain financial holdbacks that incent the completion of all issues. This report recommends that third reading of the enabling by-law for tax rebates be provided only once all remaining matters of planning approval compliance have been confirmed.

JPE has now requested the initiation of annual property tax rebates under the TIRGP. Council's approval of a by-law (Exhibit A) is required to initiate the TIRGP rebates for the project.

As required by the Brownfield Site Agreement, JPE has submitted documentation of the eligible remediation costs incurred for the project, along with a third party financial audit of their costs that attests to the accuracy and legitimacy of those costs as eligible remediation expenses. Staff have reviewed the financial information submitted and are satisfied that the costs in the amount of \$1,597,046 were incurred and that once the value of previous BFTIP tax cancellations (\$87,688) and initial study grants (\$20,000) are subtracted from the maximum approved financial benefit (\$1,516,627), the total amount available for rebate through the TIRGP is \$1,408,939. A summary eligible remediation costs is provided within Table 1 below.

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Table 1: Summary of Eligible Remediation Costs Incurred

Description	Approved Estimate	Actual Submitted
Soil Disposal (>MOECP Table 3)	\$717,456	\$795,042
Soil Disposal (Table 1 to Table 3)	\$379,770	\$344,736
Phase II ESA/RSC, Rem Reporting	\$107,154	\$85,026
Demolition	\$30,000	\$26,549
Finance and Legal	\$282,247	\$345,693
Subtotals	\$1,516,627	\$1,597,046
Initial Study Grants provided	- \$20,000	
BFTIP tax cancellations	- \$87,688	
Net Eligible for TIRGP Rebate	\$1,408,939	

MOECP = Ministry of Environment, Conservation and Parks

The City's current Brownfield CIP program no longer considers finance costs as eligible expenses. However, the Brownfield Site Agreement for 655 Princess Street was completed prior to the change in the policy and are therefore eligible for this site. As per the City's practice at that time, only short term financing costs related to remediation costs incurred until the property received its Record of Site Condition were eligible.

The TIRGP allows for the annual rebate of up to 80% of the pre-development property tax amount to the post-development property tax uplift for the property until the net eligible remediation expenses (\$1,408,939) are recovered. The number of annual rebates is capped at no more than ten years. The TIRGP tax rebate is applied to the municipal portion of annual property taxes only. No rebate of the educational portion is permitted. It is anticipated that the maximum rebate amount will be reached following payment of four years of post-development tax amounts being paid.

The municipal portion of the pre-development tax assessment for the property was \$55,174 in 2014 (pre-development). The current assessment on the remediated and redeveloped property yields a municipal property tax payment of \$541,577 which equates to a property tax uplift of approximately \$485,023. Eighty percent (80%) of the estimated tax uplift is expected to yield an annual tax rebate of approximately \$388,018.

In anticipation of the originally planned start of TIRGP rebates, the City's tax department has been accruing and reserving anticipated TIRGP rebate amounts for 2017 and 2018. These rebates will be paid out as a lump sum once the TIRGP rebate by-law is approved. The remaining portion of eligible expense will be rebated in 2019 and 2020. The accrual of tax

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rebates was done because the building received occupancy and paid property taxes, but the completion of site plan requirements took considerably longer to complete than typical. Therefore, the amount of the accrual grew to a size that is not typical.

The property was sold in 2017 by JPE to the present owner, WCPT Princess Inc. In accordance with the rules of the Brownfield CIP and the Brownfield Site Agreement, and in the absence of an approved assignment of benefits from WCPT to JPE, tax rebates enabled by the recommended by-law will be provided to the current owner (WCPT).

Existing Policy/By-Law:

1. Brownfield Community Improvement Plan (Project Area 1c), revised December 19, 2017
2. Report Number 13-234, June 18, 2013 'Approval of a Brownfield Project and Cancellation of Pre-Development Taxes'
3. Report from Planning Committee (Report 75) to City Council Meeting Number 2013-14, May 21, 2013 'Approval of an Initial Study Grant'

Notice Provisions:

None applicable

Accessibility Considerations:

None applicable

Financial Considerations:

The developer has provided satisfactory documentation that the project has incurred, and the developer has paid, a total of \$1,597,046 in eligible remediation expenses.

The amount of \$1,516,627 was approved as the maximum amount of eligible remediation expenses that could be recovered via all components of the City's Brownfield CIP (Initial Study Grant, Tax Cancellations and Tax Rebates). An initial study grant of \$20,000 and pre-development tax cancellations of \$87,688 were provided to the property owner making the net maximum amount available for tax increment rebates \$1,408,939.

This report recommends that once compliance with remaining planning approvals has been confirmed, that the TIRGP provide annual incremental municipal property tax rebates retroactive to 2017, to a total maximum of \$1,408,939 to the registered owner of the subject property, provided that compliance with all conditions of the brownfield site agreement is maintained.

Due to the City's accrual of anticipated tax rebates for 2017 and 2018 it is anticipated that all rebates will be paid out following the owner's payment of municipal taxes for 2020.

Contacts:

Paul MacLatchy, Environment Director 613-546-4291 extension 1226

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Other City of Kingston Staff Consulted:

Jeffrey Walker, Manager, Taxation & Revenue, Financial Services

Exhibits Attached:

Exhibit A A By-Law to Approve Tax Increment-Based Rehabilitation Grant Rebates for 655 Princess Street

By-Law Number 2019-XX

A By-Law To Provide Annual Tax Increment-Based Rehabilitation Grants Pursuant To The Community Improvement Plan For Brownfields For The Property at 655 Princess Street, Plan A8 Lots 4 37 to 38 PT; Lots 3 and 36 Plan 157 PT; South Bartlett St Plan C17; PT Lots 1 and 2 N Princess St; ST RP 13R20637 Parts 1 to 12; with Roll Number 1011050040090000005 and also known as “The Foundry Apartments”

Passed: [Meeting Date]

Whereas By-Law No. 2005-40, being “A By-Law to Designate Brownfields Project Areas 1A, 1B & 1C as Community Improvement Project Areas”, pursuant to Section 28(2) of the Planning Act, was passed by Council on February 15, 2005;

Whereas By-Law No. 2005-41, being “A By-Law to Adopt the Community Improvement Plan for Brownfields Project Areas 1A, 1B & 1C” was passed by Council on February 15, 2005; and

Whereas By-Laws No. 2006-125 and 2006-126, being “Amendment No. 1 to the Community Improvement Plan for Brownfields Project Areas 1A , 1B & 1C” was passed by Council on May 23, 2006; and

Whereas By-Laws No. 2013-63 and 2013-064, being “Amendment No. 2 to the Community Improvement Plan for Brownfields Project Areas 1A , 1B & 1C” was passed by Council on March 5, 2013; and

Whereas By-Law No. 2018-13 being “A By-Law to Repeal and Replace By-Law Number 2005-41, “A By-Law to Adopt the Community Improvement Plan for Brownfields Project Areas 1A, 1B, 1C, 1D, and 2” with By-Law Number 2018-13 “A By-Law to Adopt the Brownfields Community Improvement Plan” was passed by Council on December 19, 2017, and

Whereas Jay Patry Enterprises, the developer of the property known as 655 Princess Street, Plan A8 Lots 4 37 to 38 PT; Lots 3 and 36 Plan 157 PT; South Bartlett St Plan C17; PT Lots 1 and 2 N Princess St; ST RP 13R20637 Parts 1 to 12, applied to the City of Kingston for brownfield assistance for this property, in accordance with the Community Improvement Plan and section 365.1 of the Municipal Act; and

Whereas By-Law Number 2013-134 being “A By-Law to Cancel Municipal And Education Taxes for 655 Princess Street, Plan A8 Lots 4 37 to 38 PT; Lots 3 and 36 Plan 157 PT; South Bartlett St Plan C17; PT Lots 1 and 2 N Princess St; ST RP 13R20637 Parts 1 to 12” was passed by Council on February 27, 2007; and

Whereas as of the date of this by-law, the terms of the Brownfields Site Agreement entered into with the City have been fulfilled and the property will be eligible for repayment of a portion of said property taxes in accordance with the Community Improvement Plan and the Brownfields Site Agreement; and

Whereas as of the date of this by-law, the property known as 655 Princess Street, Plan A8 Lots 4 37 to 38 PT; Lots 3 and 36 Plan 157 PT; South Bartlett St Plan C17; PT Lots 1 and 2 N Princess St; ST RP 13R20637 Parts 1 to 12 is no longer owned by the developer; and

Whereas there has been no assignment of benefits from the current owner of 655 Princess Street to any other entity;

Now Therefore the Council of The Corporation of the City of Kingston, pursuant to Section 28 of the *Planning Act*, R.S.O. 1990 and section 106(3) of the *Municipal Act*, 2001 S.O. 2001, c. 25, as amended, hereby **Enacts as follows**:

1. In this By-law,

- a) “Brownfields Site Agreement” means the agreement entered into by the Developer and the City dated **March 24, 2016** governing the remediation and redevelopment of the Eligible Property and establishing the mechanism for reimbursing the Owner for eligible rehabilitation costs.
- b) “Developer” means **Jay Patry Enterprises**.
- c) “Eligible Property” means the property known as 655 Princess Street, Kingston, Ontario, Plan A8 Lots 4 37 to 38 PT; Lots 3 and 36 Plan 157 PT; South Bartlett St Plan C17; PT Lots 1 and 2 N Princess St; ST RP 13R20637 Parts 1 to 12; with Roll Number 1011050040090000005.
- d) “Owner” means the owner of the Eligible Property at the time of each rebate payment.
- e) “Remediation Costs” means 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 in the Environmental Site Registry under section 168.4 of the Environmental Protection Act and the cost of complying with any certificate of property use issued under section 168.6 of the Environmental Protection Act, and as further specified in the Community Improvement Plan; and
- f) “Tax Increment” means the increase in municipal property taxes realized on the Eligible Property that results from the rehabilitation and redevelopment of said property. The Tax Increment shall be calculated as the difference between the municipal portion of property taxes levied on the Eligible Property in 2012 and the municipal portion of property taxes levied on the Eligible Property after rehabilitation and development, as assessed by the Municipal Property

Assessment Corporation in each year in which an annual Tax Increment Based Rehabilitation Grant is payable.

g) "Tax Increment-Based Rehabilitation Grant" means the payment to be made pursuant to the Brownfields Site Agreement and the Community Improvement Plan for Brownfields. The Tax Increment Based Rehabilitation Grant shall be calculated by multiplying the Municipal portion of the Tax Increment for any applicable tax year by 0.8.

2. The total of all annual Tax Increment Based Rehabilitation Grants that may be paid by the City of Kingston for 655 Princess Street shall not exceed one million four hundred eight thousand nine hundred and thirty nine dollars (\$1,408,939) calculated as follows:

Approved eligible costs as per Brownfield Site Agreement	\$1,516,627
Less: Initial Study Grant and BFTIP Tax Cancellations	<u>(\$107,688)</u>
Total available for Tax Increment-Based Rehabilitation Grant	\$1,408,939

- 3. The annual Tax Increment-Based Rehabilitation Grant shall be calculated based upon the Tax Increment directly related to the rehabilitation and redevelopment of the Eligible Property as defined in the Brownfields Site Agreement. Changes in taxes or assessment based on occupancy shall not be included in this calculation.
- 4. The annual Tax Increment-Based Rehabilitation Grant shall not include any increase in assessment that results from additional construction that is not part of the original application for Brownfields Assistance, as defined in the Brownfields Site Agreement.
- 5. The City shall pay to the Owner a Tax Increment-Based Rehabilitation Grant, for the 2017, 2018 and 2019 taxation years in the amount of up to **one million, one hundred and sixty thousand and one hundred and eight dollars, \$1,160,108** subject to taxes having been verified as paid in full by the Owner by December 31, 2019. Property taxes not paid by December 31st will not yield a grant at that time.
- 6. The City shall pay to the Owner additional Tax Increment-Based Rehabilitation Grants annually, calculated in accordance with this By-law, and provided that the municipal property taxes for any year in which a grant is paid, have been paid in full by the Owner of the property by October 31st. Property taxes not paid by October 31st of subsequent years will not yield a grant at that time.
- 7. The City shall pay no more than ten (10) annual Tax Increment-Based Rehabilitation Grants, starting with the 2017 taxation year and ending with the final payment no later than 2025, for the 2025 taxation year, provided that the total of all annual Tax Increment-Based Rehabilitation Grants shall not exceed one million four hundred eight thousand nine hundred and thirty nine dollars (\$1,408,939).

8. The Owner shall comply in all material respects with the Brownfields Site Agreement as a pre-condition to issuance of any annual Tax Increment-Based Rehabilitation Grant under this By-law. In the event that the Owner is not in compliance with the Brownfields Site Agreement, in whole or in part, the City shall withhold the annual Tax Increment-Based Rehabilitation Grant until such time as the Owner is in compliance with the Brownfields Site Agreement.
9. This by-law shall come into force and take effect on its passing.

Given First and Second Readings: October 15, 2019

Given Third Reading and Passed: [Meeting Date]

John Bolognone
City Clerk

Bryan Paterson
Mayor