



September 7, 2022

Delivered By Email to mayor@hamilton.ca and stephanie.paparella@hamilton.ca

His Worship Fred Eisenberger
Mayor of the City of Hamilton
Hamilton City Hall
2nd floor – 71 Main Street West
Hamilton, Ontario L8P 4Y5

Council Chambers
General Issues Committee
Attn: Stephanie Paparella
Hamilton City Hall
71 Main Street West
Hamilton, Ontario L8P 4Y5

Dear Mayor Eisenberger and Members of Council:

Re: Chedoke Creek Remediation and Council Meeting No. 22-071

We are counsel to the Haudenosaunee Development Institute (“**HDI**”), which acts with delegated authority from the Haudenosaunee Confederacy Chiefs Council (“**HCCC**”) in respect of land development issues.

We write in respect of Meeting No. 22-017 of the Hamilton City Council General Issues Committee held today (the “**Meeting**”) and the report submitted by Hamilton Public Works in respect of the Meeting titled “Chedoke Creek Order – Remediation Update (PW19008(r))” prepared by Hamilton City Staff (the “**Report**”). The Report purports to provide an update on the City of Hamilton’s engagement with the Haudenosaunee in respect of the Chedoke Creek Dredging Project (the “**Project**”).

False and Misleading Statements in the Report

Specifically, we write with concerns about allegations in the Report regarding the conduct of HDI delegates at the site of the Chedoke Creek Dredging Project (the “**Project Site**”) during the last three weeks. Numerous of these statements are false and require clarification.

1. Contrary to the Report’s statement that “two individuals representing the [HDI] blocked access to the site via the Kay Drage Park Bridge with a vehicle”:
 - a. No member of the Haudenosaunee Confederacy “blocked access” to the Chedoke Creek site with a vehicle or otherwise. As stated by Mr. Detlor at today’s Meeting, Mr. Detlor parked his car and moved it upon request from workers at the Project Site.

- b. HDI has “no plans to block the dredging”, as stated to the CBC by Mr. Detlor and reported on August 24, 2022. HDI has repeated this very position to Hamilton City Staff and Council on numerous occasions. HDI does not have any plans to block access to the Project Site, as indicated by Mr. Detlor at the Meeting.
 2. Contrary to the Report’s statement that “it is understood from discussions between City staff and representatives from the HCCC/HDI that should the City resume any works on the project, a protest may ensue on-site by representatives of the HCCC/HDI and their supporters, to attempt a work stoppage”:
 - a. No member of the Haudenosaunee Confederacy has at any time threatened or indicated that work at the Project Site could not proceed or that an undisclosed number of “others” would reattend at the Project Site.

The aforementioned statements are false, misleading, and defamatory of HDI, the HCCC, and the Haudenosaunee Confederacy. We ask that the City of Hamilton forthwith retract these statements in the Report and publicly apologize for the inaccuracies.

The statements contained in the Report are inflammatory and appear to be calculated to support the imposition of injunctive relief. Appellate authorities, including the Court of Appeal for Ontario, make clear that the use of litigation and injunctions are not appropriate unless every effort has, in good faith, been exhausted to obtain a negotiated solution.¹ Hamilton cannot say “every effort” has been exhausted here, and HDI has presented a clear pathway forward.

Pathway Forward

As with other municipalities with whom HDI engages (such as Haldimand County), all that is required of Hamilton is: (a) file an application with HDI in respect of the Project; and (b) undertake to do the same for future works in Hamilton.

HDI’s position is simple: Hamilton ought to abide by its own policy commitments, including those set out in its Urban Indigenous Strategy. The UIS incorporates the UNDRIP by reference, Article 32 of which provides that:

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

To clarify, the Haudenosaunee Confederacy is not opposed to the subject of the Project, however even laudable undertakings cannot run roughshod over established treaty rights or constitutional obligations.

¹ See e.g., *Frontenac Ventures Corporation v Ardoch Algonquin First Nation*, 2008 ONCA 534 at paras 46-48.

The Haudenosaunee Confederacy have established treaty rights that cover the Project Site, including those provided by instruments such as the Nanfan/Fort Albany Treaty of 1701. To be clear, the exercise of these treaty rights is not inconsistent with the works to be carried for the Project.

All the best,

GILBERT'S LLP



Tim Gilbert

- c. Deputy Mayor Russ Powers by email to russ.powers@hamilton.ca
- Councillor Maureen Wilson by email to maureen.wilson@hamilton.ca
- Councillor Jason Farr by email to jason.farr@hamilton.ca
- Councillor Nrinder Nann by email to ward3@hamilton.ca
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