

September 22, 2022

Delivered By Email to ron.sabo@hamilton.ca

Ron Sabo
Acting City Solicitor
Legal Services Division
Corporate Services Department
City of Hamilton
50 Main Street East, 4th Floor
Hamilton, ON L8N 1E9

Dear Mr. Sabo:

Re: Chedoke Creek Remediation and Hamilton's Urban Indigenous Strategy

We write further to your letter of September 19th, 2022 regarding the remediation of Chedoke Creek and the PW190008(r) report discussed at City Council on September 7, 2022.

Hamilton's Mischaracterization of HDI's Position and Statements

We disagree with your allegation that HDI delayed in communicating its position in respect of the project site. HDI's position has been consistent from the beginning. HDI has never stated that it would, nor did it, block access to the site, prevent any dredging work, or cause a work stoppage. HDI has repeatedly expressed this position with site workers, the media, and Hamilton City Council. It is not sincere to suggest this position was raised for the first time on September 7, 2022 when, as set out in our letter of September 7, 2022, HDI has always been vocal on its position, including in statements to the CBC disseminated broadly as early as August 24, 2022.

To the extent Hamilton maintains its position that "the statements and activities of persons representing the HDI" are not consistent with HDI's position, we would be grateful if you could identify those statements and activities. To date, the City's allegations have been entirely vague or, where we have been provided any particularity, simply not true.

Hamilton's Commitment to "Consult"

Your letter refers to a commitment to "consult" with the Haudenosaunee. More than mere consultation is required. What is required is free and informed consent of the Haudenosaunee or, where Haudenosaunee rights are infringed, justification by a compelling and substantial public purpose, provided that infringement is not inconsistent with the Crown's fiduciary duty. No consent or justification have been provided here.

In any event, your letter carefully limits Hamilton's consultation commitment to the Chedoke Creek remediation project. We have two questions regarding this position:

1. Does Hamilton intend to consult on other projects in Hamilton, given its acknowledgement that Hamilton is on the traditional territory of the Haudenosaunee?
2. In connection with Hamilton's commitment to "meaningful consultation", Hamilton is under an obligation to disclose its preliminary assessment of the strength of the case supporting Haudenosaunee rights, and to provide its assessment of the scope of its duty to engage on the basis of those rights. Could you kindly provide that preliminary assessment? Based on your letter's suggestion that consultation has taken place and is ongoing, this should be readily available, with particulars.¹

Hamilton's Rejection of UNDRIP, Contrary to the Truth and Reconciliation Commission Calls to Action and Hamilton's Urban Indigenous Strategy

HDI has proposed a clear pathway forward for meaningful engagement with the Haudenosaunee. Your letter indicates that the City of Hamilton rejects HDI's proposal, and makes clear that Hamilton has no intention of abiding by its own policy commitments.

Specifically, your letter states unequivocally that Hamilton has not adopted—and in fact rejects—the United Nations Declaration on the Rights of Indigenous People ("**UNDRIP**"), notwithstanding its clear statements to its constituents and neighbours expressly in support of UNDRIP:

- In 2015, the Truth and Reconciliation Commission called upon "federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation."
- In 2019, Hamilton purported to respond to that call to action, developing, formally adopting, and publishing its Urban Indigenous Strategy in June 2019 (the "**UIS**"). We note that the UIS was endorsed unanimously at City Council, including by Mayor Eisenberger.²
- Among its many references to UNDRIP, Hamilton's UIS states that:
 - Hamilton "should adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as the framework to move forward with reconciliation"; and
 - Hamilton's "journey to reconciliation must be forged together with Indigenous and non-Indigenous allies who can collectively champion the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation".

There is no doubt that the UIS leaves Hamilton's constituents and Indigenous neighbours with the impression that the City of Hamilton itself "champions" UNDRIP—that is, that Hamilton "acts as a militant support of" UNDRIP and its principles. We would presume that the UIS was calculated to do just that.

Unfortunately, Hamilton's words appear to be meaningless, as your letter confirms that Hamilton has no intention of engaging with the Haudenosaunee in accordance with the principles enshrined

¹ See, for example, [Saugeen First Nation v Ontario \(MNR\), 2017 ONSC 3456 at para 54](#).

² City Council Minutes 19-013 dated July 12, 2019.

by UNDRIP. This is precisely the issue raised by Mr. Bomberry at the City Council Meeting on September 7, 2022:

“When we’re talking about reconciliation; I like to think of that one as a fancy term for ‘saying sorry without saying sorry’. It’s almost become a punchline...from what I see [...], it’s just words...I don’t want to hear ‘reconciliation’ as much as I want to see it...”

Hamilton’s conduct, including its decision to ignore its own policy considerations in the UIS and reject UNDRIP, does not advance reconciliation.

We would invite Mayor Eisenberger to explain to HDI, and to Hamilton’s constituents, how Hamilton can simultaneously reject the *United Nations Declaration on the Rights of Indigenous People* (and therefore the Truth and Reconciliation Commission’s Calls to Action) and purport to be on a “journey to reconciliation” that “honour[s] the history, knowledge, rights, languages and cultures” of Indigenous peoples, including its close neighbours, the Haudenosaunee.

On behalf of HDI, we invite the City of Hamilton to reconsider its position and seriously consider its conduct in view of its important role in advancing reconciliation in Canada. HDI remains open to discuss Hamilton’s engagement on the Chedoke Creek remediation project, and reiterates its request for a framework agreement applicable to future projects in the City of Hamilton.

Yours truly,

GILBERT’S LLP



Tim Gilbert