SUBJECT: Heritage Permit Application (HP2008-022) Under Part IV of the Ontario Heritage Act to Demolish the Boiler Plant Infrastructure at 28-44 James Street North (Lister Block) Hamilton (PED08167) (Ward 2)

RECOMMENDATION:

That Heritage Permit (HP2008-022) for Report PED08167 be approved for the demolition of the boiler plant infrastructure, comprising the remains of the chimney stack, underground boiler-room, and underground storage tank, for the designated property at 28-44 James Street North (Lister Block), Hamilton, subject to the following conditions:

(a) That prior to the issuance of a demolition permit under the Building Code Act for the boiler plant infrastructure for the Lister Block at 28-44 James Street North, and prior to any other demolition activity at 28-44 James Street North, the applicant supply photo-documentation of the:

(i) Interior of the underground bunker, confirming the structural status of the feature as described in the application; and,

(ii) Exterior back east wall of the Lister Block arcade.

(b) That the back wall of the Lister Block arcade be monitored through the demolition of the Boiler Plant Infrastructure by the proponent;

(c) If there are signs of incipient failure in the back wall of the Lister Block arcade during demolition activities, these activities shall cease and City staff (Cultural Heritage Planning and Building Services staff) shall be contacted to advise on any necessary interventions, and that the proponent take measures to immediately rectify the situation; and,
(d) That the back east wall of the Lister Block arcade shall be structurally braced after these demolition activities are complete.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

The Lister Block, located at 28-44 James Street South, is designated under Part IV of the Ontario Heritage Act. A heritage permit is required for the removal or alteration of any features affecting the Reasons for Designation. The Reasons for Designation specify that the James Street and King William facades and the interior arcade constitute the designated features. The Agent is applying on behalf of the property owner for consent to demolish the boiler plant infrastructure of the Lister Block (see location map attached as Appendix ‘A’), comprising the chimney stack, boiler-room bunker, and underground storage tank. The chimney is not specifically identified in the Reasons for Designation, however, it is physically linked to the building complex and the removal has the potential to adversely affect those features identified in the Reasons for Designation. The Hamilton LACAC (Municipal Heritage Committee) has advised approval of the proposed work, and it is recommended for approval.

BACKGROUND:

The subject property at 28-44 James Street North, Hamilton, (Appendix ‘B’) was designated by the former City of Hamilton under Part IV of the Ontario Heritage Act (By-law 96-175). Under Section 33 of the Ontario Heritage Act, a permit is required for the alteration of any building or structure affecting the Reasons for Designation. Section 34 of the Act also requires Council consent for demolition or removal of a structure. Demolition is not an approval delegated to staff. Only the Council of the municipality may issue such permits addressing demolitions.

The designated six-storey retail-office building built in 1923, referred to as the Lister Block, is located within a parcel of land incorporating several additional buildings listed in Hamilton’s Inventory of Buildings of Architectural and/or Historical Interest. The Labourers International Union of North America (LIUNA) has owned the historic Lister Block and surrounding buildings since 1999. In early 2005, LIUNA proposed its redevelopment to create 120,000 square feet of Type “A” office space, an initiative which has undergone several subsequent iterations. In April of 2008, the Balfour building adjacent to the designated Lister Block suffered structural failure and was subject to an Emergency Order under Section 15.10 of the Building Code Act.
 Shortly thereafter, on April 18, 2008, an Order to Comply was issued to the owner of the Lister Block to remove the upper portion of the chimney stack, as per the recommendation of a professional engineer reporting on its integrity. In accordance with this Order, the upper 45 feet of the chimney stack was removed, leaving approximately 37 feet standing (Appendix ‘C’). Work on any property designated under the *Ontario Heritage Act* carried out under the scope of an Order to Comply issued under the *Building Code Act* does not require a heritage permit.

The work proposed under this heritage permit comprises the demolition of the remainder of the chimney stack, the removal of the underground heating oil storage tank for the boiler, and the underground boiler-room bunker (Appendix ‘D’). The door leading from the boiler-room bunker into the basement of the Lister Block arcade will be permanently closed with concrete block. The Reasons for Designation for the Lister Block specify the James Street and King William facades and the interior arcade: the boiler plant infrastructure is not included in these reasons for designation, but is directly and physically linked to the Lister Block, and so its removal has the potential to adversely affect the designated building and features, including their structural integrity.

The Heritage Permit Review Subcommittee of the City of Hamilton LACAC (Municipal Heritage Committee) reviewed this application and advised approval of the proposed demolition with conditions. Following the submission of this Heritage Permit application, the underground storage tank referred to in the application has been removed, and the underground boiler-room bunker has been partially demolished.

**ANALYSIS/RATIONALE:**

**Heritage Considerations**

According to the *Ontario Heritage Act*, Section 34, no owner of property designated under Section 29 of the Act shall demolish or remove a building or structure on the property, or permit the demolition or removal of a building or structure on the property unless the owner applies to the Council of the municipality in which the property is situate and receives consent, in writing, to the demolition or removal. The Council, after consultation with its Municipal Heritage Committee may, under Section 34. (2)(a):

- Consent to the application,
- Consent to the application, subject to such terms and conditions as may be specified by the Council; or,
- Refuse the application.

If Council refuses to approve the application, the owner can appeal the matter to the Ontario Municipal Board.
Key factors that are considered in the evaluation of any change affecting a heritage building, or its setting, are consideration of “displacement effects” (those adverse actions that result in the damage, loss or removal of valued heritage features) and “disruption effects” (those actions that result in detrimental changes to the setting or character of the heritage feature).

In this application, displacement effects comprise removal of the remainder of the chimney stack and underground infrastructure. None of these features are directly referenced in the Reasons for Designation of the subject property.

The original presence of the chimney stack contributed to the overall character of the building. However, it was at the rear of the Lister Block, is now partially demolished, and is not visually related to those features in the primary reasons for designation: the two street facades and arcade interior. There is however, a considerable physical, structural, and functional relationship. The underground storage tank and boiler-room bunker are not visible from the surface, but the bunker is directly attached to the Lister arcade basement. Thus, removal and demolition of these related features has the potential, through a “cascade” or “domino-effect”, to adversely affect designated building fabric. (This was the case with the Tivoli structural failure).

If demolition is carried out appropriately according to the recommended conditions, it is anticipated that the potential for building failure will be reduced.

**ALTERNATIVES FOR CONSIDERATION:**

1. **Refuse the heritage permit application for demolition.**

   This permit application has been considered in the context of provincial heritage legislation, the City of Hamilton Official Plan policies and current heritage conservation best practices. Refusal of the heritage permit to demolish the boiler plant infrastructure does not directly conserve any significant built heritage resources.

2. **Approval of the heritage permit for demolition with no conditions.**

   As noted above, removal of the boiler plant infrastructure does not in and of itself significantly displace or disrupt the designated features on the subject property. Work in the immediate vicinity of designated features means that their structural integrity may be adversely affected, and if such demolition proceeds without proper direction, the integrity of the back wall of the arcade may be compromised, affecting this feature of cultural heritage value.
Financial/Staffing/Legal Implications:

Financial – None.

Staffing – None.

Legal – This heritage permit application has been processed and considered within the context of the applicable legislation. Section 34 of the Ontario Heritage Act states that: “No owner of property designated under Section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the Council of the municipality in which the property is situate and receives consent, in writing, to the demolition or removal.” Within 90 days after receipt of an application under Subsection (1), the Council, after consultation with its Municipal Heritage Committee may: i) consent to the application; ii) consent to the application, subject to such terms and conditions as may be specified by the Council; or iii) refuse the application. The Ontario Heritage Trust must be notified of the Council decision.

If after 90 days no decision has been made by Council, the application is deemed to have been approved.

Policies Affecting Proposal:

City of Hamilton Official Plan

Subsection C.6-Heritage Resources: The City of Hamilton OP states that it is the intent of Council to encourage the preservation, maintenance, reconstruction, restoration and management of property that is considered to have historic, architectural or aesthetic value (Section 6.1). The Official Plan also states that encouragement may be given to Commercial development schemes, in appropriate locations, proposed to incorporate a building, or group of buildings, with historic character or architectural value.

City of Hamilton Downtown Secondary Plan

As stated in the Secondary Plan, heritage buildings and streetscapes define Downtown Hamilton as a unique place, and the existing built form is one of the key strengths and opportunities in downtown Hamilton. Conservation and reuse of these buildings not only enhances the Downtown, but can serve as a catalyst for other public and private investments, and conservation and adaptive re-use of heritage buildings has many benefits for the entire community.
Section 2.4.4.2 f) of the Secondary Plan states the City may require as part of development or redevelopment of land in the downtown that heritage properties are retained on-site and incorporated, used or adaptively re-used as appropriate to the proposed development. Retention of a heritage feature on lands subject to development may be a requirement as a condition of development approval.

The Downtown Secondary Plan seeks to provide new importance and opportunities for the heritage elements of downtown. The demolition of relatively minor features not identified within the Reasons for Designation of the designated Lister Block in support of the retention of designated features does not conflict with the heritage objectives of the Downtown Secondary Plan.

As development related to the adaptive reuse of the existing designated building as retail and office space partially within the Secondary Plan Central Business District (3.6.2.5.3), the proposed demolitions conform with these Secondary Plan policies.

**Provincial Policy Statement**

Successful development of the Lister Block site may require other approvals pursuant to the Planning Act. Any planning application approvals would have to take into account matters of provincial heritage interest under Subsection 2(d) of the Planning Act, as well as the Provincial Policy Statement. The Provincial Policy Statement specifies that “Significant built heritage resources and significant cultural heritage landscapes shall be conserved” (Section 2.6.1). As actions in support of the adaptive reuse of the existing designated building and conservation of significant cultural heritage values, the proposed demolition of features not included in the Reasons for Designation conforms with these Provincial policies.

**RELEVANT CONSULTATION:**

Pursuant to subsection 28(1) and 33(4) of the Ontario Heritage Act, the City of Hamilton LACAC (Municipal Heritage Committee) advises and assists Council on matters relating to Part IV and Part V of the Ontario Heritage Act. At its meeting of June 26, 2008, the City of Hamilton MHC considered this application, together with a staff report, and recommended to Council that the subject application be approved, subject to the following conditions:

- That the back wall of the Lister Block arcade be monitored daily throughout the process of this demolition.

- That City Heritage Planning staff and Building and Licensing staff be contacted to advise on any necessary interventions if the back wall of the Lister Block arcade shows any signs of stress or imminent structural failure during demolition activities.
That the back wall of the Lister Block arcade be appropriately braced after demolition activities under this permit are completed.

These conditions are included as part of the recommended approval.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

The recommendation to approve this application would achieve the following triple bottom line objectives as follows:

**Community Well-Being is enhanced.** ☑️ Yes ☐ No
Arts, culture, archaeological and cultural heritage are supported and enhanced.

**Environmental Well-Being is enhanced.** ☑️ Yes ☐ No
Consumption of all natural resources is reduced.

**Economic Well-Being is enhanced.** ☑️ Yes ☐ No
Infrastructure and compact, mixed use development minimize land consumption and servicing costs.

Does the option you are recommending create value across all three bottom lines? ☑️ Yes ☐ No
Sustainable development through retention and adaptive re-use of built heritage within the downtown core is achieved.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑️ Yes ☐ No
An active, sustainable downtown core helps to attract and retain valued employees.

JPM

Attaches. (4)
Extant Chimney Stack
Chimney Stack base, top of Boiler Room facility, and portion of Arcade back wall