THE HAMILTON LACAC (MUNICIPAL HERITAGE COMMITTEE) PRESENTS REPORT 06-001 AND RESPECTFULLY RECOMMENDS:

1. **Heritage Permit Application (HP2006-017) Under Part IV of the Ontario Heritage Act to Demolish a Designated Property at 28-44 James Street North (Lister Block), Hamilton (Ward 2)**

   WHEREAS, the landlord was required to submit a heritage impact study, construction drawings, and heritage rehabilitation plans prepared by a qualified heritage restoration professional and failed to do so, despite advice to the contrary from the Hamilton LACAC (Municipal Heritage Committee); and,

   WHEREAS, the all three members of the City’s Independent Peer Review team, working independently of each other, felt that the heritage impact assessment was inadequate and incomplete; and,
WHEREAS, the Permit Review Sub-Committee of the Hamilton LACAC (Municipal Heritage Committee) has conducted a thorough analysis and has recommended against issuing a demolition permit (attached as Appendix A to Report 06-001); and,

WHEREAS, the proposal is contrary to the Ontario Heritage Act and does not satisfy the heritage policies of the City of Hamilton’s Official Plan, nor the heritage policies of the Downtown Secondary Plan; and,

WHEREAS, the landlord did not make the case that the option of building conservation and adaptive reuse was not economically viable, as they failed to conduct a proper heritage assessment and thorough cost analysis of alternatives and options; and,

WHEREAS, the proposed demolition can be viewed as being contrary to sustainable development under the Ontario Heritage Act; and,

WHEREAS, Parks Canada notes that the loss of heritage commercial buildings weakens the distinctiveness of our communities and our sense of attachment to the past.

(a) Therefore, the Hamilton LACAC (Municipal Heritage Committee) recommends that the request for Heritage Permit (HP2006-017), for the demolition of the designated property at 28-44 James Street North (known as the Lister Block), Hamilton, be denied.

(b) That the statement (attached as Appendix B to Report 06-001) be received.

FOR THE INFORMATION OF THE COMMITTEE:

(a) CHANGES TO THE AGENDA (Item 1)

The Clerk noted the following changes, which were approved:

(i) Added Motion by Councillor McHattie respecting the Lister Block.

(b) DECLARATIONS OF INTEREST (Item 2)

There were none declared.
(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 3)

The Hamilton LACAC (Municipal Heritage Committee) meeting Minutes, dated April 27, 2006 were approved, as amended.

(d) DISCUSSION ITEMS (Item 4)

Tim McCabe, Director of Development and Real Estate provided an overview of the following staff report to Committee. Committee considered the request for Heritage Permit Application (HP200617); however, the motion was defeated on a recorded vote of 12 to 1:

4.1 Heritage Permit Application (HP2006-017) Under Part IV of the Ontario Heritage Act to Demolish a Designated Property at 28-44 James Street North (Lister Block), Hamilton (Ward 2)

(a) That Council is advised that Heritage Permit (HP2006-017) be approved for the demolition of the designated property at 28-44 James Street North (Lister Block), Hamilton, subject to the following conditions:

(i) That prior to the issuance of a demolition permit for the Lister Block at 28-44 James Street North and prior to any other demolition activity, that the applicant apply for and receive all necessary approvals under the Planning Act and the Building Code Act and any other applicable by-laws of the City of Hamilton related to the proposed construction and development activities.

(ii) That the applicant arrange for the retrieval of building remnants and features including but not restricted to terra cotta units, copper spandrels, designated storefront features and designated arcade features to the satisfaction and approval of the Director of Development and Real Estate in consultation with the Hamilton LACAC (Municipal Heritage Committee).

(iii) That all retrieved building remnants and features be appropriately stored by the applicant with quality representatives of key remnants and features being subsequently incorporated into a commemorative or interpretive display to be located within a publicly accessible portion of the new replacement structure at 28-44 James Street North, all subject to the approval of the Director of Development and Real Estate in consultation with the Hamilton LACAC (Municipal Heritage Committee).
(iv) That the applicant submit plans and drawings of all elevations of the replacement structure including all façade materials to be approved by the Director of Development and Real Estate in consultation with the Hamilton LACAC (Municipal Heritage Committee).

(b) That staff be directed to prepare any necessary by-laws under Subsection 34.3(1) of the Ontario Heritage Act to repeal the designating by-law subsequent to building demolition.

(c) That Council be advised that the lease commencement date of September 1, 2007, and lease termination date of August 31, 2022, as adopted in Item 4(a)(i) of the Council Minutes of May 9th, 2005 and recommended in Report PD05095/FCS05052/CM05018 be amended to a commencement date of October 1, 2008, and termination date of September 30, 2023, respectively.

(d) That Council be advised that the lease commencement date of September 1, 2007, and lease termination date of August 31, 2022, as adopted in Item 4(a)(iii) of the Council Minutes of May 9th, 2005 and recommended in Report PD05095/FCS05052/CM05018 be amended to a commencement date of October 1, 2008, and termination date of September 30, 2023, respectively.

(e) That Council be advised that the final date for entering into a signed Lease Agreement by the Landlord and Tenant of May 31, 2005, as adopted in Item 4(a)(VI)(5) of the Council Minutes of May 9, 2005 and recommended in Report PD05095/FCS05052/CM05018, be amended to a signed lease agreement date of September 15, 2006.

The motion was DEFEATED on a Recorded Vote as follows:

Yea: Councillor Pearson
Total: 1

Nays: Councillor McHattie, Dent, Charlton, Denham, French, Hartnett, Manson, Neufeld, Shaker, Stark, Wakeman, Wray
Total: 12

Subsequent to consideration of the staff report, a motion to deny the request for Heritage Permit (HP2006-17), for the demolition of the designated property located at 28-44 James Street North (known as the Lister Block), was carried on a recorded vote of 12 to 1.
The motion was CARRIED on a Recorded Vote as follows:

Yeas: Councillor McHattie, Dent, Charlton, Denham, French, Hartnett, Manson, Neufeld, Shaker, Stark, Wakeman, Wray

Total: 12

Nays: Councillor Pearson

Total: 1

(e) **ADJOURNMENT**

There being no further business, the Committee adjourned at 12:00 p.m.

Stephanie Paparella
Legislative Assistant
May 18, 2006
To: Sharon Vattay

Re: Lister Block

The recommendation from the Heritage Permit Review Sub-Committee is to refuse the application for demolition of the Lister Block.

It has been clear from the outset that the intention of the applicant has been demolition of the Lister Block and the creation of Class AAA office space. Accordingly, there has been on the part of the applicant a flagrant disregard of the requirements of the Heritage Impact Assessment, an unqualified disrespect for the heritage resources of downtown Hamilton and their potential in its revitalization, a seemingly intentional obfuscation of the attainable possibility of the adaptive reuse of the Lister Block, and, in the case of their recent meeting with the Heritage Permit Review Sub-Committee, a lack of any attempt to conform with usual procedure and provide members with visual material of the proposed project.

Members of Council would be well-advised to read the amended Heritage Impact Assessment to fully comprehend its shortcomings and thus the shortcomings of the proposal in relation to the heritage value of the Lister Block. The peer reviews of the H.I.A. compiled by competent and qualified professionals in built heritage and which document the omissions and contradictions contained in the H.I.A. should also be reviewed by members of Council. Because the building is a designated heritage property, there is an onus on the part of the applicant to prove that it cannot be re-used rather than to promote a circumstance for which the building cannot serve.

The costs and manner of restoration, the first option which should have been addressed in the Heritage Impact Assessment, have not been considered. The viability of this option has been dismissed as being impractical with no details provided and no architects or contractors qualified in restoration consulted. This option appears to have been ignored because of insufficient floor to ceiling heights and the lack of viability of the terracotta on the facade. However, no alternatives for the provision of HVAC systems through creative methods which would maintain adequate floor to ceiling heights have been pursued in any meaningful way. The terracotta facade material, which, in fact, comprises only one-third of the facade area, has been dismissed as unusable despite a lack of thorough investigation of its condition and attachment. Discussion of the interior arcade was minimal despite the overwhelming heritage value of its designated features and no attempt made to discuss the possibility of restoration in any of the options submitted by the applicant. The applicant conceded that the steel and concrete infrastructure of the building was in satisfactory condition. In short, the applicant has summarily dismissed the restoration of the Lister Block, or indeed even its facade, based on an incorrect assessment of facade material and a lack of desire to investigate creative solutions to maintaining floor to ceiling heights.

No provision has been made by the applicant for salvaging any of the designated heritage material i.e. the terracotta, copper panels, the street or interior mall storefronts or the floor and staircase of the interior mall. Under Tab 6, Requirement #6, No. 2 in the H.I.A., it is stated:

"A general description of the effect of the proposed development on the heritage resources is addressed by John Mokrycke Architect in the attached material 'Heritage Impact Assessment: Requirement 6'. As noted, while it is possible that some of the designated heritage resources may
be re-used it is not the intention of the proposed development to reuse a significant portion of the existing structure. As will be discussed in further detail under Requirement 7 and 8, the practical and financial impact of the various preservation options has dictated a new construction approach. Accordingly, a discussion of the process of salvage of the architectural features and how they would be removed from the site has not been pursued. Similarly, we have not discussed how the elements, once removed, would be stored nor ultimately reconstituted into a new building. Discussions in this regard given the practical and financial implications and the direction of the proposed development would be an academic exercise and would serve no purpose.

The aforementioned Requirement 6 is merely a reiteration of the above quote with no further elaboration. Requirement 7 and 8 detail costs and not the manner in which salvaging and/or restoration would be achieved. It should also be noted that, in order to be demolished, the Lister Block would have to be de-designated which would remove all control from the City of Hamilton over the salvage and storage of previously-designated heritage elements.

The applicant’s stated intention at the recent Heritage Permit Review meeting is to demolish the 1856 building at 44-50 James Street North designed by notable 19th century architect William Thomas, and supposedly to rebuild the facade in the same style using the same materials. However, on page 2 of Tab 2 of the revised H.I.A., the author states that the building will be ‘restored to the original features’ with no mention of demolition. There is obviously a huge discrepancy between the intentions of the applicant at the time of the meeting and his intentions as stated in the H.I.A. The William Thomas building is a listed building and there is no guarantee, as is the case with the listed buildings on King William Street also slated for demolition, that it would be reconstructed as it stands now. The loss of the William Thomas building to the character and scale of the streetscape of James Street North would be immeasurable.

The Heritage Permit Review Sub-Committee believes, after reviewing the Heritage Impact Assessment, the peer reviews of the H.I.A., and being aware of the many financially and physically successful restorations of similar buildings in Canada and the United States, that the Lister Block is an excellent candidate for adaptive reuse. If the creation of Class AAA office space was not the driving force behind the applicant’s project, would the adaptive re-use of the Lister Block be considered a possible alternative? Restored sensitively and creatively, it could be the linchpin of a renewed and eventually vibrant downtown core and a unique opportunity for the City of Hamilton to show an environmentally sensitive, informed and responsible use of sustainable heritage resources. This possibility will never be realized if the Lister Block is replaced with a diluted and ill-conceived version of itself. Not only will such an eventuality destroy the heritage landscape of James Street North and King William Street but it will also damage the mixed-use concept for which the Lister was first built and upon which any revitalization of downtown Hamilton will depend.

The Heritage Permit Review Sub-Committee would certainly be willing to consider applications for compromise solutions to the re-use of the Lister Block. However, this particular application should be refused because of the overwhelming disregard by the applicant for the heritage value of the property, the lack of cooperation with the City concerning the preparation of the H.I.A., the contradictory information and intentions submitted in the H.I.A. and stated at the recent Heritage Permit Review Sub-Committee meeting, unsubstantiated conclusions reached by the applicant concerning the possibilities for restoration, and the lack of provision made for the salvaging of designated heritage material.

Heritage Permit Review Sub-Committee
Dear Council,

After a long and difficult process of evaluation, the Hamilton LACAC (Municipal Heritage Committee) has decided to recommend against issuing a Heritage Permit (Application HP2006-017) concerning the Lister Block as it is currently submitted.

It was with great optimism that this project was announced about one year ago. The Lister Block is a significant piece of our history and as such it is recognized and protected under Provincial legislation. As the Committee of Council charged with the task of providing you with recommendations on matters dealing with heritage, we looked forward to working with the applicants to see this building renewed.

The process outlined in the City report of April 21, 2005 articulated a clear and fair set of criteria to which the applicants should abide in order to receive a significant commitment of taxpayers’ dollars to rent space in the renovated building. Essentially, the applicant was to demonstrate that “it is not economically viable or structurally possible or practical” to restore the Lister Block in order to be able to demolish and build a new structure. The applicant was to prepare a Heritage Impact Assessment (HIA) within which options for redevelopment were considered and evaluated. Further, a peer review process was agreed to in order to provide an independent evaluation of whether the HIA was complete and valid.

While our formal motion outlines our recommendation, there are important and significant questions that remain unanswered:

1. **How can the Heritage Impact Assessment be considered credible and acceptable for the current permit review process concerning the Lister?**

   The City report outlining the arrangement between the municipality and the proponent states that, “as a requirement of obtaining a heritage permit, the Landlord must complete a heritage impact assessment, to be peer reviewed by the City,” and that this requirement must be undertaken, “by a qualified heritage restoration professional.” All three independent peer review reports deem the Heritage Impact Assessment (HIA) to be incomplete or inadequate.

2. **Two of the three Peer Review reports contend that the HIA is not a thorough examination, but a means to justify a predetermined decision that was made up front by the proponents. How does this demonstrate that the proponents are acting in good faith in evaluating restoration options for a designated historic building?**
HIA Excerpts:
“Overall the case appears to be being made that despite the fact that a high percentage of the façade cladding is sound (brick, copper spandrels and areas of terra cotta) as well as that of the full concrete structure (never questioned in the H.I.A.) the optimum solution is to demolish the building and rebuild. Clearly it is not the integrity of the heritage materials or existing structure that is driving the decision making.” (Andy Huctwith, P. Eng.)

“The reader is left to surmise the proponent’s intent; demolition and pseudo replication. There is not a clear evaluation of the heritage attributes and little assessment of the impact on the heritage attributes of other buildings of historical interest on the site, or the neighbourhood.” (Jane Burgess, OAA, CAPHC)

3. How can there be sufficient information to determine whether restoration is possible or not if this option was never considered and fully analyzed?

The City report outlining the arrangement between the municipality and the proponent states that, “The City of Hamilton recognizes that development of the Lister Block property is vital to the rejuvenation of the downtown core. The Landlord will use its best efforts to maintain the architectural detail of the existing building.” However, the proponents never fully considered the option of preserving the building in their HIA. As one of the peer review reports states, “It is completely possible that the project is not viable for other reasons but a clear illustration that this [restoration] is not viable is warranted before a designated building is demolished.”

4. At a meeting with the policy review sub-committee of the Municipal Heritage Committee on April 19, 2006, the proponents stated that restoration of the Lister Block is possible, but the economics of doing business in Hamilton would not justify it. However, the City report outlining the arrangement between the municipality and the proponent states that the rental rate to be paid by the City is significantly above the current market rate in Hamilton. Wasn’t this premium rental rate specifically offered by the city in order to compensate for the “market conditions” in Hamilton in order to make redevelopment and restoration possible?

5. If Council approves the permit to demolish the Lister Block based on an inadequate HIA and unwillingness by the proponent to honour public process, does this not set a dangerous precedent that the rules do not need to be followed in Hamilton?
Further, there have been recent attempts to discredit our Committee of Council and the open suggestion that councillors should ignore any decision made by the committee before the public process is complete. Also, there have been suggestions that LACAC has caused significant delays. However, it should be clearly noted that it was the applicants, not any Committee of Council, that delayed this process by choosing to submit the HIA some 2 and a half months late. Additionally, it was the independent opinion of three outside experts, not any Committee of Council that determined that the applicant’s documentation was inadequate.

The applicants agreed to abide by a public process outlined in the City report of April 21, 2005, and now appear to see fit to opt out of that process as they disagree with how it is unfolding. Specifically, they have not undertaken the necessary analysis to substantiate their position that restoration of the Lister Block is economically unfeasible. They have essentially asked our Committee, and Council, to take their word for it. It is not in the public interest to make a decision without the facts, especially when there is significant taxpayers dollars that will be invested in this project. We urge Council to consider this fact when rendering a decision.

We would also like to emphasize that while we are recommending against issuing the demolition permit as currently submitted, we would like to stress that we hope the applicants will provide additional information so that they are in fulfilment of their obligations outlined in the original arrangement with Council announced in April 2005.

Sincerely,

Diane Dent, PhD
Chair, Hamilton LACAC (Municipal Heritage Committee)