




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Hamilton Municipal Heritage Committee
COMMITTEE DATE:	December 13, 2024
SUBJECT/REPORT NO:	Heritage Permit Application HP2024-033, Under Section 34 of the <i>Ontario Heritage Act</i> , for the Demolition of the Tivoli Lobby and Auditorium at 108 James Street North and 111 - 113 Hughson Street North, Hamilton (PED24232) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Alissa Golden (905) 546-2424 Ext. 1202
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That Heritage Permit Application HP2024-033, under Section 34 of the *Ontario Heritage Act*, for the demolition of the Tivoli Lobby and Auditorium at 108 James Street North and 111-113 Hughson Street North, Hamilton, be **approved** in accordance with the submitted Heritage Permit Application and the following conditions:
- (i) That a Conservation Strategy, including a Conservation Plan, Interpretation/Commemoration Plan, Documentation and Salvage Report, Design Guidelines, and an Interim Conditions Plan outlining how the site conditions will be treated and managed following demolition and until redevelopment occurs, be submitted in accordance with the recommendations of the Cultural Heritage Impact Assessment prepared by +VG, dated September 30, 2024 (attached as Appendix "B" to Report PED24232), and their Addendum dated November 27, 2024 (attached as Appendix "C" to Report PED24232), to the satisfaction and approval of the

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Director of Planning and Chief Planner, prior to issuance of a Building Permit to Demolish any structures on the property;

- (ii) That the following conditions with respect to cost estimates and financial security shall be satisfied prior to the issuance of a Building Permit to demolish the former Tivoli Theatre structures:
- (1) The applicant shall provide cost estimates for either: (a) 100% of the total cost of implementing the Conservation Strategy, approved in accordance with Condition (i); or, (b) a minimum of \$1,000,000 to cover the approximate costs of implementing the Conservation Strategy, including salvaging representative plaster features, where feasible, and recreating the plaster detailing in a new development on the site, which may be approved in accordance with Condition (i) following demolition of the Tivoli Theatre structures. Such cost estimates shall be in the form satisfactory to the Director of Planning and Chief Planner, or be prepared in accordance with the Guides for estimating security requirements for landscaping and engineering;
 - (2) The applicant shall calculate the lump sum security payment, satisfactory to the City Solicitor, for works to the satisfaction of the Director of Planning and Chief Planner;
 - (3) The applicant shall provide Financial Instrument for security that is satisfactory to the City Solicitor such as the Letter of Credit (Policy), Surety Bond (Policy), or Certified Cheque/Bank Draft to the Director of Planning and Chief Planner for 100% of the total estimated cost as per Condition (ii)(1) in a form satisfactory to the City's Finance Department (Development Officer, Development Charges, Programs and Policies) to be held by the City as security for the completion of the on-site development works required in these conditions. Alternatively, the owner may choose to provide a lump sum payment for on-site works in accordance with Condition (ii)(2) above;
 - (4) The Security shall be kept in force, whether or not the ownership of 108 James Street North and 111-113 Hughson Street North, Hamilton, changes at any time, until the completion of the required site development works in conformity with this Heritage Permit HP2024-033, and securities may be reduced in accordance with

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the approved Financial Instrument Policies by the City Solicitor. If the Security is about to expire without renewal thereof and the works have not been completed in conformity with their approved designs, the City may draw all of the funds so secured and hold them as security to guarantee completion unless the City Solicitor is provided with a replacement or renewal of the Security forthwith;

- (5) In the event that the Owner fails to complete, to the satisfaction of the Director of Planning and Chief Planner, the required site development works in conformity with this Heritage Permit within the time required, then the Owner shall permit the City, its employees, agents or contractors, at the City's sole option and in addition to any other remedies that the City may have, to enter on the lands and so complete the required site development works to the extent of monies received as Security. The cost of completion of such works shall be deducted from the monies obtained from the Security. In the event that there is a surplus, the City shall pay it forthwith to the Owner. In the event that there are required site development works remaining to be completed, the City may exercise its authority under (Section 446 of the *Municipal Act*) to have such works completed and to recover the expense incurred in doing so in like manner as municipal taxes and the Owner shall enter an agreement with the City to give effect to this Condition (ii)(5) and shall register this Agreement on title to the Property at the Owner's own expense;
- (iii) That the applicant submits a complete Zoning By-law Amendment application under the *Planning Act* for redevelopment of the site, in accordance with the Conservation Strategy approved as part of Condition (i), prior to issuance of a Building Permit to demolish the former Tivoli Theatre structures;
- (iv) That any minor changes to the approved scope of work shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to the commencement of any alterations;
- (v) That an initial scoped Conservation Plan and Documentation and Salvage Plan, assessing the feasibility of salvaging representative plaster features from the building, including details for their abatement and storage, be submitted, to the satisfaction and approval of the Director of Planning and

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Chief Planner, prior to the commencement of the removal of interior plaster features;

- (vi) That the demolition, in accordance with this approval, shall be completed no later than January 31, 2026. If the alteration(s) are not completed by January 31, 2026, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton; and,
 - (vii) That the Director of Planning and Chief Planner be authorized to approve a request to extend the date noted in Condition (vi) of this approval if that request is submitted prior to the expiry and if progress is being made to their satisfaction.
- (b) That the Director of Planning and Chief Planner be authorized to execute an Agreement with the owner(s) of 108 James Street North and 111-113 Hughson Street North, Hamilton, satisfactory to the City Solicitor, to be registered on title by the owner(s) and to give effect to Recommendation (a) (ii) (5) of Report PED24232; and,
- (c) That staff be directed to repeal Designation By-law Nos. 04-256 (Tivoli Auditorium) and 90-255 (Tivoli Lobby) following implementation of the recommendations of the Conservation Strategy approved as part of Recommendation (a)(i) of Report PED24232.

EXECUTIVE SUMMARY

This Report addresses Heritage Permit application HP2024-033, for the demolition of the Tivoli lobby (circa 1908) and auditorium (circa 1924) structures located at 108 James Street North and 111-113 Hughson Street North, Hamilton (see Appendix “A” attached to Report PED24232). The subject property is designated under Part IV of the *Ontario Heritage Act* by By-law Nos. 90-255 and 04-256.

This Heritage Permit application to demolish requires consultation with the Heritage Permit Review Subcommittee and the Hamilton Municipal Heritage Committee before consideration by Planning Committee and a final decision of Council. Council is required to make the final decision on this Heritage Permit application within 90 days of an application being deemed complete, being March 2, 2025.

The Heritage Permit Review Subcommittee reviewed the subject application at their meeting on November 12, 2024, and recommended refusal of the application. Staff

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requested additional information from the applicant following the Subcommittee meeting to address questions and concerns that were raised during the discussion. This information includes an outline estimated cost of \$5.875 million to return the building to an occupiable state and additional structural information from an engineer with recognized heritage expertise. This Report considers that additional documentation.

Heritage Permit application HP2024-033 was submitted to address the deteriorated state of the historic structures on site and in anticipation of future *Planning Act* applications for redevelopment of the subject property and the adjacent parcels located at 1 Wilson Street and 115 Hughson Street North. Cultural Heritage and Development Planning staff reviewed the initial development concept through Formal Consultation application FC-23-053, which proposed a mixed-use building consisting of two towers (35 and 40 storeys) containing 875 dwelling units, 948 sq. m. of commercial space, and 716 sq. m. of event space intended to commemorate the former Tivoli Theatre. Cultural Heritage staff noted that a Cultural Heritage Impact Assessment would be required to support future *Planning Act* applications, as well as the Heritage Permit to demolish the Tivoli auditorium and lobby.

Staff have evaluated the Cultural Heritage Impact Assessment submitted with Heritage Permit application HP2024-033, which was informed by accompanying structural and environmental reports (see Appendix “B” attached to Report PED24232) and the supplemental Addendum provided after the Heritage Permit Review Subcommittee meeting which included documentation from the heritage consultant, an engineer with demonstrated heritage experience and an abatement company (see Appendix “C” attached to Report PED24232). These documents identify that the existing building and interior heritage features cannot be feasibly retained and restored in place and should be demolished as soon as possible. The remaining Tivoli Theatre structures are in an advanced state of deterioration that would require significant reconstruction of the building envelope to make it safe to occupy and the designated interior elements of the former theatre and lobby would be required to be removed to facilitate the reconstruction of the building envelope.

The applicant proposes measures to interpret and commemorate the former Tivoli Theatre as part of future redevelopment on site by:

- Providing an event space in the new development paying homage to the former Tivoli Theatre interior design with replicated plaster details;
- Commemorating the former Tivoli Theatre in a public interpretive centre and theatre lobby accessible from James Street North;

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- Interpreting the architecture of the former Theatre complex fronting onto James Street North in the podium of the new development, including a new marquee; and,
- Thoroughly documenting the existing building and spaces prior to demolition, which will also inform the interpretive centre materials.

Therefore, staff recommend approval of Heritage Permit application HP2024-033 to demolish the remaining lobby and auditorium structures of the former Tivoli Theatre, subject to conditions to ensure that the proposed commemoration and interpretation measures are implemented, including the:

- Preparation of an initial scoped Conservation Plan and Documentation and Salvage Plan assessing the feasibility of salvaging representative plaster features from the building prior to their removal (Condition (v));
- Preparation of a comprehensive Conservation Strategy to guide future redevelopment on site prior to demolition, including a Conservation Plan, Interpretation/Commemoration Plan, Documentation and Salvage Report, Design Guidelines for the new development, and an Interim Conditions Plan outlining how the site conditions will be treated and managed following demolition and until redevelopment occurs (Condition (i));
- Provision of financial securities to implement the Conservation Strategy, prior to demolition (Condition (ii)); and,
- Submission of a complete application for the required Zoning By-law Amendment under the *Planning Act* for redevelopment, prior to demolition (Condition (iii)).

This Report also recommends that staff repeal Designation By-law Nos. 90-255 and 04-256 following implementation of Heritage Permit application HP2024-033, specifically the Conservation Strategy actions for interpretation and commemoration in the new development (Recommendation (c) of this Report).

Alternatives for Consideration – See Page 19

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The approximate total 2024 tax amount for the subject property, which includes the remaining Tivoli Theatre structures at 108 James Street North/111-113 Hughson Street North, and the dwelling located at 115 Hughson Street North (not subject to this Heritage Permit application) is \$39,982. The municipal share is approximately \$29,979 and the provincial education share is approximately \$10,003. If the Tivoli Theatre structures are demolished, a portion of the commercial taxes may be reduced.

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Staffing: None.

Legal: The *Ontario Heritage Act* requires that the City make a decision on a Heritage Permit application 90 days after a Notice of Complete Application is served on the applicant, or after the end of a 60-day period from the day an application is received if it is not deemed complete within that period. The subject Heritage Permit Application HP2024-033 was received on October 3, 2024. The application was deemed complete on December 2, 2024, and a decision of Council is required by March 2, 2025.

By-law No. 05-364, as amended by By-law No. 07-322, delegates the power to consent to alterations to designated property under the *Ontario Heritage Act* to the Director of Planning and Chief Planner. However, the delegated powers in Section 1 do not include the power to refuse an application or to approve an application under Section 34(1)1 to demolish or remove. The subject application proposes the complete demolition and removal of the former Tivoli lobby and auditorium structures, subject to Section 34 of the *Ontario Heritage Act*, and therefore require a decision of Council, as advised by the Hamilton Municipal Heritage Committee.

As per Section 34(4.2), the notice of Council's decision will be required to be served on the owner of the property, the Ontario Heritage Trust and shall be published in a newspaper having general circulation in the municipality. If Council consents to the application subject to terms or conditions, or refuses the application, the owner of the property may appeal Council's decision to the Ontario Land Tribunal within 30 days of receiving notice of Council's decision.

HISTORICAL BACKGROUND

The subject property, known as the former Tivoli Theatre, municipally addressed as 108 James Street North and 111-113 Hughson Street North, Hamilton (see Appendix "A" attached to Report PED24232) is protected by two designation By-laws (90-255 and 04-256) that collectively protect what remains of the former Tivoli lobby (circa 1908) and auditorium (circa 1924) structures on the property under Part IV of the *Ontario Heritage Act*. Only interior features remain that are protected by designation and the exterior brick facades are not considered to be heritage attributes.

Building Collapse and Partial Demolition, 2004

In 2004, the western portion of the former theatre collapsed due to structural failure of its south façade and partial demolition was required to stabilize the building and render it safe and secure, resulting in the removal of the former carriage factory structure (circa 1875) which fronted onto James Street North that was designed in the Second Empire style of architecture (see Reports PD04204 and PD04280).

Following the partial demolition, the property transferred ownership several times. In 2008, the City issued a grant for building stabilization and heating improvements and in 2010 the City advanced an interest free loan to fund repairs to the theatre's roof, which was fully repaid in 2013.

Previous Zoning By-law Amendment and Heritage Permit Applications, 2014-2016

On December 1, 2014, a Zoning By-law Amendment application (ZAR-15-001) was submitted proposing redevelopment of the site to construct a new 22-storey mixed-use building including retention and integration of the former Tivoli Theatre. After considerations by Planning Committee and Council, zoning by-law amendments were approved on August 14, 2015, as part of By-law No. 15-188, to permit restoration of the theatre auditorium and a 22-storey mixed-use building, consisting of accessory commercial and residential uses (see Reports PED15029(a) and PED15029(b)).

By-law No. 15-188 identifies permitted uses for the subject lands, specifically the use of a theatre within the existing building identified as 111 Hughson Street North at the time of passing of the by-law, and a 106-unit multiple dwelling and associated commercial uses on lands identified as 108 James Street North, only in conjunction with, and accessory to, the existing theatre auditorium.

On December 14, 2016, Council approved Heritage Permit application HP2016-041 in support of implementation of the redevelopment proposal, which required demolition of the former Tivoli lobby, however the lobby was never demolished and the Heritage Permit expired.

In 2015, the City approved grant funding for the preparation of a Conservation Plan for the Tivoli auditorium to facilitate its restoration, which was extended until 2018, but was not completed and no funding was issued.

New Ownership and Redevelopment Proposal, 2022-2023

On March 31, 2022, Adventus Development Corporation, in partnership with Society Developments Inc., announced its acquisition of the former Tivoli Theatre property and the neighbouring Centre Point Plaza (1 Wilson Street), indicating their plan to “breathe new life” into the Tivoli.

In May 2023, the City received a Formal Consultation application (FC-23-053) for the subject property and the adjacent properties located at 115 Hughson Street North and 1 Wilson Street, for the demolition of all buildings on site (including the Tivoli auditorium and lobby) to establish a mixed-use building consisting of one 40-storey tower and one 35-storey tower, with a total of 875 dwelling units, 948 sq. m of commercial space and 716 sq. m of event space, with the event space meant to commemorate the site's previous use as a theatre.

Cultural Heritage Planning staff provided comment on the Formal Consultation application, noting that the proposal did not address the conservation of the designated Tivoli Theatre structure or compatibility with the historic Beasley neighbourhood and James Street North historic streetscape. Cultural Heritage Planning staff advised the applicant that, without an approved Heritage Permit to demolish the building, any subsequent *Planning Act* applications would be considered premature. Staff further advised of the requirement to provide a Cultural Heritage Impact Assessment with future development applications. The Formal Consultation Document noted that the proposal required an Urban Official Plan Amendment, Secondary Plan Amendment and Zoning By-law Amendment to facilitate the proposal. Further, the proposal would also require a Site Plan Control application.

Heritage Permit, 2023-2024

In October 2023, Cultural Heritage Planning staff attended the site and had a pre-consultation meeting with heritage consultants for the owner and advised them what materials would be required with the submission of a Heritage Permit application to demolish the theatre, with the understanding that, at the time, the goal was to try to salvage representative features of the decorative plasterwork, where feasible, and take moulds and paint samples of the remaining plaster work in the hopes of recreating and reimagining it into a new theatre space as part of a redevelopment on site. Staff strongly recommended that the applicant undertake pre-consultation with the Heritage Permit Review Subcommittee before submitting a complete Heritage Permit application. Staff met with representatives for the owner in December 2023, reiterating the strong recommendation for pre-consultation with the Subcommittee and the submission requirements for a Heritage Permit application to demolish.

Between July and August 2024, staff reviewed draft Cultural Heritage Impact Assessment reports from the applicant to provide preliminary feedback and comment and outlined the administrative steps for processing a Heritage Permit application once submitted. The subject Heritage Permit application was submitted on October 3, 2024. The Heritage Permit Review Subcommittee considered the application at their meeting

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on November 12, 2024, and recommended refusal. The city received two written delegations about the application that were included on the November 12, 2024, Heritage Permit Review Subcommittee agenda for their consideration as part of their review of the application. The delegates did not support the proposed demolition. Following the Subcommittee meeting, staff reached out to the applicant to request additional information to address concerns and questions raised by the members, public and local Councillor, including:

1. Clarity on the severity of the structural issues and what it would take to repair the building for reuse. What steps would be needed to repair the envelope and replicate the interior heritage features, and what would the approximate cost be?
2. Clarification on the interpretation and commemoration of the former Tivoli Theatre proposed for the new development on site. Although the specific details would come at a later design stage, it would be helpful to have a set of key principals for how interpretation and commemoration will be approached to be able to better understand what the community benefit or compensation will be for the loss of the theatre.

The applicant provided an Addendum in response (attached as Appendix “C” to Report PED24232), which has been considered in the preparation of this Report and staff Recommendations.

Vacant Building Registry, Property Standards and Building Inspections

The former Tivoli Theatre property has been on the City’s Vacant Building Registry since 2020. Properties on the Vacant Building Registry are proactively monitored by Municipal Law Enforcement staff quarterly, including inspection of the exterior of the building for any issues. In the fall of 2023, the City received concerns that the vacant building was structurally unsound. The Building Inspections staff investigated and did not find any imminent concerns of failure, but worked with Municipal Law Enforcement staff to ensure the building was in a safe condition and did not present any public safety hazards and was in conformity with the City’s Property Standards By-law. Orders were issued to assist in preventing moisture from entering the building and for general safety, including repointing and repair of the exterior masonry and the removal of a contemporary awning that was in a deteriorated condition. Cultural Heritage Planning staff were consulted on the orders before they were issued.

Following the submission of this Heritage Permit application, Cultural Heritage Planning staff provided Building Inspection and Municipal Law Enforcement staff with a copy of the Building Condition Assessment included in the application package. Building

Inspection staff reviewed the Building Condition Assessment report and concluded that the engineer of record (Kalos Engineering) has determined the building to be in a generally poor condition, and past the point of restoration. While the building remains vacant, there was no indication in the structural engineer's report that this building posed any immediate danger of collapse or failure or threat to public safety. The building was not deemed to be in an unsafe condition, and no immediate remedial actions were required as a result of the report.

In addition to reviewing the Building Condition Assessment report, Building Inspection staff attended the property on November 13, 2024, for the purposes of an external assessment, and found no apparent change to an inspection conducted in September 2023. The Building Division strongly recommend that the owner of the property take all steps necessary to comply with the Vacant Building, and Property Standards By-law's respectfully. Municipal Law Enforcement staff completed their most recent inspection of the property on November 21, 2024.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Recommendations of this Report are consistent with Provincial and Municipal legislation, policy, and direction, including:

- Encouraging retention and conservation of built heritage resources in their original locations when considering *Planning Act* and Heritage Permit applications (Urban Hamilton Official Plan, Volume 1, Chapter B.3.4.5.2); and,
- Requiring mitigation measures, in addition to a thorough inventory and documentation of lost features, when a significant built heritage resource is unavoidably lost or demolished, including (Urban Hamilton Official Plan, Volume 1, Chapter B. 3.4.5.5):
 - Preserving and displaying fragments of the former buildings' features;
 - Displaying graphic and textual descriptions of the site's history and former use, buildings, and structures;
 - Incorporating salvaged material in the design of the new development; and,
 - Generally reflecting the former architecture and use in the design of the new development, where appropriate.

RELEVANT CONSULTATION

External

- Property owner and their agent and consultants.

Internal

- Planning and Economic Development Department, Building Division, Building Inspections;
- Planning and Economic Development Department, Licensing and By-law Services Division, Enforcement;
- Corporate Services, Financial Services and Taxation, Tax Billings and Collections; and,
- Ward 2 Councillor Kroetsch.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The subject Heritage Permit application HP2024-033 is for the demolition of the former Tivoli Theatre lobby (circa 1908) and auditorium (circa 1924) structures located at 108 James Street North and 111-113 Hughson Street North, Hamilton. The subject Heritage Permit application HP2024-033 is required to implement redevelopment proposed in Formal Consultation application FC-23-053 (see Historical Background Section of this Report). In support of the Heritage Permit application, the following documents have been submitted:

- Heritage Permit Application Form, dated October 3, 2024;
- Cultural Heritage Impact Assessment, prepared by +VG Architects, dated September 30, 2024, attached as Appendix “B” to Report PED24232 which includes the following appended supporting reports and documents:
 - Building Condition Assessment prepared by Kalos Engineering, dated February 2024 (see Appendix A.5.2);
 - Designated Substances and Hazardous Building Materials Assessment, prepared by Access Environmental Solutions, dated April 9, 2024 (see Appendix A.5.3);
 - Hazardous Building Materials Assessment prepared by Reveal Environmental Inc., dated April 26, 2017 (Appendix A.5.4);
 - Letter dated September 29, 2024, from Steven Dall of Designs by Dall, on state of the plaster statues in the building (Appendix A.5.5);
 - Drawings of the current conditions of the building (Appendix A.6.1);
 - Proposed development, preliminary plans (Appendix A.6.2);
- Presentation Slides prepared by +VG Architects, presented on November 12, 2024 to the Heritage Permit Review Subcommittee;

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- Addendum materials, provided after the Heritage Permit Review Subcommittee meeting, attached as Appendix “C” to Report PED24232, including:
 - Cultural Heritage Impact Assessment Addendum prepared by +VG, dated November 27, 2024;
 - Condition Assessment Update prepared by John G. Cooke and Associates Ltd., dated November 27, 2024; and,
 - High-Level Option on Probable Costs of Abatement, Former Tivoli Theatre, prepared by Access Environmental Solutions dated November 23, 2024.

Remaining Cultural Heritage Value or Interest

The subject property retains historical and associative value as the former Tivoli Theatre complex served primarily as a theatre for over 100 years since 1908. The Tivoli, a vaudeville theatre and motion picture house, was the first theatre to introduce sound movies in the late 1920s. Of the numerous theatres built in Hamilton during the early-twentieth century, the Tivoli counted among the seven largest and grandest, the most resplendent of which were the Capitol and the Palace. Only the Tivoli remains of these early downtown theatres. The Tivoli Theatre was greatly admired for its sumptuously decorated "Italian Renaissance" interior, designed by Toronto architect, B. Kingston Hall.

A significant proportion of the original decor was removed or covered during renovations undertaken in 1943, 1947 and 1954 (when the most extensive remodelling occurred). However, the main architectural features of the auditorium remain, including: the proscenium, the ceiling with its elliptical design, the decorative cornice and frieze below, and along each side wall: a colonnade comprising five round arches sprung from coupled pilasters. The two arches on either side of the stage still contain statues of Caesar Augustus and the goddess Minerva. At the base of each of the other eight arches are medallions depicting the four seasons.

Only interior features remain that are protected by designation and the exterior brick facades are not considered to be heritage attributes. The Reasons for Designation forming part of the By-law Nos. 90-255 and 04-256 for the property include “the original architectural features of the auditorium, including the ceilings, proscenium, colonnades, statuary, and other decorative wall elements” and “the original architectural features of the lobby [...] including the ceilings”.

Review of the Cultural Heritage Impact Assessment

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A Cultural Heritage Impact Assessment, prepared by +VG Architects (+VG) dated September 30, 2024, was submitted in support of the application (see Appendix “B” to Report PED24232). The Cultural Heritage Impact Assessment report includes an updated evaluation of the cultural heritage value or interest of the subject property in accordance with Ontario Regulation 9/06, which confirms that the property retains physical and associative value, as summarized above, and included in Section 3.2 starting on page 21 of the document.

Staff have reviewed the Cultural Heritage Impact Assessment report and supporting documentation and assessed the potential impact on the designated heritage resource, including 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.

The removal of the lobby and auditorium will result in significant displacement and disruption effects, as all remaining tangible heritage attributes are proposed to be demolished. However, the documentation provided with the Heritage Permit application confirms that the existing building and interior heritage features cannot be feasibly retained and restored in place. The remaining Tivoli Theatre structures are in an advanced state of deterioration that would require reconstruction of the building envelope to make it safe to occupy, and the designated interior elements of the former theatre and lobby would be required to be removed to facilitate the repairs and due to the presence of hazardous materials and require further analysis to determine if they can be remediated after removal.

The following is a summary of the findings of the documentation provided in support of this application:

- Cultural Heritage Impact Assessment, prepared by +VG, dated September 30, 2024 (attached as Appendix “B” to Report PED24232) concludes that:
 - The property retains cultural heritage value or interest, but it is not feasible to restore the existing features and the building that contains in place.
 - To mitigate the impacts of demolition, interpretation and commemoration measures are recommended as part of redevelopment of the site.
- Building Condition Assessment, prepared by Kalos Engineering Inc., dated February 2024 (see Appendix A.5.2 of the Cultural Heritage Impact Assessment attached as Appendix “B” to Report PED24232) states the following:

- The building has poured concrete foundations with brick walls and a mixture of wood and steel framing. The roof structure consists of gypsum based (Siporex) roof deck panels. Some walls are clay tile (speed tile).
- The roof is in poor condition. The roof deck panels consist of a material that loses structural integrity when it becomes wet. Heavy moisture, likely from a failing roofing system, is evident throughout. Shoring has been installed to temporarily prevent collapse of the interior ceiling, however the entire roof structure would need to be replaced.
- The brick and clay tile walls are significantly deteriorated on the exterior and interior of the building. Rebuilding would be required to restore the structural integrity of the walls. The plaster would need to be removed to better assess the state of the damage of the walls and to undertake any repairs.
- There is moisture evident on the interior walls, as observed by peeling paint and plaster.
- The flooring requires further examination, however additional reinforcing would be required to remove damaged components and to reinforce the floors to meet present-day loading requirements for occupancy.
- The building is generally in poor condition and “should be considered past the point of restoration”.
- Designated Substances and Hazardous Building Materials Assessment, prepared by Access Environmental Solutions dated April 9, 2024, (see Appendix A.5.3 of the Cultural Heritage Impact Assessment attached as Appendix “B” to Report PED24232) states the following:
 - Asbestos was found throughout the building, including in the designated plaster walls, ceilings, and ornamental mouldings.
 - The condition of the asbestos-containing plaster throughout the building is extremely poor, evidenced by widespread damage to the plaster walls and ceilings.
 - Debris from this asbestos plaster was found throughout the premises.
 - All building surfaces should be treated as being contaminated with asbestos fibres.
 - Additional designated substances and hazardous building materials suspected to be present in the building include mercury, silica, polychlorinated biphenyls (PCBs), ozone-depleting substances, mould, and biological contaminants (animal waste).
 - Building materials confirmed and/or presumed to contain asbestos, including the interior plasterwork, must be removed prior to disturbance, in accordance with provincial regulation Ontario Regulation 278/05.

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- Hazardous Building Materials Assessment, prepared by Reveal Environmental Inc., dated April 26, 2017 (see Appendix A.5.4 of the Cultural Heritage Impact Assessment attached as Appendix “B” to Report PED24232) states the following:
 - Asbestos was confirmed, or presumed present, in the plaster walls and ceiling finishes, as well as other areas of the interior of the building.
 - Testing of the plaster finish confirmed the presence of chrysotile asbestos in the finish coat.
 - It was recommended that all asbestos-containing materials be removed that may be disturbed by renovation work.
 - Other hazardous materials were confirmed or presumed present in the building, including lead, silica, and mould.
- Addendum from +VG, dated November 27, 2024 (attached as Appendix “C” to Report PED24232), which summarizes the findings of their original Cultural Heritage Impact Assessment (attached as Appendix “C” to Report PED24232) and clarifies the rationale for the proposed demolition and the recommended measures for commemoration and interpretation as part of redevelopment of the site.
- Addendum – Updated to Condition Assessment, prepared by John G. Cooke and Associates Ltd., dated November 27, 2024, (attached as Appendix “C” to Report PED24232) states the following:
 - At a high-level, the scope of work that would be required to repair and conserve the shell of the existing building (not including the designated interior heritage features), would cost approximately \$4.7 million, including:
 - Investigations of column conditions;
 - Repair of steel columns;
 - Replacement of all gypsum roof deck panels;
 - Reinforcement of roof trusses if required;
 - Complete localized rebuilding and repairs of masonry walls from exterior;
 - Investigate and locally replace failed terra cotta tile along the interior; and,
 - Investigate and reinforce wall ties as required.
 - It is “almost impossible to come up with a budget without far more investigation and determination of the true scope of work required to rehabilitate the building shell”. Therefore, it is recommended that any budgeting for the work include a large contingency of at least 25%, for a total estimate of \$5.875 million.
 - “There is a high likelihood that dangerous conditions will develop in the near term and, more concerningly, that others may currently exist that we cannot see.”

- "The liability of leaving this building to deteriorate further is unacceptable. Unless there is a realistic prospect of immediately undertaking a project in line with what is described above, then I must regrettably recommend that this building be demolished without further delay."

Mitigation Measures

To mitigate the impact of demolition of the former Tivoli Theatre, the Cultural Heritage Impact Assessment and the Addendum propose measures to interpret and commemorate the intangible historical and associative value of the former Tivoli Theatre as part of the proposed redevelopment of the site, and potential salvage and/or recreation of tangible physical heritage attributes. As noted in the consultant report, the Standards and Guidelines for the Conservation of Historic Places in Canada (Parks Canada, 2011) recommends documentation and commemoration of heritage features when demolished or removed. The City's Official Plan policies also speak to mitigation measures when significant built heritage resources are unavoidably lost or demolished (see Policy Implications and Legislated Requirements Section of this Report).

Section 6.2 of the Cultural Heritage Impact Assessment (starting on page 29 of Appendix "B" to Report PED24232), provides preliminary recommendations for documentation and salvage for each of the interior heritage attributes of the former Tivoli Theatre, including an overview of their condition and initial recommendations for curation and reuse. For all of the features, detailed scanning, drawings, and descriptions are proposed for comprehensive documentation. The consultant report notes that, for many of the features, further testing is required to confirm if they can be safely abated for asbestos and salvaged for display in the new development, or if they would need to be recreated.

The final details of the proposed mitigation measures are subject to a final design for redevelopment, however, the Cultural Heritage Impact Assessment and Addendum (attached as Appendices "B" and "C" of Report PED23232), outline the key principles for this work, including:

- Providing an event space in the new development, ideally located in a skybridge or in an upper storey, paying homage to the heritage fabric of the original Tivoli Theatre, including replicated plaster proscenium panels and medallions from the former auditorium;
- Commemorating the former Tivoli Theatre in the new development including:

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- A public interpretive centre and theatre lobby fronting onto James Street North for commemoration;
- Displaying of salvaged or recreated plaster work, including interpretive materials, to celebrate the Italian Renaissance architecture and history of the Tivoli Theatre, including print, electronic publications, interactive installations, and a virtual reality tour incorporating 3D building scans of the building;
- Interpreting the Second Empire architecture of the former carriage factory portion of the Tivoli Theatre complex that used to front onto James Street North (demolished circa 2004) in the podium of the new development, in terms of its massing, materials and detailing, including a new marquee; and,
- Documenting the existing building and spaces for the City's archival record prior to demolition.

The Cultural Heritage Impact Assessment recommends further investigation and studies required to finalize a strategy for conservation and mitigation of the impacts of demolition, including:

- Review of the feasibility of remediating salvaged interior heritage attributes for display and integration (Conservation Plan);
- Creation of an interpretive/commemorative plan, including historic documentation, materials, signage, and architecture (Interpretation/Commemoration Plan);
- Development of design guidelines for the site (Design Guidelines); and,
- Detailed documentation of the existing building and spaces for the City's archival records prior to demolition and final recommendations for salvage and reuse (Documentation and Salvage Plan).

Conclusion

Given that the remaining Tivoli Theatre structures are in an advanced state of deterioration, that reconstruction of the building envelope is required to make it safe to occupy, and that the designated interior elements of the former theatre and lobby would be required to be removed to facilitate any repair work and due to hazardous materials and require further analysis to determine if they can be remediated after removal, staff are supportive of the opportunity to intensify the consolidated site, re-introduce an event space and provide the public with a commemoration of the Tivoli, which has been inaccessible to the public for several decades.

Therefore, staff recommend approval of Heritage Permit application HP2024-033 to demolish the remaining lobby and auditorium structures of the former Tivoli Theatre,

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subject to conditions to ensure that the proposed commemoration and interpretation measures are implemented, including the:

- Preparation of an initial scoped Conservation Plan and Documentation and Salvaged Plan assessing the feasibility of salvaging representative plaster features from the building prior to their removal (Condition (v));
- Preparation of a comprehensive Conservation Strategy to guide future redevelopment on site prior to demolition, including a Conservation Plan, Interpretation/Commemoration Plan, Documentation and Salvage Report, Design Guidelines for the new development, and an Interim Conditions Plan outlining how the site conditions will be treated and managed following demolition and until redevelopment occurs (Condition (i));
- Provision of financial securities to implement the Conservation Strategy prior to demolition (Condition (ii)); and,
- Submission of a complete application for the required Zoning By-law Amendment under the *Planning Act* for redevelopment, prior to demolition (Condition (iii)).

This Report also recommends that staff repeal Designation By-law Nos. 90-255 and 04-256 for the subject property following implementation of Heritage Permit application HP2024-033, specifically the Conservation Strategy actions for interpretation and commemoration in the new development (Recommendation (c) of this Report).

ALTERNATIVES FOR CONSIDERATION

Recommend Refusal of the Heritage Permit Application

Hamilton Municipal Heritage Committee may recommend that Council refuse the Heritage Permit application. Staff do not recommend this alternative because the recommended conditions of Heritage Permit approval address the concerns identified by Heritage Permit Review Subcommittee following review of the application at their meeting on November 12, 2024. Should this alternative be considered, staff propose the following language for an amended recommendation:

“That Heritage Permit Application HP2024-033 to demolish the former Tivoli Theatre lobby and auditorium structures at 108 James Street North and 111-113 Hughson Street North, Hamilton, under Section 34 of the *Ontario Heritage Act*, be **refused**.”

Recommend Approval of the Heritage Permit with Additional or Amended Conditions

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Hamilton Municipal Heritage Committee may recommend that Council approve the Heritage Permit Application, subject to additional or amended conditions of approval. Staff do not recommend this alternative because the recommended conditions of approval provide appropriate direction for the commemoration and interpretation of the heritage value of the site through the forthcoming Conservation Strategy and required financial securities for the implementation of its recommendations.

Recommend Approval of the Heritage Permit with No Conditions

Hamilton Municipal Heritage Committee may recommend that Council approval of the Heritage Permit Application with no conditions of approval. Staff do not recommend this alternative because the recommended conditions are necessary to ensure appropriate commemoration and interpretation of the heritage value of the site through the required Conservation Strategy and financial securities for the implementation of its recommendations.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED24232 – Location Map
Appendix “B” to Report PED24232 – Cultural Heritage Impact Assessment
Appendix “C” to Report PED24232 – Addendum Materials

EB:AG:mb