



Hamilton

City of Hamilton
Legal Services
71 Main Street West
Hamilton, ON Canada L8P 4Y5
www.hamilton.ca

R. A. Sabo, Acting City Solicitor
Legal Services Division, Corporate Services Department
Office Address: 50 Main Street East, 4th Floor
Hamilton, Ontario, L8N 1E9
Phone: 905-546-4520 Fax: 905-546-4370
Email: ron.sabo@hamilton.ca
Direct Phone: 905-546-2424, ext. 3143

September 19, 2022

Tim Gilbert
GILBERT'S LLP
125 Queens Quay East, 8th Floor
P.O. Box 19
Toronto, ON M5A 0Z6

VIA Email to: tim@gilbertslaw.ca

Dear Counsel,

Re: Chedoke Creek Remediation

City of Hamilton Council received your correspondence at its meeting of September 14th, 2022 and has directed staff to respond.

After receipt of your letter, at the same meeting, Council adopted the recommendations in report PW19008(r). Those recommendations authorize staff to continue consultation with the Mississaugas of the Credit First Nation, the Huron-Wendat Nation, the Six Nations of the Grand River, and the Haudenosaunee Confederacy Chiefs Council (through their representative agency, the Haudenosaunee Development Institute, the "HDI") on the Chedoke Creek Remediation Project, which is being undertaken pursuant to a Director's Order issued by the Province. The recommendations also authorize staff to negotiate and enter into agreements, where appropriate, to provide for Indigenous Environmental Monitors to attend the work site. It is the intent of Council to provide ongoing and meaningful consultation and project monitoring raised in the earlier consultations, as well as ensuring the safety of those persons involved in those monitoring activities. To that end, the contractor has prepared a safety plan for monitors so that project work can continue with safety in mind, and the project work will resume on Wednesday September 21st, with in-water works to commence four or five days afterwards.

Your letter, however, raises certain concerns that the City must respond to, namely (a) the request for consent from the HDI in part based on the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, the "Declaration"), and (b) allegations made against staff which incorrectly claim staff included false or misleading information in Report PW19008(r). Our response, which follows, does not derogate from Council's sincere interest in meaningful consultation and indigenous relationship building.

The allegations in your correspondence that staff have provided false or misleading information in their report are incorrect and do not take into account the delay in

providing what appears to be the official position of the HDI that it will not (i) prevent access to the site, (ii) block dredging, and (iii) block work at the site through activity or by attendance of other persons. Had the HDI's official position on these matters been provided in earlier consultations with the City or prior to site attendances by HDI representatives, the City would have had the opportunity to address matters at the time of the events that are mentioned in the staff report. Unfortunately, the statements and activity of persons representing the HDI during the events described in the City's report and even while attending the site during the current pause in work, in the presence of the contractor, police and City staff, are not consistent with the official position of the HDI. You should also understand that attendance on-site without proper safety measures being in place puts the safety of those attending, as well as construction crews, in danger and requires an immediate work stoppage and delay of work until safety can be ensured. We would encourage HDI representatives to find means to communicate with City officials without causing work stoppages or costs to be incurred which ultimately have to be borne by taxpayers or detract from essential services needed by City residents.

With respect to the request for the City to seek HDI consent, the City has already indicated that it will consult, but this will not involve seeking consent for this Project. This response is specific to the Remediation Project. Your letter also raises the HDI's general request for the City to apply and seek consents for a wide scope of municipal projects, which appears to suggest that no project could proceed without binding the City to this consent process. This request appears to be based on the view that the City has adopted UNDRIP, which is not correct. The City is committed, through its Urban Indigenous Strategy to consult on and develop an appropriate framework and processes for future consultation and relations. As Council's decision on September 14th reflects, the City remains committed to ongoing consultation which will both allow for the HDI to express its views, and for environmental monitoring.

In summary, the City intends to move forward with consultation and arrangements for environmental monitoring and looks forward to clear and open communications between the City and the HDI.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Sabo', with a long horizontal flourish extending to the right.

Ron Sabo

RS/gk