




INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	March 22, 2023
SUBJECT/REPORT NO:	Chedoke Creek Order - Remediation Update (PW19008(t)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Tim Crowley (905) 546-2424 Ext. 5063
SUBMITTED BY:	Cari Vanderperk Director, Watershed Management Public Works Department
SIGNATURE:	

COUNCIL DIRECTION

Council at its special council meeting of March 9, 2023, approved the following:

- (a) That the City Solicitor and external legal counsel be directed to file an appeal in respect of the March 3, 2023, amendment to Director's Order dated December 4, 2020 (1-PE3L3).
- (b) That Report LS21012(c) and Appendix "A" remain confidential and not be released as a public document, except for the Executive Summary which may be released to the public.
- (c) That the General Manager, Public Works be directed to provide a public report at the March 22, 2023, General Issues Committee Meeting regarding an update to the Chedoke Creek Order and Remediation.
- (d) That the City Solicitor and City Clerk review Appendix "B" to Report LS21012(c) to apply exemptions under *Municipal Freedom of Information and Protection of Privacy Act* and that a redacted version be released publicly for the March 22, 2023 General Issues Committee agenda through a Public Works report.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

INFORMATION

The City of Hamilton (City) was served Director's Order No.1-PE3L3 (Order) by the Ministry of the Environment, Conservation and Parks (MECP) on December 4, 2020, as a result of the Main/King combined sewer overflow discharge which occurred between January 2014 and July 2018.

The Order consists of two parts. The first part requires the City to undertake the MECP approved Chedoke Creek Workplan, which includes the dredging of sediment in targeted parts of Chedoke Creek that scientific analysis concluded to be impacted by the combined sewer overflow. The original deadline imposed by the Order was for the City to complete dredging work no later than October 31, 2021. The City requested that the MECP review various permitting requirements for in-water dredging work, which resulted in the original deadline being amended to December 31, 2022.

The second part of the Order requires the City to undertake the MECP approved Cootes Paradise Workplan, which includes various studies and policy reviews to improve the water quality entering Cootes Paradise from City owned infrastructure. There is no deadline associated with the Cootes Paradise Workplan, however the City has committed to undertake several Municipal Class Environmental Assessment (EA) studies that are currently underway. These studies will contemplate various possible improvement options for the City to implement over the next several years.

For additional context, a status update on the recent amendments to the Order; a chronology of the correspondence with the MECP and the Haudenosaunee Development Institute (HDI), and the activities undertaken to date to address the requirements of the Order are provided below.

Chedoke Creek Workplan Overview and Chronology:

The Chedoke Creek Workplan, as required by the Order and approved by the MECP, identifies the remedial strategy for targeted dredging in Chedoke Creek. In late July 2022, the contractor for the City, Milestone Environmental Contracting Inc. (Milestone), began mobilizing equipment and preparing the Dredge Material Management Area at Kay Drage Park with the intention of starting the in-water targeted dredging work on August 22, 2022.

As previously reported at the September 7, 2022 (Report PW19008(r)), and November 30, 2022 (Report PW19008(s)), General Issues Committee, preparation activities at the work site were paused on August 18, 2022 after two individuals representing the HDI blocked access to the site and stated that they were exercising their treaty rights. The HDI representatives stated they would not permit the work to proceed until certain conditions were met and their consent for the project had been sought and received.

Attempts were made to resume the project in order to meet the requirements outlined in the MECP Order to the City. Unfortunately, further disruptions occurred which created health and safety risks for Milestone, their subcontractors and the HDI representatives. On October 5, 2022, Milestone and the dredging sub-contractor issued a notice of refusal to work to the City until a safe and unimpeded work environment could be provided for their employees. On October 21, 2022, the City's consultant WSP Environment & Infrastructure Canada (WSP), also issued the opinion that it was "unwise to proceed" pursuant to section 54 (1) of the General Conditions of the Contract. This professional opinion was reached based on WSP's independent examination of the circumstances.

Since that time the project has remained on standby and equipment, such as the hydraulic suction dredger have been demobilized from the site in order to reduce standby costs. Currently, the contractor maintains a minimal presence on-site for site monitoring and security purposes.

Various correspondence thereafter between the City, MECP and HDI is summarized below and attached as Appendix "A" to Report PW19008(t). This was formerly Appendix "B" to Report LS21012(c) and is being released publicly at the direction of Council at its special council meeting of March 9, 2023. A redacted version is required as a result of the *Municipal Freedom of Information and Protection of Privacy Act* and includes the following correspondence in chronological order:

- City letter requesting two interventions from the MECP (October 6, 2022)
- MECP letter declining the City's request for an access order (November 15, 2022)
- MECP letter approving the City's request for an extension (December 20, 2022)
- MECP letter to the HDI (December 29, 2022)
- City letter to HDI (January 23, 2023)
- City follow-up letter to HDI (February 16, 2023)
- City follow-up letter to the MECP requesting an access order (February 23, 2023)
- HDI reply to the MECP letter issued December 29, 2022 (February 28, 2023)
- HDI reply to the City's issued letters (February 28, 2023)
- MECP letter declining the City's request for an access order (March 3, 2023)
- MECP amendment to the Order (March 3, 2023)
- City letter to HDI notifying them of the Order amendment (March 3, 2023)
- HDI reply to the City's March 3, 2023, correspondence (March 7, 2023)
- HDI correspondence to the MECP (March 7, 2023)

With the project remaining in standby and the Order deadline unable to be achieved, on October 6, 2022, the City requested two interventions from the MECP. The first intervention request was for the MECP to issue an access order to the HDI to provide the City and its contractors unimpeded access to the site to complete the work required

under the Order. The second intervention request was for the MECP to provide the City with a 12-month extension under Item #6 of the Order which imposed a deadline for the targeted dredging of December 31, 2022. The formal request to extend the deadline was made after evaluating project completion scenarios including engagement with permitting agencies regarding extensions to the associated permits.

On November 15, 2022, the MECP declined the City's request for an access order to be issued to the HDI, stating that the City was "best positioned to discuss concerns regarding the remediation, its potential impacts on the natural environment and share project status documentation with Haudenosaunee Development Institute (HDI)". Subsequently, on December 20, 2022, the MECP Director approved the City's request for a deadline extension to December 31, 2023, with all other items in the Order remaining in effect and unaltered.

On December 29, 2022, a letter was issued by the MECP District Office to the HDI in response to prior HDI correspondence to the MECP. It specifies that the remediation work would have no appreciable impact on hunting, fishing or harvesting treaty rights under the Nanfan Deed, particularly considering this is a remediation project with the main objective to improve conditions of the creek. The letter also requests that the HDI provide the MECP with details regarding its concerns in this regard.

On January 23, 2023, the City submitted a letter to the HDI in an attempt to engage in dialogue, address concerns and explore options for the HDI to enter into an agreement for an Environmental Monitor on similar terms as the City has entered with three other First Nations Communities. The City did not receive a response by the requested due date of February 6, 2023, and a follow up letter was sent to the HDI, on February 16, 2023. This second letter provides notice that the City has now rescheduled commencement of the remedial work at Chedoke Creek for June 2023 as the City is required by law to complete the targeted dredging by the extended deadline of December 31, 2023.

On February 23, 2023, the City wrote to the MECP to restate its request that the MECP issue an order to the HDI to enable the City and its contractors unimpeded access to the site to complete the work, otherwise the City would have no other option than to seek relief from the Courts. Shortly after, on February 28, 2023, the HDI wrote to both the MECP and the City. The HDI indicated that the City had not engaged sufficiently, and the HDI requested further discussion and engagement from both the MECP and the City.

On March 3, 2023, the MECP replied to the City's letter of February 23, 2023 and declined to reconsider the City's request for an access order. Also, within the same letter the MECP indicated that it had reconsidered its earlier Order deadline extension and is now requesting that the dredging work be accelerated. Later that same day, the

City received a formal amendment to the Order requiring the completion of dredging works on an accelerated schedule under which all in-water dredging work needs to be completed by August 31, 2023, four months earlier than previously ordered, with all ancillary works to be completed by December 31, 2023.

On March 3, 2023, the City replied to the HDI correspondence of February 28, 2023 reminding HDI of the City's attempts to engage the HDI in this matter, reiterating the City's offer of a monitoring agreement on the same terms offered to three other First Nations, and also forwarding a copy of the revised Order issued by the MECP earlier that day. The HDI responded to both the City and the MECP by email on March 7, 2023 expressing dissatisfaction with the MECP's reliance on Federal Department of Fisheries and Oceans (DFO) permit, and also indicating that the proposals made by the City, in its correspondence of March 3, 2023, would be reviewed by the HDI during their next meeting on November 8, 2023, well beyond the new MECP deadline. Finally, on March 7, 2023 the City reached out to the HDI via email to arrange a meeting to discuss their concerns. As of the time that this report was written, the City has not received a response from the HDI.

As stated in the Executive Summary of Report LS21012(c), "on March 3, 2023, the Director unexpectedly issued a revised Order to the City that accelerated the timeframe for the performance of dredging operations by four months, requiring in-water work that previously was required to be completed on or before December 31, 2023 to now be completed on or before August 31, 2023. Since it is not clear that the City will be able to comply with this unexpected new timeframe, staff are recommending that the City appeal the revised Order".

As such, at the special Council meeting on March 9, 2023, Council directed the City Solicitor and external legal counsel to file an appeal in respect of the March 3, 2023 amendment to the Order. The appeal will allow the project team to seek more time to accommodate unexpected events, which could include delays caused by staffing and supply chain challenges, possible work stoppages due to prolonged wet weather, and excess debris on the creek bed. During the meeting the Mayor, Council and Staff were also made aware of letters sent to the Mayor and the Minister of the Environment, Conservation and Parks by Chief Mark Hill of the Six Nations of the Grand River Elected Council. Attached as Appendix "B" to Report PW19008(t), the letters request that both parties take steps necessary to expedite the remediation of Chedoke Creek.

On March 10, 2023, City representatives engaged with representatives from the MECP, to discuss the City's concerns with the March 3, 2023 amendment to the Order. This was a positive and collaborative discussion with the goal of identifying a common path forward that does not require the City to file an appeal to the amended Order, supports the City's concerns regarding the August 31, 2023 deadline to complete the in-water targeted dredging work, and still expedites the remediation of Chedoke Creek. During

that discussion it was agreed that a deadline to complete the in-water targeted dredging work of October 31, 2023 would be achievable.

As a result, the project team developed a revised remediation timeline, attached as Appendix "C" to Report PW19008(t). The revised timeline illustrates the optimal path forward and identifies the time between notifying the contractor to remobilize and the actual commencement of targeted dredging on July 17, 2023. This start date avoids the spring months when wet weather events can be unpredictable, respects the annual periods where in-water work is typically restricted due to fish spawning and identifies the completion of the in-water work on or before October 31, 2023.

Subsequently, on March 14, 2023, the MECP issued a fourth amendment to the Order, attached as Appendix "D" to Report PW19008(t). The amendment requires the completion of the targeted dredging works on an accelerated schedule under which all in-water dredging work needs to be completed by October 31, 2023, with the remaining activities in the approved Chedoke Creek Workplan completed by December 31, 2023. In addition, the City is also required to provide the MECP with weekly written reports outlining progress on key milestones before dredging begins and weekly written project updates once the dredging has commenced.

Staff continue to update the Mississaugas of the Credit First Nation, the Huron-Wendat Nation, the Six Nations of the Grand River Elected Council and the Haudenosaunee Confederacy Chiefs Council via the HDI on the project. The existing Environmental Monitoring Agreements with the Mississaugas of the Credit First Nation, the Huron-Wendat Nation, and the Six Nations of the Grand River Elected Council are being extended to accommodate each Nation to attend the work site throughout 2023. Unfortunately, the HDI has been unresponsive to the City's offers to enter into an agreement for an Environmental Monitor on similar terms.

Cootes Paradise Workplan Overview:

The purpose of the Cootes Paradise Workplan, as required by the Order and approved by the MECP, is for the City to complete enhanced remedial measures that will improve the condition of Cootes Paradise in addition to the targeted dredging of Chedoke Creek.

The Cootes Paradise Workplan includes the potential works listed in Table 1 which mainly fall into two (2) forms, those that reduce nutrients from the inflowing water, and those in-water works that treat or remove nutrients and other contaminants, either through a one-time reduction or continuously through uptake. In order to determine which works will be preferred, the City is also required under the *Environmental Assessment Act* to evaluate any large-scale initiatives through the Municipal Class EA process.

Table 1

Annual Removal Projects	Large Scale Floating Vegetative Mats
	Outcomes from Lower Chedoke Master EA Study
	Outcomes from Chedoke Watershed Stormwater Retrofit Master EA Study
	Outcomes from Application of Redevelopment Sites – Stormwater Management Policy
	Outcomes from Application of Retrofits for Road Rehabilitation Projects / Low Impact Development Best Management Practices Policy
One-Time Removal Projects	Exploratory Study to Dredge in specific locations within Cootes Paradise
	Sediment Nutrient Inactivation within Cootes Paradise
Other	Ainsley Woods Class EA (Sewer Separation)

Consultant assignments for each of the three (3) Master Planning EAs identified in the table above are underway. The studies include a detailed environmental, social, and economic assessment of opportunities to improve water quality and address related water quantity matters. The timing and capital budgets for the identified preferred solutions from each Class EA study will be identified once each study is completed.

The exploratory study to dredge certain areas of Cootes Paradise, and sediment nutrient inactivation projects have been combined into one (1) assignment. Investigative field work started in 2022 with a review of existing literature, including an extensive data package from the Royal Botanical Gardens (RBG). In addition, the project consultant prepared detailed bathymetric and sediment thickness mapping of potential project areas, with a focus on those areas deemed of most concern based on feedback from RBG and a data assessment. The scope of work also includes a mesocosm study to evaluate the potential impacts from various sediment treatment alternatives. This will assist the City in evaluating the potential for the implementation of targeted water quality restoration projects within Cootes Paradise.

Lastly, the Road Retrofits Rehabilitation and Stormwater Management Policy reviews will continue throughout 2023 with the appropriate City departments. It is important to note that the Order does not specify completion deadlines for the proposed initiatives identified in the Cootes Paradise Workplan, however the City is expected to complete each of the three (3) Cootes Paradise Workplan Class EA studies by the end of 2023, as communicated to the MECP.

Costs:

The current expected costs for the Chedoke Creek and Cootes Paradise Workplans are shown in Table 2, which is within the allocated budgets for the identified Project IDs. Approximately 26% of costs were incurred on the Chedoke Creek Workplan project prior to entering into standby. To-date, standby claims have resulted in \$1.2M in extra costs. Additional costs will continue to be incurred while the City's contractor remains on standby. Future cost implications may also include changes to the targeted dredging construction contract due to inflationary pressures and/or losing preferred pricing as a result of the delays.

Table 2

Previous Project IDs and/or Other City Departments	Cost
• Investigative and Clean Up Costs (from 2018-2020)	\$1,934,269
• Legal and Risk Management Costs (to December 31, 2022)	\$235,000
Total	\$2,169,269
Project ID 5162168777	Cost
• Small Scale Offsetting	\$36,565
• WSP - Emergency Procurement (Workplans, Data Collection, Design and Permitting)	\$791,144
• WSP - Non-Competitive Procurement (Contract Administration, Investigative Field Work and Post Monitoring)	\$778,396
• WSP - Standby Costs (Aug 18 – March 31, 2023)	\$165,000
• Milestone Environmental Contracting Inc. - Tender (Targeted Dredging of Chedoke Creek)	\$6,769,992
• Milestone Environmental Contracting Inc. - Standby Costs (Aug 18 – March 31, 2023)	\$1,051,175
• First Nations Communities - Environmental Monitoring Agreements	\$160,000
Total	\$9,752,272

Project ID 5162268757 - Lower Chedoke Combined EA	\$173,833
Project ID 5162268767 - Chedoke Watershed Stormwater Management EA	\$194,336
Project ID 5162262305 - Ainslie Wood Creek Separation Municipal Class EA	\$236,892

To address the outcomes of the Cootes Paradise Workplan, approximately \$20M has been programmed into the 2023 Water, Wastewater, and Storm Rate Capital Budget. Within the next five years and once known, any additional required resources will be included in future budget requests.

Communications Strategy:

The City's Communications and Strategic Initiatives team is continuing to support this project with a robust communications strategy to ensure the community is kept informed. The strategy includes various tactics including media releases, webpage updates and the use of social media. This ensures the community and stakeholders are kept updated on the Chedoke Creek remediation progress.

A new webpage for the remediation efforts was launched on May 2, 2022 to support ongoing communications. Recent updates have been made to the timeline to reflect the ongoing water stewardship from the Indigenous communities and their efforts to bring attention to the degrading health of our watersheds to the forefront.

Approximately 4,000 project notices were sent to residents in the surrounding area on June 24, 2022 and the communications team is currently evaluating a plan to re-engage the community prior to the planned recommencement of work.

To learn more about the status of dredging activities and the remediation efforts identified in the Cootes Paradise Workplan, please visit:
www.hamilton.ca/chedokecreekremediation.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PW19008(t) – Various City, MECP and HDI correspondence
Appendix "B" to Report PW19008(t) – Six Nations letters to MECP and City
Appendix "C" to Report PW19008(t) – Revised Remediation Timeline
Appendix "D" to Report PW19008(t) – MECP Fourth Amendment to the Order