TO: Chair and Members General Issues Committee  
WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: August 13, 2012

SUBJECT/REPORT NO:  
Administrative Amendments to the ERASE Redevelopment Grant Program (RGP) Description and Terms (PED12147) (City Wide)

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning and Economic Development Department

PREPARED BY:  
Brian Morris (905) 546-2424, Ext. 5602

SIGNATURE:  

RECOMMENDATION

a) That the revised Environmental Remediation and Site Enhancement (ERASE) Redevelopment Grant Program (RGP) description and terms, attached as Appendix “A” to Report PED12147, be approved;

b) That staff continue to monitor the ERASE Redevelopment Program with respect to detailed implementation measures to allow for the efficient administration of the Program.

EXECUTIVE SUMMARY

City Council, at its meeting held March 10, 2010, approved Report ECO05009(a) that included several amendments to the Environmental Remediation and Site Enhancement (ERASE) Community Improvement Plan (CIP). One of those amendments was to remove the various program description and terms, including the ERASE Redevelopment Grant Program (RGP), from the ERASE CIP and add them as appendices to the CIP. This is consistent with the City’s other CIPs and further allows
staff to be able to make changes to the program descriptions and terms by way of Council resolution without having to do a full amendment to the ERASE CIP.

Report PED12147 includes some administrative changes to the ERASE RGP description and terms that will allow for more effective administration and implementation of the Program, including processing of applications (see Appendix “A” to Report PED12147 for a complete amended program description and terms). Included in these administrative amendments are a few grammatical edits as well as additional wording that would allow staff to consider an application to the ERASE RGP as a two-step application and approval process rather than a holistic single application and approval process should staff feel that an application warrants such consideration based on detailed information received from the applicant and their qualified person(s). This additional wording was prompted by the fact that there are fewer vacant Brownfield properties in Hamilton’s industrial area. As a result, property owners, developers and businesses have no alternative but to consider the redevelopment on Brownfield properties that have existing structures. This trend creates particular challenges when there are large, antiquated facilities on these properties and/or when these structures have been virtually built to the property lines. Demolition costs have been considered as eligible expenses under the ERASE RGP since its inception in 2001. However, only recently has staff considered it necessary to amend the application and approval process in order that the remaining Brownfield properties with existing structures can receive the full benefit of all eligible expenses under the Program. A recent application that staff received for an ERASE Redevelopment Grant and the subsequent discussion of the merits of the applicant’s proposal initiated staff’s need to review the ERASE RGP’s descriptions and terms with respect to the program’s administration.

Alternatives for Consideration – See Page 6

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** There are no additional financial implications to the City if the amended description and terms of the ERASE RGP is approved. Under the ERASE RGP, there is no actual loss of tax revenues to the City. The annual grant paid by the City to the applicant is actually paid out of increased taxes generated by the development taking advantage of the ERASE Program. This would not change if staff and Council were to contemplate an application for approval as part of a two-step process.

**Staffing:** N/A

**Legal:** The policy, as currently written, does not contemplate an application to the ERASE RGP as a two-step application and approval process. However, by means of a Council resolution the proposed terms and descriptions of the ERASE RGP can be amended.
HISTORICAL BACKGROUND  (Chronology of events)

The ERASE CIP has been in existence since it was originally approved by Council in April of 2001. The ERASE CIP was the first Brownfield specific CIP in Canada and as a result, the City of Hamilton has continued to be seen as a leader in the Province and the rest of Canada when it comes to Brownfield redevelopment programming. The ERASE RGP was one of the original programs created when the CIP was introduced in 2001, and it has been very successful since inception. The ERASE CIP was expanded to the full limits of the urban area within the City in April 2005, from the original boundary which was considered the older industrial area of the City. Some program additions and adjustments were also made.

In March of 2010, Council again approved an amendment to the ERASE CIP which included the addition of a new program (Downtown Hamilton/West Harbourfront Remediation Loan Pilot Program), additions of eligible costs to the ERASE RGP and some administrative changes to the CIP. One of the administrative changes was to remove the various program description and terms, including the ERASE RGP, from the ERASE CIP and add them as appendices to the CIP to allow staff to be able to make changes to the program descriptions and terms by way of Council resolution without having to do a full amendment to the ERASE CIP.

The ERASE Redevelopment Grant provides a financial incentive in the form of a grant to help offset the cost of environmental remediation and rehabilitation of Brownfield properties where redevelopment results in a re-valuation and tax increase on these properties. The Redevelopment Grant is offered as a tax-increment grant on a “pay-as-you go” basis. The developer will initially pay for the entire cost of the remediation and redevelopment project. Then, when the municipality receives the incremental property taxes that result from the project, the municipality will reimburse the applicant or assignee in the form of an annual grant equivalent to 80% of the increase in City taxes that result from redevelopment for up to ten years. Each year, the property owner must first pay taxes owing and then the approved applicant or assignee will receive the grant. In no case will the total amount of the grant provided under this program exceed the value of the work done under eligible program costs that resulted in the assessment increase.

The grant provided under the ERG will equal 80% of the increase in the City portion of property taxes. The remaining 20% of the increase in the City portion of property taxes will be dedicated to the ERASE Municipal Acquisition and Partnership Program (MAPP). Hamilton’s exceptionally low industrial vacancy rate and the redevelopment of much of the “low hanging fruit” in respect to available Brownfields have necessitated that staff reconsider the process in which applications are accepted and approved. This is based on the rationale that more Brownfield properties in the Hamilton’s industrial north end may require demolition prior to environmental testing and eventual remediation. While there is still redevelopment potential in the older industrial area, some of these
properties are complicated not only by the remediation required, but by the fact that the existing facility prevents the ability to conduct full testing and analysis. This is significant because it prohibits the determination of the full and realistic costs of remediation and redevelopment. Recently, staff received an application to the ERASE RGP that, based on the information supplied, felt had merit to proceed but would require an administrative amendment to the description and terms of ERASE RGP. Report PED12147 seeks to implement the administrative change.

POLICY IMPLICATIONS

The ERASE RGP is contained within the Council approved ERASE CIP. With the administrative changes proposed in Report PED12147, the intent and purpose of the ERASE RGP remain and are not compromised. The administrative amendments would simply allow staff and Council discretion that would provide for the efficient administration of the program.

RELEVANT CONSULTATION

Staff from the Planning Division and Legal Services Division was consulted in the preparation of Report PED12147.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Every successful economic development program/process must be dynamic in nature and possess the ability to change in order to accommodate revisions to policy; trends in the market; and to satisfy the needs of the end user of the program; while simultaneously deliver on the expectations of Council. Report PED12147 specifically speaks to trends in the market and the need to satisfy the end user of the program.

With the expansion of the ERASE CIP’s area boundary to the full limits of the urban area of the City in 2005, there were specific eligible costs under the ERASE RGP that remained only for the older industrial area on top of the main eligible costs of environmental remediation; these being demolition expenses and infrastructure upgrading at 25% (on-site water services, sanitary sewers and storm sewers).

Demolition is considered an eligible expense under the program in the older industrial area of the City due to several factors that are consistent with the purpose of the program. Under “Types of Assistance Required” section of the ERASE CIP, it states that, due to the age of the buildings and infrastructure, Brownfield properties in the older industrial area in Hamilton also regularly require financial assistance for the costs associated with building demolition and infrastructure upgrading. These costs, which are not incurred on Greenfield sites, can sometimes exceed the costs of environmental
remediation. Furthermore, as the building stock within the older industrial area is older than the rest of the City, many former industrial buildings lie abandoned, derelict and in a state of disrepair. These buildings also suffer from obsolescence in that they are not of sufficient ceiling height and internal configuration to meet modern manufacturing and warehousing requirements. Many of the properties on which these buildings stand can only be reused if these buildings are demolished.

Currently, the ERASE RGP terms and description and application process is contemplated on a holistic application where the focus is on necessary environmental remediation (soil and groundwater) and redevelopment plans of a site into a value added real estate commodity, but also where eligible demolition and infrastructure upgrading costs are necessary as part of the process. This holistic, one-step approach has never been in question until recently.

As more and more properties continue to be redeveloped throughout the City, and in the older industrial area, as evidenced by the success of the ERASE CIP, the number of available properties that more easily lend themselves to redevelopment dwindles. What are left are more complicated sites that may require different tactics and creativity to make a successful redevelopment project happen. There are several larger properties in the older industrial area that may lend themselves to redevelopment, but the process can be complicated when there are existing structures on site that may not lend themselves to adaptive re-use, or to the current marketplace. Moreover, it may be the case that, in order to accurately define the contamination and remediation needed on the site, these structures stand in the way of ascertaining such information. In such an instance, contemplating an ERASE Redevelopment Grant Application as a single holistic application, where estimates for eligible costs for environmental remediation, demolition and infrastructure upgrading are needed, would be difficult to provide, all at the same time. As such, Report PED12147 seeks to amend the description and terms of the program to allow staff to contemplate an application as part of a two-step application and approval process.

An application to the ERASE RGP was recently made that stipulated that the demolition of the existing building was necessary prior to completing a comprehensive environmental site assessment (ESA) of the overall site. Therefore, as the program is not retroactive in nature, meaning an applicant must have the application in and Council approved prior to incurring any costs towards eligible expenses, the applicant submitted an application with only eligible demolition costs. The necessary eligible remediation and infrastructure upgrading expenses would come at a later date, when the comprehensive ESA could be completed. This prompted staff to review the merits of such a proposal given the size and the scale of the project. Furthermore, staff felt that there could be similar scenarios, such as the aforementioned application and proposal in the future, so a necessary amendment to the program description and terms is needed to allow staff and Council the ability to contemplate an application as part of a two-step approval process where an applicant can first be approved for their demolition.
costs, then at a later date, approved for their remediation and/or infrastructure upgrading costs.

The attached revised description and terms of the ERASE RGP (see Appendix “A”) has an additional wording under the “Administration Section” that allows staff to contemplate an application in such a way. The proposed wording is as follows:

“If demolition, where such costs are eligible, is recommended by a qualified person in order to accurately complete the required detailed work plan, cost estimates, or supporting Phase II ESA and/or risk assessment, the demolition may be recommended by staff and may be deemed by Council to be eligible works prior to submitting the balance of the eligible cost estimates for the complete redevelopment project “.

In addition to this wording, there are some minor grammatical changes to the description and terms that have been included in Appendix “A” to Report PED12147.

**ALTERNATIVES FOR CONSIDERATION**
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

City Council may choose to not accept the recommendations contained within Report PED12147 and have the ERASE Redevelopment Program continue as written. Council may also refer Report PED12147 back to staff to review alternative wording that has been provided as an administrative amendment to the ERASE RGP description and terms.

**CORPORATE STRATEGIC PLAN**  (Linkage to Desired End Results)


**Skilled, Innovative & Respectful Organization**
- A culture of excellence
- More innovation, greater teamwork, better client focus
- Council and SMT are recognized for their leadership and integrity

**Financial Sustainability**
- Effective and sustainable Growth Management
- Generate assessment growth/non-tax revenues

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
Growing Our Economy

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

Environmental Stewardship

- Reduced impact of City activities on the environment
- Reduce the impact of Hamilton’s industrial, commercial Private and Public operations on the environment
- Aspiring to the highest environmental standards

Healthy Community

- Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix “A” to Report PED12147 – Environmental Remediation and Site Enhancement (ERASE) Redevelopment Grant Program (RGP)

BM/dkm
8.2 ERASE Redevelopment Grant Program (ERG)

8.2.1 Purpose

The purpose of this program is to remove alleviate a serious financial impediment to brownfield redevelopment efforts, namely the large tax increase that can result when a brownfield property is redeveloped. The intent of the ERG is to encourage environmental remediation, rehabilitation, redevelopment and adaptive re-use of brownfield sites. Therefore, only those brownfield redevelopment projects that result in an increase in property assessment and taxes will be eligible for funding under the ERG. The ERG also leverages public sector investment and encourages development that would otherwise not take place without this incentive program.

8.2.2 Program Description

The ERG will provide a financial incentive in the form of a grant to help offset the cost of environmental remediation and rehabilitation of brownfield properties where redevelopment results in a re-valuation and tax increase on these properties. The ERG will be offered as a tax-increment grant on a “pay-as-you go” basis. The developer will initially pay for the entire cost of the remediation and redevelopment project. Then, when the municipality receives the incremental property taxes that result from the project, the municipality will reimburse the applicant or assignee in the form of an annual grant equivalent to 80% of the increase in City taxes that result from redevelopment. Each year, the property owner must first pay taxes owing and then the approved applicant or assignee will receive the grant. In no case will the total amount of the grant provided under this program exceed the value of the work done under eligible program costs that resulted in the assessment increase. Also, in no case, will the total amount of the grants provided under this program, the SGP (8.1), and the tax assistance provided under the Tax Assistance Program (TAP) (8.3) exceed the total cost of rehabilitating the land and buildings.

The grant provided under the ERG will equal 80% of the increase in the City portion of property taxes. The remaining 20% of the increase in the City portion of property taxes will be dedicated to the ERASE Municipal Acquisition and Partnership Program (MAPP).

The grants may be received by an owner in conjunction with any other available municipal program except for other tax increment financing programs. The approved grants are not assignable by the owner to anyone, except to the initial purchaser of any condominium unit. The total of each property’s ten years of approved grants shall not exceed the City’s share of the incremental construction cost.

A limited assignment of the grant under the terms of the Program may be made from a registered or assessed owner of the property to the initial purchaser of each new condominium unit. The assignment of the grant shall not apply to any subsequent re-sale of any such unit. The assigned grant shall be restricted to the balance of the ten (10) year term following the date of the registration of the condominium. The first year grant is payable during the calendar year in which 75% of the condominium units within the project are fully assessed, and is calculated on a rateable per unit basis. A one-time administration fee of $340 per unit shall be deducted from the initial grant payment. Fees
will be authorized through a by-law passed by City Council. The rate of the fees may be changed from time to time as approved by City Council.

For applicants who choose not to assign the grant to the initial purchasers of each condominium unit, the grant will be earned by the applicant if they have met all terms and conditions of the Program including payment of taxes during the development stage only. The annual grant to the applicant will be pro-rated if an appeal has been filed with the Municipal Property Assessment Corporation by any of the condominium unit owners. The grant for condominium units that are under appeal will not be released until the appeals are settled through the Assessment Review Board. The first year grant is payable during the calendar year in which 75% of the condominium units within the

The ERG will commence on or after the date of approval of this CIP, and will continue for a period of approximately ten (10) years from the date of approval of this CIP by Council. All grant payments will cease:

a) when total grant payments provided under this program equal the total value of work done under “eligible program costs” that resulted in the re-valuation; or
b) After ten (10) years; whichever comes first.

The ERG is an application-based program. As early as possible in the development approvals process, a property owner will register their intent to participate in the program by filing an ERG Application with the Economic Development Department. Before accepting this application, the Economic Development Department will screen the application to ensure that it is for a property within the designated Community Improvement Project Area and the application meets the eligibility requirements. Applications that are not within the project area or applications that clearly do not meet the eligibility requirements will not be accepted. Acceptance of the application by the Economic Development Department in no way implies grant approval.

Applications will be processed and approved on a first come, first serve basis. Review and evaluation of the application and supporting materials against program eligibility requirements will be done by City staff. The applicant participating in the ERG must enter into an agreement with the City. This Agreement will specify the terms and conditions of the grant. All ERG applications and agreements will be subject to approval by City Council or Council’s designate.

The amount of City taxes (“base rate”) will be determined before commencement of the project. The increase in the municipal portion of real property taxes (or “municipal tax increment”) will be calculated as the difference between the base rate and the amount of City taxes levied as a result of re-valuation by the Municipal Property Assessment Corporation (MPAC) following project completion. The municipal tax increment will be used to fund the grant. This program does not exempt property owners from an increase/decrease in municipal taxes due to a general tax rate increase/decrease, or a change in assessment for any other reason.

The applicant shall obtain and submit to the City a Phase II ESA and/or risk assessment undertaken by a qualified person that:

a) identifies the extent and provides a cost estimate for the environmental remediation of the eligible property; and,
b) Contains a detailed work plan and budget for said environmental remediation.

The applicant will be required to submit a detailed work plan and cost estimate for the demolition and on-site improvement of public works that is eligible for the ERG.

The actual component costs for all eligible cost items will be supplied to the City upon completion of the project. Payment of the grant will be based on the City’s review and satisfaction with all reports and documentation submitted outlining the full scope and cost of the work completed. Any and all of these costs may be subject to audit, at the expense of the property owner. The grant may be reduced or cancelled if the eligible work is not completed, or not completed as approved.

If during the course of the work, the scope of the work changes, or actual costs are greater or less than estimated costs, the City reserves the right to increase or decrease the total amount of the grant. The annual grant payment will be based on the actual increase in property taxes as calculated, based on the actual re-valuation by the MPAC following project completion.

The City may discontinue the ERG at any time. However, participants in the ERG with applications and agreements that were approved prior the closing of the program will continue to receive grant payments as determined through their ERG Agreement with the City. The City is not responsible for any costs incurred by the owner/applicant in any way relating to the program, including without limitation, costs incurred in anticipation of a grant.

8.2.3 Eligibility Requirements

All owners of properties within the ERASE Community Improvement Project Area are eligible to apply for funding under this program, subject to meeting the general program requirements in Section 8.0, the following eligibility requirements, and subject to availability of funding as approved by Council:

a) An application for the ERG must be submitted to the Economic Development Department prior to the commencement of any works and prior to application for building permit;

b) Such application shall include reports, plans, estimates, contracts and other details as may be required to satisfy the City with respect to the eligible costs of the project and conformity of the project with the CIP;

c) The applicant shall obtain and submit to the City a Phase II ESA and/or risk assessment undertaken by a qualified person that:
   i) identifies the extent and provides a cost estimate for the environmental remediation of the eligible property; and,
   ii) Contains a detailed work plan and budget for said environmental remediation.

d) As a condition of the grant application, the City may require the applicant to submit a Business Plan, with said Plan to the City’s satisfaction;

e) The property shall be redeveloped such that the amount of work undertaken is sufficient to at a minimum result in an increase in the assessed value of the
property;

f) The total value of the grant provided under this program shall not exceed the total value of work done under eligible program costs;

g) Eligible program costs include the costs of:

i) environmental remediation, i.e., 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;

ii) Phase II and ESA’s, risk assessments or remedial work plans not covered by the SGP;

iii) installing environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or Certificate of Property Use;

iv) 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;

v) the following Leadership in Energy and Environmental Design (LEED) Program components up to a maximum of 50% as per the City of Hamilton’s LEED Grant Program (LGP) to achieve LEED certification under the LEED rating system by the Canadian Green Building Council – CaGBC
   a) incremental construction costs,
   b) consultation costs,
   c) energy modeling, and
   d) certification fees

vi) demolition not covered by demolition charge credits (Areas 2 and 3 only);

vii) removal of existing on-site infrastructure prior to replacement up to a maximum of 25% of construction/improvement costs for of on-site public works (water services, sanitary sewers and storm sewers) (Areas 2 and 3 only); and

viii) 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).

h) The total of the grant provided under this Program and the SGP (8.1), and the tax assistance provided under the Tax Assistance Program (TAP) (8.3) and grants or loans provided under any other applicable Community Improvement Plan shall not exceed the total cost of rehabilitating the land and buildings;

i) Actual costs for any or all of the items in eligible program costs above may be subject to audit by the City, at the expense of the property owner;

j) All property owners participating in this program will be required to enter into an agreement with the City which will specify the terms and conditions of the grant;
k) All RGP applications must be approved by City Council or City Council’s designate;

l) The owner shall submit to the Environmental Site Registry under section 168.4 of the *Environmental Protection Act*, a record of site condition prepared by a qualified person. The owner shall notify the City when the record of site condition has been submitted.

m) The City reserves the right to require the submission to the City’s satisfaction, of environmental reports and documentation showing the subject property has been remediated to the appropriate levels for the proposed use.

n) If a building(s) erected on a property participating in this Program is demolished before the grant period expires, the remainder of the monies to be paid out under the grant shall be forfeited;

o) The improvements made to buildings and/or land shall be made pursuant to a Building Permit, constructed in accordance with the Ontario Building Code, and in compliance with all applicable official plan and zoning requirements and approvals; and

p) Outstanding work orders and/or orders or requests to comply from the City must be satisfactorily addressed prior to grant approval.

8.2.4 Administration

The Economic Development Department will be responsible for administering the RGP, in consultation with other departments as necessary. Applications shall be submitted to the Economic Development Department and shall be accompanied by a Phase II ESA and/or risk assessment undertaken by a qualified person that:

i) identifies the extent and provides a cost estimate for the environmental remediation, installation, monitoring, maintaining and operating environmental and/or engineering controls/works of the eligible property; and

ii) contains a detailed work plan and budget for said environmental remediation, installation, monitoring, maintaining and operating environmental and/or engineering controls/works.

In addition, a cost estimate for all eligible LEED program component costs by a LEED’s certified specialist must be provided.

Applicants will be required to have a pre-application consultation meeting with City staff in order to determine program eligibility, proposed scope of work, project timing, etc.

Applications shall be submitted to the Economic Development Department and shall include a detailed work plan and cost estimate for the proposed eligible works. Said work plan and cost estimate will be supported by a Phase II ESA and/or risk assessment undertaken by a qualified person that identifies the estimated cost of environmental remediation and a written contractor’s estimate for other eligible works. The City may also require a Business Plan.

If demolition, where such costs are eligible, is recommended by a qualified person in order to accurately complete the required detailed work plan, cost estimates, or
supporting Phase II ESA and/or risk assessment, the demolition may be recommended by staff and may deemed by Council to be eligible works prior to submitting the balance of the eligible cost estimates for the complete redevelopment project.

Before accepting an application, City staff will screen the application. If the application is not within the community improvement project area or the application clearly does not meet the program eligibility requirements, the application will not be accepted. Acceptance of the application by the City in no way implies grant approval.

Program eligibility will be determined by the Economic Development Department, in consultation with other departments as necessary. Applications will be recommended for approval only if they meet the criteria specified in this Plan and any other requirements of the City.

In instances where an applicant can not satisfy staff with all necessary eligible cost estimates and required back-up documentation, staff reserves the right to consider an application as part of a two step application and approval process, with the ultimate approval residing with City Council.

A recommendation on the ERG Application (including estimated eligible costs) will be forwarded to City Council (or Council’s designate) for consideration. Once City Council (or Council’s designate) approves the ERG Application, the ERG Agreement will be forwarded to the applicant for signature. Once the applicant has signed the agreement, the agreement will then be executed by City officials and a copy will be provided to the applicant. The City may require the applicant to register the agreement on title immediately upon execution of the agreement.

The Owner shall submit to the MOE, a signed record of site condition (RSC) prepared by a qualified person, and the Owner shall submit to the City an acknowledgement of receipt of the RSC by the MOE. The City reserves the right to require the submission to the City’s satisfaction, of environmental reports and documentation showing the subject property has been remediated to the appropriate levels for the proposed use.

Once the redevelopment project is complete and the property has been re-valued by the MPAC, the property owner will be sent a new tax bill. After the property owner has paid in full the new taxes for one (1) year, the City will check to see that the property is not in tax arrears and that the property is still in conformity with the terms of the ERG Agreement. 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.