



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Supplementary Report - Applications to the Imagination, Manufacturing, Innovation and Technology (IMIT) Property Tax Incentive Program

Date: July 20, 2018

To: City Council

From: General Manager, Economic Development and Culture, and City Solicitor

Wards: 10, 20, 28

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains advice or communications that are subject to solicitor-client privilege, and potential litigation that affects the City.

SUMMARY

The IMIT Property Tax Incentive Program requires that all applications for Development Grants with an estimated construction value equal to or exceeding \$150,000,000 (one hundred and fifty million dollars) require City Council approval.

Eight applications for the IMIT Program have been received that fall under this eligibility criteria. In a Staff report dated July 3, 2018 staff recommended refusing IMIT Program incentives for six applicants.

On July 9, 2018 the Economic Development Committee approved a motion asking that the General Manager, Economic Development and Culture report directly to City Council on July 23, 2018 on alternative options for those applicants being refused IMIT Program incentives. This report responds to that request.

RECOMMENDATIONS

The General Manager of Economic Development and Culture and City Solicitor recommend that:

1. City Council adopt the recommendations contained in the report from the General Manger of Economic Development and Culture (July 4, 2018) as follows:

1. City Council approve Imagination, Manufacturing, Innovation and Technology (IMIT) incentives for the following applications:

- a.440 Front Street- in the estimated amount of \$40,000,000; and
- b.1755 Steeles Avenue West- in the estimated amount of \$15,000,000.

2. City Council refuse Imagination, Manufacturing, Innovation and Technology (IMIT) incentives for the following applications:

- a. 100 Queens Quay East;
- b. 16 York Street;
- c. 30 Bay Street & 60 Harbour Street;
- d. 56 Yonge Street et al;
- e. 40 Temperance Street; and
- f. 160 Front Street West.

3. City Council authorize the General Manager of Economic Development and Culture to negotiate and execute a Financial Incentive Agreement with respect to each of the projects approved in accordance with Recommendation 1, in a form satisfactory to the City Solicitor.

2. City Council direct that the confidential information contained in Confidential Attachment 1 to this supplementary report remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The original staff report 'IMIT Property Tax Incentive Program Applications' dated July 4, 2018 (ED31.7) recommends approval of two applications for IMIT Program grants. The total estimated IMIT Program grant amount is \$55 million over 10 years.

The same report recommends not approving the applications for IMIT Program grants for six other office developments. The total estimated IMIT Program grant amount, if provided for the six developments, is estimated to be \$364 million over 10 years.

DECISION HISTORY

On July 9, 2018, the Economic Development Committee considered a staff report reviewing eight applications to the IMIT Property tax Incentive program.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.ED31.7>

COMMENTS

IMIT Program grants are made under the provisions of a Community Improvement Plan (CIP) and are funded from the increased tax revenues that, but for the provision of financial incentives, the City would likely not otherwise realize. The intent and purpose of the IMIT Program is to provide incentives only for development that would likely not occur but for the incentive. As such, the "but for" analysis is fundamental in determining eligibility. It was recommended after a thorough internal and external review, that six of the applications should be refused for not meeting this "but for" requirement. In other words, these reviews determined that it was likely that these six developments would proceed despite not receiving approval for IMIT Program grants.

The amendment to IMIT Program in 2012 that introduced the requirement for Council approval for projects with a construction value in excess of \$150 million was intended to

ensure that City Council is able to exercise a broad, discretionary authority to ensure that these high-value projects continue to promote the policy objectives of the IMIT Program. It has always been the intent of the IMIT Program to encourage development that would likely not occur "but for" the provision of the grants. A contrary interpretation of the requirement of City Council approval -- that City Council is required to approve any application that otherwise meets the eligibility requirements -- makes the approval requirement meaningless and illusory, and would inappropriately bind the decision-making ability of the democratically elected members of City Council to consider applications that come before it.

In addition, this oversight by City Council ensures that City Council is able to maintain its supervisory role over public finances by ensuring that high-value applications, which may be eligible to obtain substantial grants and thereby have a significant impact on the City's finances, are not approved when to do so would not be in the City's interest, as determined by City Council.

The applicants who are challenging the recommendation to deny their applications argue, among other things, that the City is applying proposed, future criteria of the Program when such criteria are not in force. The assertion that this is the basis for staff's recommendation is not correct. The applications were assessed in accordance with the current eligibility criteria, which provides for City Council to exercise its discretionary supervision and approval authority of high value applications in order to ensure that the objectives of the IMIT Program are met.

All applicants had the opportunity to provide to the City's consultants, Hemson Consulting, all documents and records in support of their position regarding the "but for" analysis. In completing its analysis, Hemson reviewed confidential business records subject to non-disclosure agreements. Hemson had the opportunity to review all of the additional written submissions that each applicant submitted to the Economic Development Committee, as well as listen to the oral submissions of each deputant. In a further report (which is attached), Hemson has concluded that none of the written or oral submissions have changed its conclusions.

The retention of a third party expert to evaluate these application ensured that each application was thoroughly evaluated and that the recommendations were based on a thorough and objective analysis. Hemson divided the applications into two groups, those who would likely not have developed "but for" IMIT Program assistance, and those who would likely have developed regardless. As such, all "like" persons are being treated equally; all who meet the "but for" objective are being recommended for approval, and all who do not meet the "but for" objective are being recommended for denial.

Brownfield Remediation Tax Assistance

The IMIT Program also provides an incentive for brownfield remediation (Brownfield Remediation Tax Assistance or BRTA). This aspect of the Program does not require Council approval and can be approved separately from Development Grants. Owners are only eligible for BRTA when a Phase II ESA has been conducted and has identified contaminants exceeding acceptable Ministry of the Environment and Climate Change (MOECC) standards that would prevent a Record of Site Condition from being

registered in the Environmental Site Registry, in accordance with the Environmental Protection Act.

One of the applications that was recommended for refusal of their Development Grant, 100 Queens Quay East, has provided sufficient documentation to determine eligibility for a two year BRTA up to a maximum of their estimated remediation expenses of \$10 million. Two other applicants indicated a potential need for remediation but did not provide sufficient documentation to determine eligibility for BRTA.

Additional Programs and Initiatives

The IMIT Program is unique. There are no similar programs offered by the City that could replace this incentive for those applicants recommended for refusal. The City offers smaller grant programs such as the Eco-Roof Incentive Program to support the development of green and cool roofs on existing buildings, a façade improvement grant program for small businesses located within the City's Business Improvement Areas (BIA's) and the Industrial Water Rate Program that offers a discounted water rate to the City's large manufacturers.

The City does have tax policies that seek to improve the business climate over the long term. This includes Council's policy to reduce the tax ratios for the business tax classes to 2.5-times the residential tax rate by 2023. The City was also able to negotiate a successful agreement with the provincial government to reduce business education tax (BET) rates for City of Toronto businesses closer to the average of the surrounding GTA municipalities. Finally the City continues to offer a non-ground floor non-residential floor area development charge exemption to commercial developments and a complete development charge exemption for industrial uses.

CONTACT

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SIGNATURE

Mike Williams, General Manager

Wendy Walberg, City Solicitor

ATTACHMENTS

Public Attachment 1 - Hemson Report
Confidential Attachment 1 - Confidential Information

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