



**City of Kingston
Report to Council
Report Number 24-019**

To: Mayor and Members of Council

From: Paige Agnew, Commissioner, Growth & Development
Services

Resource Staff: Brandon Forrest, Director Business, Real Estate and
Environment

Date of Meeting: January 23, 2024

Subject: Third Reading of Amended Brownfield By-Law for 18 Queen
and 282 Ontario Street

Council Strategic Plan Alignment:

Theme: 1. Support Housing Affordability

Goal: 1.1 Promote increased supply and affordability of housing.

Executive Summary:

In 2022 City Council approved amended terms for financial benefits for the brownfield project at 18 Queen Street and 282 Ontario Street and first and second readings of a related Brownfield Financial Tax Incentive Program (BFTIP) By-Law Number 2022-120. The approval also included recommended updates to the City's Brownfield Community Improvement Plan (CIP) that would allow the City to take advantage of recent changes made to the Brownfield Financial Tax Incentive Program (BFTIP) by the Provincial government. These changes allow a larger amount of education taxes to be used as part of the financial incentives for brownfield projects which reduces the City's share of the financial contribution to these projects. Changes to the CIP have been completed and the BFTIP By-Law has been reviewed by the Ministry of Municipal Affairs and Housing. Based on comments received from the MMAH, the by-law has been amended and is presented herein for approval and third reading.

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Approval of the recommended by-law does not change the amount of financial benefit that the subject brownfield project is eligible for, the conditions of the benefit, or timelines.

Recommendation:

That By-Law Number 2022-120, A By-Law to Permit the Cancellation of Municipal and Education Taxes for the Brownfield Property at 18 Queen Street and 282 Ontario Street, attached as Exhibit A to Report Number 24-019, be presented to Council for third reading.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Paige Agnew, Commissioner,
Growth & Development Services**

ORIGINAL SIGNED BY CHIEF

ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Jennifer Campbell, Commissioner, Community Services Not required

Neil Carbone, Commissioner, Corporate Services Not required

David Fell, President & CEO, Utilities Kingston Not required

Peter Huigenbos, Commissioner, Major Projects & Strategic Initiatives Not required

Brad Joyce, Commissioner, Infrastructure, Transportation
& Emergency Services Not required

Desirée Kennedy, Chief Financial Officer & City Treasurer

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Options/Discussion:**Background**

On July 12, 2022, Council approved the amendment of terms for the previously approved brownfield project at 18 Queen and 282 Ontario Street. In addition to amending the maximum amount of brownfield financial benefit to \$5,053,879, a first and second reading of a new by-law that would enable the City to include increased levels of education tax cancellation as part of the total brownfields financial benefit amount was approved. The ability for Ontario municipalities to provide increased levels of municipal and education tax cancellation was introduced by the provincial government in 2022.

Previous to this change, a municipality could cancel municipal or education taxes as part of a brownfield financial benefit program but only the pre-development level taxes and only for the 36 months when remediation and construction was underway. This allowed only a modest contribution from the province to any given brownfield project. The recent changes now allows the cancellation of up to 10 years (for residential property) and 6 years (for commercial property) of education taxes at levels that reflect the post-development tax uplift for a project. This means that the provincial contribution to a brownfield financial benefit amount has now significantly increased.

Kingston has applied to the Ministry of Municipal Affairs and Housing (MMAH) for increased tax cancellations for the subject brownfield project and, as part of their review of the application, the MMAH has provided comments that require some amendment to the draft by-law that was presented to Council for first and second readings in 2022. The amended by-law does not change the maximum amount of brownfield financial benefit that was approved by Council for the project in 2022 or the project timelines and conditions required by the City. The amended by-law for cancellation of municipal and education taxes for the brownfield project at 18 Queen and 282 Ontario Street is attached as Exhibit A.

Analysis

This report recommends third reading of an amended brownfield tax cancellation by-law so that the City may take advantage of recent changes made by the province to how municipalities are permitted to rebate the education portion of tax assessments and thereby increase the provincial contribution to brownfield financial benefits for approved projects. The increase in provincial contributions provides a proportional decrease in contributions by municipal tax rebates while leaving the total amount of financial benefit to an approved brownfield project unchanged.

Once completed, the brownfield project at 18 Queen and 282 Ontario Street is projected to provide 200 new residential units in apartment formats and approximately 39,000 square feet of commercial space.

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Existing Policy/By-Law:

Brownfield Community Improvement Plan (CIP)

Report to Council 22-103

By-Law Number 2022-120

Notice Provisions:

None

Financial Considerations:

On July 12, 2022, City Council approved a brownfield financial benefits package amount of no more than \$5,053,879 in future tax cancellations or rebates to offset costs for the environmental remediation of the property. A by-law to allow for future tax cancellations under the province's brownfield financial tax incentive program (BFTIP) was presented and received first and second readings.

Approval of the recommended third reading of the amended By-Law Number 2022-120 does not alter the total amount of brownfield financial benefit available to the property but does allow for the inclusion of an increased contribution to the financial benefit from the province via the cancellation of post-development education taxes. The increased provincial contribution allows for a proportionate decrease in the total contribution from municipal tax rebates, thereby decreasing the financial burden on the municipality. Although actual tax assessments will vary from year to year, for the subject project, the provincial contribution and proportional decrease in municipal tax rebate contribution is estimated to be up to \$60,000 per year of annual rebate.

Once completed, the brownfield project at 18 Queen and 282 Ontario Street is expected to provide a new tax revenue uplift to the city of at least \$533,000 annually.

Contacts:

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

Other City of Kingston Staff Consulted:

Jeff Walker, Manager of Taxation and Revenue, Financial Services

Exhibits Attached:

Exhibit A Brownfields BFTIP Program By-Law for 18 Queen and 282 Ontario Streets
(Amended)

By-Law Number 2024-XX

**A By-Law to Cancel Municipal and Education Taxes for the Property Known
as 18 Queen Street & 282 Ontario Street**

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; and

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 Numbers 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 Numbers 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 18 Queen Street Holdings Ltd, the registered owner of the property known as 18 Queen Street and 282 Ontario Street, more specifically described as:

18 Queen Street: Lot 15 Original Survey Kingston City; Lot 52 Original Survey Kingston City; Part Lot 57 Original Survey Kingston City Part 1 13R-13709; Kingston; The County of Frontenac being all of PIN 36044-0133 (LT); and

282 Ontario Street: Lot 3 & Lot 10 Original Survey Being Part 1 13R15191 Kingston City; Kingston; The County of Frontenac being all of PIN 36044-0141 (LT).

has applied to the City of Kingston to cancel the property taxes for this property, in accordance with the Community Improvement Plan and section 365.1 of the *Municipal Act*; and

Whereas the property is located within the Community Improvement Project Area and is

eligible for Tax Assistance pursuant to section 365.1 of the *Municipal Act*, and

Whereas the Minister of Finance has approved the education tax assistance provided for in this By-Law as required by the *Municipal Act*,

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 365.1 of the *Municipal Act*, 2001 S.O. 2001, c. 25, as amended, **ENACTS** as follows:

1. In this By-Law,
 - a) “Assistance Period” means, with respect to the Eligible Property, the period of time starting on the date that Tax Assistance begins to be provided under this By-Law for the Eligible Property and ending on the earlier of:
 - i) for residential portions of the Eligible Property, the date that is 10 years after the date that the Tax Assistance begins to be provided, and for commercial portions of the property, the date that is 6 years after the date that the Tax Assistance begins to be provided, or
 - ii) the final expiry date set out within the Community Improvement Plan, which for this Eligible Property shall be December 31, 2041, or
 - iii) the date that the Brownfield Financial Benefits provided for the Eligible Property equals the Eligible Remediation Costs;
 - b) “Brownfield Financial Benefits” means the sum of financial benefits provided to the Eligible Property and consists of grants, tax deferrals, tax cancellations and/or tax rebates;
 - c) “Community Improvement Plan” means the Community Improvement Plan of the City of Kingston, approved by City Council and adopted by By-Law Number 2018-13, as amended or re-enacted from time to time;
 - d) “Eligible Property” means the property known as 18 Queen Street and 282 Ontario Street, Kingston, Ontario, being ARN – Assessment Roll Numbers 1011 030 090 06000 and 1011 030 090 06100 respectively;
 - e) “Eligible Remediation Costs” means the cost of any action taken to reduce the concentration of or manage 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) “Incremental Taxes” means the difference between pre-development and post-development municipal, or education taxes levied in any given year of Tax Assistance where the pre-development taxes are those that were levied in the year prior to the issuance of a record of site condition;
 - g) “Owner” means 18 Queen Street Holdings Ltd., the owner of the Eligible Property;
 - h) “Tax Assistance” means the deferral or cancellation of taxes for municipal and education purposes levied on the Eligible Property during the Assistance Period pursuant to this By-Law. In the period before the Owner’s obligations under this By-Law have been met, Tax Assistance shall take the form of a deferral of taxes. Once the City of Kingston has confirmed that the Owner’s obligations under this By-Law have been met, Tax Assistance shall take the form of a cancellation of taxes.
2. The City of Kingston shall provide Tax Assistance for the Eligible Property subject to the provisions of this By-Law and subject to confirmation that the Owner has paid all property taxes owing with respect to the Eligible Property for all years prior to the year in which this By-Law is passed.
 3. The Tax Assistance may commence as of the date this By-Law receives third reading and shall be effective only after completion and permit of occupancy of the proposed redevelopment, and a tax increment has been created, and for the duration of the Assistance Period.
 4. The Tax Assistance available shall be a maximum of 80% of the Incremental Taxes for municipal purposes and 80% of the Incremental Taxes for education purposes levied during the Assistance Period. The City of Kingston may revise the level of Tax Assistance based on the Municipal Tax Roll as returned in any given year and said revision shall not require an amendment to this By-Law, but the percentage of education taxes deferred or cancelled shall match the percentage of municipal taxes deferred or cancelled and the maximum percentage of Tax Assistance shall be 80% of the Incremental Taxes. The City of Kingston shall notify the Minister of Finance forthwith of any revision to the level of Tax Assistance.
 5. Where Tax Assistance is provided for a portion of any year, or where Tax Assistance represents only a portion of the taxes levied on the Eligible Property, the Owner is responsible for payment of all property taxes levied during the portion of the year when Tax Assistance is not provided, and for all taxes not subject to Tax Assistance.

6. As of the date of passing of this By-Law, the City of Kingston may,
 - a) Refund the taxes to the extent required to provide the Tax Assistance in the year this By-Law is passed, if the taxes for the Eligible Property have been paid; or
 - b) Credit the amount to be refunded to an outstanding tax liability of the Owner with respect to the Eligible Property, if the taxes have not been paid in the year that this By-Law is passed.
7. The Treasurer of the City shall alter the tax roll in accordance with the Tax Assistance to be provided for the Eligible Property.
8. The Owner shall, within 18 months of the anniversary of the commencement of Tax Assistance (or such later date agreed to in writing by the City of Kingston and the Minister of Finance), file a record of site condition (RSC) with respect to the Eligible Property in the Environmental Site Registry under section 168.4 of the Environmental Protection Act. The Owner shall, within 30 days, notify the City of Kingston of the filing. Within 30 days after receiving the notice from the Owner, the City of Kingston shall advise the Minister of Finance of the filing.
9. The Owner shall provide to the City of Kingston an annual report within thirty (30) days of the anniversary of the commencement of Tax Assistance for each year or part thereof that Tax Assistance is provided. The annual report shall include:
 - a) An update of the concentration and location of contamination on the Eligible Property;
 - b) The status of remediation work completed to date;
 - c) Costs expended to date and an estimate of costs not yet incurred; and
 - d) Time estimates to complete the remedial and redevelopment work.
10. The requirement for an annual report may be waived by the City after a Record of Site Condition has been filed by the Owner.
11. Within 30 days of receiving the annual report from the Owner, the City of Kingston shall provide a copy to the Minister of Finance.
12. Tax Assistance shall be suspended, and either or both the municipal and education portions of the Tax Assistance may be terminated, where any one of the following occurs:
 - a) The Owner is in default of any obligation pursuant to this By-Law;
 - b) The Owner is in default of any provision of the Brownfield Site Agreement entered into between the Owner and the City of Kingston; or
 - c) The Owner fails to commence or ceases remediation for any reason.

13. The municipal portion of the Tax Assistance shall be suspended, and may be terminated, where any one of the following occurs:
 - a) The Eligible Property has been severed and the severed parcels have each been assigned roll numbers and one of the severed parcels is subsequently sold, the by-law shall only be canceled on the parcel(s) that has been sold; or
 - b) Tax Assistance has been provided for ten (10) years.
14. The education portion of the Tax Assistance shall be terminated where any one of the following occurs:
 - a) The Eligible Property has been severed and the severed parcels have each been assigned roll numbers and one of the severed parcels is subsequently sold, the by-law shall only be canceled on the parcel(s) that has been sold; or
 - b) Tax Assistance has been provided for ten (10) years in the case of a residential property or six (6) years in the case of a commercial property.
15. The Tax Assistance shall be terminated where the Tax Assistance equals or exceeds the Eligible Remediation Costs.
16. The Owner shall notify the City of Kingston forthwith if any of the events in Sections 12 to 15 occur. The City of Kingston shall then forthwith notify the Minister of Finance.
17. If Tax Assistance has been suspended or terminated under subsections 12 to 14 of this By-Law, the City of Kingston may:
 - a) Provide the Owner with notice that the Tax Assistance is suspended or terminated; or
 - b) Provide the Owner with notice that it may cure the default within such period and on such terms as the City specifies in writing, and that the failure to do so will result in termination of the Tax Assistance.
18. A notice under clause 17(b) is not effective with respect to education taxes unless it has been agreed to in writing by the Minister of Finance.
19. In the event that Tax Assistance is terminated pursuant to section 12 to 14 above, the City of Kingston shall provide notice to the Owner under subsection 365.1(3.1) of the *Municipal Act* that the conditions under this By-Law have not been met and order the Owner to repay all of the education taxes which were subject to the Tax Assistance, and all or a portion of the municipal taxes which were subject to the Tax Assistance.

20. Where the City makes an order under subsection 19, interest is payable on the taxes which become payable under the order calculated at the standard rates of the Municipality, as if the Tax Assistance had not been provided.
21. In the event that the Tax Assistance provided pursuant to this By-Law exceeds the actual Eligible Remediation Costs for the Eligible Property, the amount that the Tax Assistance exceeds the Eligible Remediation Costs shall be repaid by the Owner, failing which the amount to be repaid shall be added to the Tax Roll for the Eligible Property and collected as property taxes.
22. This By-Law shall come into force and take effect on the date of its passing.

Given first and second readings July 12, 2022

Given third reading and passed [Meeting Date]

**Janet Jaynes,
City Clerk**

**Bryan Paterson
Mayor**