SUBJECT: Delegation of Council Consent to Staff for Alterations to Designated Property Under the Ontario Heritage Act (PED05096) (City Wide)

COMMENDATION:

(a) That, pursuant to the provisions of the Ontario Heritage Act, the power to consent to alterations to property designated under the Ontario Heritage Act be delegated to the Director of Development and Real Estate, Planning and Economic Development Department, as per the draft By-law attached as Appendix A to Report PED05096, subject to prior consultation with the Heritage Permit Review Subcommittee of the Hamilton LACAC (Municipal Heritage Committee), or, in the case of Heritage Conservation Districts, the Cross-Melville District Advisory Committee or the Mill Street District Advisory Committee, as applicable.

(b) That the draft By-law, attached as Appendix A to Report PED05096, which has been prepared in a form satisfactory to Corporate Counsel, be enacted by Council.
EXECUTIVE SUMMARY:

Recent changes to the **Ontario Heritage Act** provide for delegation powers relating to the consent or granting of alterations to designated property, either under Part IV or V of the Act. These may be delegated to a municipal employee or official of the municipality by By-law. Prior to delegating such power, the Act requires that the Municipal Heritage Committee be consulted. This matter was considered by the Hamilton LACAC (Municipal Heritage Committee) at their meeting of August 25, 2005.

The Committee indicated concern about delegation without the Hamilton LACAC (Municipal Heritage Committee) providing advice on each and every application for alteration prior to approval by the Director of Development and Real Estate. Staff advised at that time that this ran counter to the principle of delegation and the principle of expeditious and efficient service delivery. Regardless, the Committee formally agreed to delegation, but only “as advised by the Hamilton LACAC (Municipal Heritage Committee)”.

Staff is recommending that, pursuant to Subsections 33(15) and (16) and Subsections 42(16) and (17) of the Act, a By-law be adopted with respect to delegated consents or approvals affecting property designated under Parts IV and V of the Act. It is recommended that powers of approval be delegated to the Director of Development and Real Estate.

Recognizing the concerns of the Hamilton LACAC (Municipal Heritage Committee), staff is also advising that the Heritage Permit Review Subcommittee of the Hamilton LACAC (Municipal Heritage Committee) or, in the case of designated Heritage Conservation Districts, the Cross-Melville District Advisory Committee or the Mill Street District Advisory Committee be consulted on all applications for alterations. This allows involvement of the Municipal Heritage Committee members through the various sub-committees and provides flexibility in effective service delivery.

The delegation of approval authority respecting alterations to the Director of Development and Real Estate does not include the authority to consider permit applications for demolitions or removals under Parts IV and V of the **Ontario Heritage Act**. The Act does not allow for delegation provisions in these instances. Any refusals of heritage permit applications would still continue to follow current practice, i.e., full consideration by Hamilton LACAC (Municipal Heritage Committee), PEDC and City Council.

BACKGROUND:

Prior to recent changes to the **Ontario Heritage Act**, all heritage permit applications submitted either under Part IV (individually designated properties) or Part V (heritage conservation districts) of the Act were required to be considered by Council, as advised
by their Municipal Heritage Committee. The Act provided that applications could be approved, approved with conditions, or refused.

Bill 60, *An Act to Amend the Ontario Heritage Act*, which received Royal Assent in May 2005, now allows a municipal Council to delegate its consent or approval authority on heritage permit applications to a municipal employee or official. Prior to enacting any such By-law to do this, Subsections 33(15) and (16) Act states that:

**Delegation of council’s consent**

(15) The power to consent to alterations to property under this section may be delegated by By-law by the Council of a municipality to an employee or official of the municipality if the Council has established a municipal heritage committee and has consulted with the committee prior to delegating the power. 2005, c.6, s.21(3).

**Scope of delegation**

(16) A By-law that delegates the Council’s power to consent to alterations to a municipal employee or official may delegate the power with respect to all alterations or with respect to such classes of alterations as are described in the By-law. 2005, c.6, s.21(3).

Similarly, Subsections 42(16) and (17), respecting delegation of power to grants permits for alterations in designated heritage conservation districts, provide that:

**Delegation**

(16) The Council of a municipality may delegate by By-law its power to grant permits for the alteration of property situated in a heritage conservation district designated under this Part to an employee or official of the municipality if the Council has established a municipal heritage committee and consulted with it before the delegation. 2005, c.6, s.32(6).

**Same**

(17) A By-law under Subsection (16) may specify the alterations or classes of alterations in respect of which power to grant permits is delegated to the employee or official of the municipality. 2005, c.6, s.32(6).

The current system of heritage permit approval comprises a number of steps that must be taken within 90 days, after which time, unless an application is formally Council-approved, the permit is deemed to have been approved.
The heritage permit administrative process is summarized in the following six steps:

- Receipt of heritage permit application.
- Consideration by Heritage Permit Review Subcommittee or by the Cross-Melville District Advisory Committee (Dundas) or the Mill Street District Advisory Committee (Waterdown).
- First staff report to Hamilton LACAC (Municipal Heritage Committee) for review and recommendation.
- Second staff report to Planning and Economic Development Committee (PEDC) for approval.
- Final Council approval.
- Approval letter to applicant.

All heritage permits that are recommended for approval appear as consent items on the PEDC agenda and have caused little or no discussion either by Committee members or the public.

The principle of delegation of Council authority to staff would have a number of important benefits:

- Greatly improved customer service by reducing waiting periods for heritage permit approvals, potentially from 60 days to a minimum of 10 working days (or two working weeks), and enhanced notion of the City as being “user friendly” and dispensing with unnecessary “red-tape”.

- Significant reduction in staff time spent on report preparation and processing that would be freed up to be more efficiently spent on other heritage activities, particularly the processing of property designation requests, (of which there is a backlog) and the more expedient review of development planning applications.

- Considerable reduction in the amount of paper that is utilized in report preparation for the Hamilton LACAC (Municipal Heritage Committee) agenda package and the PEDC agenda. There would be a reduction in costs for paper and photocopying, and the obvious environmentally beneficial impacts. (Heritage permit reports typically use up an average of 5 to 15 pages comprising written text, location maps, site photographs and reduced scaled drawings and plans.)

Assuming approvals are delegated to a municipal employee (in this case, the Director of Development Planning and Real Estate), the submission of a complete heritage permit application and its subsequent review by staff and the permit review subcommittees’ recommendations on approval could be completed within two working weeks.
Any potential refusals of heritage permit applications would continue to follow current practice. To date, only one heritage permit has been refused: demolition of the Tivoli auditorium. Since 2001, approximately ninety-five (95) heritage permit applications have been approved by Council.

In considering heritage permit applications for substantial changes to heritage building fabric or those involving significant landmark buildings and particularly complex conservation issues it is anticipated that these will be flagged by staff, members of the subcommittees or Council representatives on the Hamilton LACAC (Municipal Heritage Committee). Such extraordinary applications would be forwarded for full consideration by the Hamilton LACAC (Municipal Heritage Committee) and then to the Director of Development Planning and Real Estate for approval. In certain instances, particularly where there may be controversial aspects to an application, these would be forwarded to the Planning and Economic Development Committee and Council for consideration and final approval.

**ANALYSIS OF ALTERNATIVES:**

In presenting alternatives to the Hamilton LACAC (Municipal Heritage Committee) on August 25, 2005, staff presented the following three alternatives:

**Alternative 1: Do nothing**

Maintaining the status quo would offer no benefits to either heritage permit applicants or City staff. “Do nothing” would also not fulfil a clear intent of the Ontario Heritage Act to allow for delegated authority in response to a clear community need enunciated over the past decades. Service delivery would not be enhanced and there would be no other forms of cost savings to the City.

This alternative is not acceptable, especially as there are a number of significant benefits to a system of delegated approvals. These are discussed further in Alternatives 2 and 3.

**Alternative 2: Delegation to staff with no heritage committee consultation**

This alternative is predicated upon a permit approval process that involves only City staff and excludes any consultation with the currently established Heritage Permit Review Subcommittee, the Hamilton LACAC (Municipal Heritage Committee), the Cross-Melville District Advisory Committee (Dundas) and the Mill Street District Advisory Committee (Waterdown).

This alternative would allow the speedy internal processing of applications. Limited only to a staff function, complete heritage permit applications could be processed, on average, within five working days. This would allow for permit review, site visits,
assessment of conformity to sound heritage conservation practice and preparation of an approval letter to the applicant from the Director of Development and Real Estate.

Although this alternative offers the most expeditious processing time by not requiring the preparation of staff reports, the exclusion of existing volunteer committee members that bring specialized knowledge of buildings, structures and the local history and knowledge of an area is considered a drawback. It would, as a consequence, make the advisory committees on heritage permits redundant.

**Alternative 3: Delegation to staff including consultation with heritage advisory committees**

This alternative is based upon a permit approval process that involves City staff and includes consultation with the currently established Heritage Permit Review Subcommittee, the Cross-Melville District Advisory Committee (Dundas) and the Mill Street District Advisory Committee (Waterdown). All committees have Municipal Heritage Committee representation, either as chairs or members.

This alternative would still allow for speedy internal processing of applications by City staff and also provides for the input and advice of the Heritage Permit Review Subcommittee and the Cross-Melville District Advisory Committee (Dundas). Both committees usually meet on a specified day of the month and this could potentially reduce efficient processing of heritage permits. The Heritage Permit Review Subcommittee has met on occasions, outside of their monthly schedule, to facilitate and expedite permit approvals. The Mill Street District Advisory Committee (Waterdown) only meets on an “as required” basis to review heritage permit applications.

This alternative can function to allow heritage permit applications to be processed within a minimum of ten and maximum of twenty working days (two to four working weeks). This would allow for permit review by staff, site visits, assessing conformity to sound heritage conservation practice, establishing committee meetings and the preparation of an approval letter to the applicant from the Director of Development and Real Estate. If all committees met on an “as required” basis rather than a monthly schedule, this could potentially reduce the processing time to ten working days.

This alternative offers an expeditious processing time and also benefits from the inclusion of existing volunteer committee members that bring specialized knowledge.

In presenting conclusions to the Hamilton LACAC (Municipal Heritage Committee) staff evaluated the alternatives, with Alternative 3 as the preferred process:

Alternative 1 (“Do nothing”) is not acceptable as it involves no benefits in either reduction in costs or improved service delivery.
Alternative 2 (staff delegation with no input from heritage committees) provides the most effective and expeditious processing time. Exclusion of volunteer committee input and expertise is considered to be a drawback.

Alternative 3 (staff delegation with input from heritage committees) is preferred, as it provides both a significantly reduced processing time than currently exists and also allows for continuing input by volunteer heritage committees with proven experience in reviewing heritage permits. The process associated with Alternative 3 would result in the reduction of six administrative steps to the following three:

- Receipt of heritage permit application.
- Consideration, advice and endorsement by Heritage Permit Review Subcommittee or by the Cross-Melville District Advisory Committee (Dundas) or the Mill Street District Advisory Committee (Waterdown), as appropriate.
- Approval letter to applicant.

The following components would no longer be required as part of the administrative process:

- First staff report to Hamilton LACAC (Municipal Heritage Committee) for review and recommendation.
- Second staff report to PEDC for approval.
- Final Council approval.

Any refusals of heritage permit applications would still continue to follow current practice, i.e., full consideration by Hamilton LACAC (Municipal Heritage Committee), PEDC and City Council.

It should be made clear to Council that the delegation of “alterations” to the Director of Development and Real Estate does not include the authority to consider permit applications for demolitions or removals which are governed under Parts IV and V of the new 
Ontario Heritage Act, and no delegation provisions apply in these instances.

Consultation with the Hamilton LACAC (Municipal Heritage Committee), at its meeting on August 25, 2005, resulted in the preference for a new alternative, evaluated below as Alternative 4:

**Alternative 4: Delegation to staff as advised by the Hamilton LACAC (Municipal Heritage Committee)**

Alternative 4 is based upon a permit approval process that is delegated to City staff “as advised by the Hamilton LACAC (Municipal Heritage Committee)” including consultation with the currently established Heritage Permit Review Subcommittee, the Cross-Melville District Advisory Committee (Dundas) and the Mill Street District Advisory Committee (Waterdown).
This alternative would not allow for speedy internal processing of applications anticipated in the principle of delegation. This would extend processing time by another three working weeks: the time that passes between consideration of permit applications by the Heritage Permit Review Subcommittee, on the first Wednesday of the month, and then presentation at the Hamilton LACAC (Municipal Heritage Committee) held on the fourth Thursday of the month. This alternative does not provide an expeditious processing time and for all intents moves back towards a “do nothing” approach.

Accordingly, Alternative 3 remains the staff preferred approach.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial** – Delegation to staff will provide a variety of savings in staff time and cost savings in report reproduction for two City committees and allow for greater efficiencies and focus on more pro-active heritage planning.

**Staffing** – No extra staffing is required. Delegation would offer more efficient use of staff time to other related heritage activities.

**Legal** – Delegation of Council authority to approve heritage permits is permitted by the *Ontario Heritage Act*. The attached draft delegation By-law has been approved by Legal Counsel as to form.

**POLICIES AFFECTING PROPOSAL:**

There are no current Official Plan policies that address the delegation of administrative provisions under the Act, as this is a new provision in the legislation. Delegation, in and of itself, would not be contrary to former Official Plan policies. Delegation authority under the Act does not need to be sanctioned through Official Plan policies.

**CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:**

Heritage staff of the Community Planning and Design Section has consulted with the Legal Services and Corporate Counsel staff and Clerks with respect to the preparation of the draft delegating By-law attached as Appendix A to Report PED05096.

On August 25, the matters of delegation together with an accompanying staff report were considered by the Hamilton LACAC (Municipal Heritage Committee). Following discussion Committee members were concerned that the Municipal Heritage Committee was being deprived of the opportunity to provide advice and amended the staff recommendation by adding the following bolded, italicized text:

“(a) That Council be advised, that as per the provisions of the *Ontario Heritage Act*, that the power to consent to alterations to property designated under the *Ontario Heritage Act*...
Heritage Act be delegated to the Director of Development and Real Estate, Planning and Economic Development Department, as per the draft By-law attached as Appendix A to this report and as advised by the Hamilton LACAC (Municipal Heritage Committee).

(b) That the draft By-law, attached as Appendix A to Report PED05096, which has been prepared in a form satisfactory to Corporate Counsel, be forwarded to Council for enactment.

Following further consultation with legal counsel and evaluation by staff (now considered as Alternative 4 in this staff report), it is considered that this still runs counter to a number of principles, namely:

- the purposes and intent of delegation
- speeding up approval processes
- improving customer service

In order to address the concerns expressed by Committee members regarding input of members, staff is supporting the inclusion of revisions to the Committee’s amending text: “and as advised by the Hamilton LACAC (Municipal Heritage Committee)” by substituting with the following:

subject to prior consultation with the Heritage Permit Review Subcommittee of the Hamilton LACAC (Municipal Heritage Committee), or, in the case of Heritage Conservation Districts, the Cross-Melville District Advisory Committee or the Mill Street District Advisory Committee as applicable.

This addresses the concerns of the Hamilton LACAC (Municipal Heritage Committee) by:

- providing a formal written record of required consultation and recognition of Committee members; and,

- fully involving Committee members in the review of heritage permit applications through attendance and participation on the Heritage Permit Review Subcommittee.

**STRATEGIC COMMITMENT:**

**Mission**

Council has developed a document that defines the mission of our local government and a vision for the future of Hamilton. A core set of values also exists to guide behaviour and actions concerning the management of the City.
For staff and residents of the City of Hamilton, the document represents a promise for the future and provides clear direction for where our City is going. To “get there”, Council has also committed to a set of priorities known as the Strategic Plan, towards which the City’s financial and human resources will be focused in the coming years.

The following goal from that document applies to the matter of delegation under the Ontario Heritage Act.

5. A City That Spends Wisely and Invests Strategically

To get the best value for taxpayer dollars, and to ensure that we have the financial resources available to invest in our economic development and other community priorities, Council commits to increase the efficiency of our City government.

a) Maintain Service Levels
   Except where mandated by statutory obligation or to address priority infrastructure deficiencies, Council will maintain, but not increase, service levels until its economic development program is complete.

b) Best Practices – Best Value
   Council will pursue best practices to lower the cost of government and ensure best value in service delivery. It is recognized that best value is not just a calculation of dollars: it also includes accountability, service quality, accessibility and other community priorities which must be taken into account, as per Council policy.

Delegation, as provided by the staff recommendation in this report, will positively affect service delivery with a quick and more efficient turn-around time for applicants. The reduction in the cost of materials in report processing and production also results in direct cost-savings. Accordingly, this goal is being met.

Vision 2020

Vision 2020 is a Council adopted strategic commitment to a vibrant, healthy and sustainable future for the community. The specific vision for “Quality of Life” includes a statement that “Government is open, accessible, efficient, effective and participatory”. The principle of delegation ensures efficiency and effectiveness. Open access by heritage permit applicants to staff, the various permit review subcommittees and the involvement and advice from volunteer committee members also meet the goals and objectives of Vision 2020.