



**City of Kingston
Report to Council
Report Number 21-262**

To: Mayor and Members of Council
From: Peter Huigenbos, Commissioner, Business, Environment & Projects
Resource Staff: Brandon Forrest, Director, Business, Real Estate & Environment
Date of Meeting: November 16, 2021
Subject: Initiation of Brownfield Tax Increment Financing Payments for 333 University Avenue

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

In 2015, the property currently known as 333 University Avenue was approved for brownfield financial benefits in exchange for undertaking environmental remediation and redevelopment of new residential infill style housing which has been substantially completed. The owner has provided documentation of their environmental remediation expenses incurred which have been substantiated by staff review and a third-party financial audit.

The owner has incurred \$583,676.46 of eligible remediation expenses which is more than the \$529,634 maximum amount of financial benefit approved by Council in 2015 ([Report Number 15-339](#)). In accordance with the Brownfield Site Agreement between the City and 333 University Avenue Ltd., this report recommends that Council approve a by-law that initiates the payment of rebates to the property owner. The rebates will be equal to 35.2% of the annual incremental municipal taxes paid, up to the amount of eligible expenses incurred or maximum approved benefit (whichever is less) minus initial study grants and tax cancellations provided which equals a net eligible rebate of \$417,847.35.

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Payment of brownfield benefits by the City in any given year will be contingent upon the owner's payment of property taxes due and upon the owner remaining in compliance with the terms of the property's Brownfield Site Agreement.

Recommendation:

That the by-law, attached as Exhibit A to Report Number 21-262, be presented to Council for approval to initiate the Tax Increment-Based Redevelopment Grant rebates to the owner of the approved brownfield property at 333 University Avenue, Kingston, Ontario.

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Options/Discussion:

The property at 333 University Avenue is within Project Area 1c of the City's Brownfield Community Improvement Plan (CIP) and in 2014 was approved for a Brownfield Initial Study Grant of \$16,924 to assist the owners in assessing the degree of soil and groundwater contamination and develop environmental remediation plans that would enable an infill style redevelopment to a high-density residential use.

On August 11, 2015, City Council approved ([Report Number 15-339](#)) an application for brownfield financial benefits and completion of a brownfield site agreement with 333 University Avenue Ltd. for the property at 333 University Avenue. Based on the estimates for environmental remediation provided and reviewed, a maximum benefit of up to \$529,634 was approved under the Tax Increment-Based Rehabilitation Grant Program (TIRGP). A Brownfield Site Agreement between the developer (333 University Avenue Ltd.) and the City was completed and remains in force. As per the terms of this agreement, TIRGP rebates can only commence once the following key compliance items are met to the satisfaction of the City:

- Completion of environmental remediation and production of Record of Site Condition (RSC);
- Development completion and occupancy;
- Compliance with terms of planning agreements;
- Property is not in tax arrears; and
- Submission of proof of costs incurred, accompanied by verification through third-party financial project audit.

Staff are satisfied that the above conditions have been met.

The developer anticipates payment of post-development taxes in 2021 and has requested the approval 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, 333 University Avenue Ltd. has submitted documentation of their eligible remediation costs incurred for the project, along with a third-party financial audit of their submitted costs that attests to the accuracy and legitimacy of those costs as eligible remediation expenses pursuant to the terms of the Brownfield CIP and the Brownfield Site Agreement. Staff have reviewed the financial information submitted and are satisfied that eligible costs in the amount of \$583,676.46 were incurred and that once the values of the previous initial study grant (\$16,924) and tax cancellations (\$94,862.65) made under the Brownfield Increment Financing Tax Program (BFTIP) are subtracted from the maximum approved TIRGP benefit (\$529,634), the total net amount available for rebate through the TIRGP program is \$417,847.35. A summary of eligible remediation costs is provided within Table 1 below.

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Table 1: Summary of Eligible Brownfield Costs and Benefits – 333 University Avenue

Description	
Soil & groundwater remediation	\$449,009.50
Placement of clean fill	\$15,632.30
Remediation management, verification, monitoring	\$67,701.33
Phase II ESA/RSC, Rem Reporting	\$51,333.33
Subtotal of Eligible Expenses Incurred	\$583,676.46
Maximum Approved Benefit	\$529,634.00
Initial Study Grants provided	- \$16,924.00
BFTIP Tax Cancellations provided	- \$94,862.65
Net Eligible Expenses for TIRGP Rebate	\$417,847.35

Under the terms of Council’s approval of brownfield benefits for 333 University Avenue, the TIRGP program will provide an annual rebate of up to 80% of the pre to post development property tax uplift for 44% of the property. This will equate to a 35.2% rebate on the municipal portion of property taxes paid for the entire 333 University Avenue property until the net eligible remediation expenses (\$417,847.35) 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.

The application of TIRGP rebates to only 44% of the property was done because, at the time of the initial application, multiple land parcels were included within the proposed footprint of the 333 University Avenue redevelopment and only 44% of the proposed redevelopment lands could be classified as brownfield in need of remediation.

The municipal portion of the tax assessment for the properties that now comprise 333 University Avenue was \$28,201.38 in 2019 (pre-development). The post-development municipal property tax for the project is anticipated to be \$462,600 in its first full taxation year which provides an estimated tax uplift of approximately \$434,399 per year. Each year can therefore be expected to generate approximately \$152,909 in rebate payments based on the 35.2% of approved rebate yield. As per the Brownfield CIP, 20% of the annual municipal tax uplift (approximately \$38,227) will be directed to the City’s environmental reserve fund.

Based on the costs and taxation estimates available, it is anticipated that rebates will end after a maximum of 2.7 years.

Existing Policy/By-Law:

City of Kingston Brownfield Community Improvement Plan

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Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

Up to \$529,634 of rebatable remediation expense was approved for this brownfield project. The developer has provided satisfactory documentation of the project incurring and payment of \$583,676.46 in eligible remediation expenses.

An initial study grant of \$16,924, and tax cancellations of \$94,862.65 were previously provided to the property owner. These benefits are subtracted from the maximum eligible remediation expenses incurred, making the net eligible expense amount available for tax increment rebates \$417,847.35. The pre to post development tax uplift for this property is estimated to be \$434,399 in its first full post-development taxation year. Based on the terms of the property's brownfield benefits approval, it is expected that rebates will be made for 2.7 years before the net eligible expense amount is recovered by the owner.

Contacts:

Paul MacLatchy, Environment Director, Business, Real Estate & Environment 613-546-4291 extension 1226

Other City of Kingston Staff Consulted:

Jeffrey Walker, Manager of Taxation and Revenue, Financial Services

Exhibits Attached:

Exhibit A - A By-Law to Approve Tax Increment-Based Rehabilitation Grant Rebates for 333 University Avenue

By-Law Number 2021-XX

**A By-Law To Provide Annual Tax Increment-Based Rehabilitation Grants
Pursuant To The Community Improvement Plan For Brownfields For The Property
at 333 University Avenue consisting of:**

**Part Block John Duff, Plan A12, shown as Part 1, on Plan 13R-13692; City of
Kingston, County of Frontenac (327 University) – PIN 36036-0049;**

**Part Block John Duff, Plan A12, as in FR541598; City of Kingston, County of
Frontenac (480 Princess) – PIN 36036-0051;**

**Part Block John Duff, Plan A12, as in FR340855; City of Kingston, County of
Frontenac (468 Princess) – PIN 36036-0052; and**

**Lots 2-3, Plan 134; Part of Lot 1 Plan 134; Part Reserve Plan 134 as in FR285107,
Except The Easement Therein; City of Kingston, County of Frontenac (462-464
Princess) – PIN 36036-0044**

Passed: [Meeting Date]

Whereas By-Law Number 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 Number 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 Number 2006-125 and 2006-126, being “Amendment Number 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 Number 2013-63 and 2013-064, being “Amendment Number 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 Number 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 333 University Avenue Ltd., the developer of the properties known as 333 University Avenue, Part Block John Duff, Plan A12, shown as Part 1, on Plan 13R-13692; City of Kingston, County of Frontenac (327 University) – PIN 36036-0049; Part Block John Duff, Plan A12, as in FR541598; City of Kingston, County of Frontenac (480 Princess) – PIN 36036-0051; Part Block John Duff, Plan A12, as in FR340855; City of Kingston, County of Frontenac (468 Princess) – PIN 36036-0052; and Lots 2-3, Plan 134; Part of Lot 1 Plan 134; Part Reserve Plan 134 as in FR285107, Except The Easement Therein; City of Kingston, County of Frontenac (462-464 Princess) – PIN 36036-0044, 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 2015-154 being “A By-Law to Cancel Municipal and Education Taxes for 468 and 480 Princess Street” was given third reading and passed by Council on August 9, 2016; and

Whereas as of the date of this by-law, the relevant 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;

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 **September 1, 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 **333 University Avenue Ltd.**
 - c) “Eligible Property” means the property known as 333 University Avenue, Kingston, Ontario, consisting of Part Block John Duff, Plan A12, shown as Part 1, on Plan 13R-13692; City of Kingston, County of Frontenac (327 University) – PIN 36036-0049; Part Block John Duff, Plan A12, as in FR541598; City of Kingston, County of Frontenac (480 Princess) – PIN 36036-0051; Part Block John Duff, Plan A12, as in FR340855; City of Kingston, County of Frontenac (468

Princess) – PIN 36036-0052; and Lots 2-3, Plan 134; Part of Lot 1 Plan 134; Part Reserve Plan 134 as in FR285107, Except The Easement Therein; City of Kingston, County of Frontenac (462-464 Princess) – PIN 36036-0044.

- d) “Owner” means the owner or owners of the Eligible Property at the time of each annual 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.
 - 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 2019 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 0.352.
2. The total of all annual Tax Increment Based Rehabilitation Grants (rebates) that may be paid by the City of Kingston for 333 University Avenue shall not exceed four hundred and seventeen thousand eight hundred and forty-seven dollars and thirty-five cents (\$417,847.35) calculated as follows:

Approved eligible costs as per Brownfield Site Agreement	\$529,634.00
Less: Initial Study Grant and BFTIP Tax Cancellations	<u>(\$111,786.65)</u>
Total available for Tax Increment-Based Rehabilitation Grant	\$417,847.35

- 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 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.
6. The City shall pay no more than ten (10) annual Tax Increment-Based Rehabilitation Grants, starting with the 2021 taxation year and ending with the final payment no later than 2031, for the 2030 taxation year, provided that the total of all annual Tax Increment-Based Rehabilitation Grants shall not exceed four hundred and seventeen thousand eight hundred and forty-seven dollars and thirty-five cents (\$417,847.35).
7. 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.
8. This by-law shall come into force and take effect on its passing.

Given First and Second Readings: November 16, 2021

Given Third Reading and Passed: [Meeting Date]

John Bolognone
City Clerk

Bryan Paterson
Mayor