

CITY OF HAMILTON LOBBYIST REGISTRAR, DAVID G. BOGHOSIAN

Citation: Inquiry re: Graham Cubitt – DGB-LRI-2024-01

Date: September 3, 2024

REPORT ON INQUIRY

INTRODUCTION

[1] My role as the City’s Integrity Commissioner and Lobbyist Registrar includes enforcing City of Hamilton By-law No. 14-244 To Establish and Maintain a Lobbyist Registry (“LR By-law”) and conducting inquiries regarding non-compliance at the request of members of the public.

[2] On April 18, 2024, a Hamilton resident (“the Complainant”) who requested and has been granted anonymity filed a Lobbyist Registry Inquiry Request asking me to investigate whether Graham Cubitt breached the LR By-law by engaging with public office holders for the lease/sale of City lands by organizations he is affiliated with for a nominal cost for the development of supportive housing projects, without registering as a lobbyist.

[3] The Complainant referred us to the following in support of his Inquiry Request:

- During an August 17, 2023 delegation to the City’s Emergency and Community Services Committee, Mr. Cubitt described working closely with City staff to advance supportive housing projects in the City. The staff named were Justin Lewis (Director, Housing Secretariat), Jeff Wingard (Director, Housing Secretariat), Michelle Baird (Director, Housing Services) and Angie Burden (GM, Community Services; previously, GM, Safe and Healthy Communities).¹
- At a February 21, 2024 General Issues Committee Meeting, Jason Thorne (the City’s General Manager of Planning and Economic Development from July 2014 to March 2024) referred to information received from non-profit affordable housing providers.²
- In a March 29, 2024 Hamilton Spectator op-ed, Mayor Andrea Horwath cited information received from affordable housing providers in her decision to use

¹<https://pub-hamilton.escribemeetings.com/Meeting.aspx?Id=29e0f876-4ce0-4607-bd51-d221b42674be&Agenda=Agenda&lang=English>.

²<https://pub-hamilton.escribemeetings.com/Meeting.aspx?Id=3cf8542b-9fe2-4660-95c1-19c7bdbc2577&Agenda=Agenda&lang=English&Item=16&Tab=attachments>.

strong mayor powers to override Council’s decision respecting making City lands on Lake Avenue South available for affordable housing.³

- Mr. Cubitt’s spouse Emma Cubitt, principal of Invizij Architects Inc., is routinely engaged on Indwell Community Homes⁴ projects.

[4] Based on our investigation, we determined that Mr. Cubitt is affiliated with the following housing-related entities:

- Indwell Community Homes (Director of Projects & Development) - a Hamilton-based non-profit corporation and registered charity⁵ that develops and operates supportive housing projects with over 50% of its revenue coming from government funding, including affordable housing grants from the City of Hamilton.⁶
- Flourish (President) - a non-profit entity related to Indwell that provides consulting services to “clients such as municipalities, non-profits, faith communities, and other organizations to create affordable housing solutions.”⁷
- Hamilton is Home (Chair) - an unincorporated coalition of non-profit supportive housing providers (including Indwell) that works with the City⁸ to

³ The Complainant cites Mayor Horvath’s March 29, 2024 op-ed published in the Hamilton Spectator, which reads, “Local housing providers have told us that their success in applying for federal or provincial funding hinges on being able to demonstrate the city’s commitment to their projects. We must demonstrate that we are prepared to put skin in the game, including financial support. Our commitment to working with our partners on the priority of housing people will bolster our position when seeking support from other levels of government:” https://www.thespec.com/opinion/contributors/why-i-am-using-strong-mayor-powers-to-build-affordable-housing-in-stoney-creek/article_30d3a2dd-19b7-58f2-86fc-6d43bcdf22d5.html.

⁴ See description of this organization below.

⁵ <https://indwell.ca/about-us/#leadership>. According to Indwell’s website, Indwell is a “Hamilton-based Christian charity” and is “the fastest growing developer of new supportive affordable housing in Ontario.”

⁶ For example, in September 2023, Indwell received \$600,000 to provide support services to future tenants at City Housing’s 24-unit building on King William Street and \$2.3 Million towards the construction of Acorn Flats, a 23-unit affordable housing complex for families on Robert Street. https://www.thespec.com/news/hamilton-region/hamilton-council-approves-millions-to-tackle-growing-homelessness-crisis/article_ee34218f-4a96-57a8-b4e6-c5628dcf5fdd.html.

⁷ www.flourish.ca.

⁸ June 14, 2024 interview with City Housing Secretariat Director Justin Lewis. See also City’s website page re: Hamilton is Home <https://www.hamilton.ca/people-programs/cityhousing-hamilton/development-revitalization/development-stories/hamilton-home#:~:text=Hamilton%20is%20Home%20is%20an,growing%20need%20for%20affordable%20housing>. Mr. Cubitt has publicly acknowledged working with Justin Lewis, Jeff Wingard (Director, Housing Secretariat), Michelle Baird (Director, Housing Services) and Angie Burden (then GM, Community Services) to advance the goals of Hamilton is Home. <https://pub-hamilton.escribemeetings.com/Meeting.aspx?Id=29e0f876-4ce0-4607-bd51-d221b42674be&Agenda=Agenda&lang=English>.

advance the development of supportive housing.⁹ Formed in 2020, the coalition's current goal is to build 3,000 new affordable apartments in the next three years.¹⁰

[5] The LR By-law came into effect on August 1, 2015. Section 7(1) of the LR By-law requires lobbyists to file a registration in advance of lobbying public officials subject to certain exceptions. The City's Registry contains no record of any registrations or returns filed by or on behalf of Mr. Cubitt, Indwell, Flourish, Hamilton is Home or Invizij since the By-law came into effect.

[6] We have limited our investigation to Mr. Cubitt's communications with GM Angie Burden, former GM Jason Thorne and the Office of the Mayor received from the inception of the LR By-law up until late June/early July 2024.¹¹

[7] For the reasons set out below, I find that Mr. Cubitt has engaged in unregistered lobbying contrary to s. 7(1) of the LR By-law.

APPLICABLE PROVISIONS OF LR BY-LAW

Definitions

"**communication**" means any type of expressive contact and includes but is not limited to oral, written or electronic communication and "**communicate**" has a similar meaning;

"**constituent**" means:

(a) with respect to the Mayor:

- (i) an individual who resides in the City; or
- (ii) an owner or operator of a business or other entity located in the City; and

(b) With respect to a Councillor:

- (i) an individual who resides in the Councillor's ward; or

⁹ During an August 17, 2023 delegation to the Emergency and Community Services Committee, Mr. Cubitt urged Council to commit to contributing 15% of the cost/resources for various supportive housing projects as a catalyst to prompt other levels of government to make more substantial contributions to the projects: <https://pub-hamilton.escribemeetings.com/Meeting.aspx?Id=29e0f876-4ce0-4607-bd51-d221b42674be&Agenda=Agenda&lang=English>.

¹⁰ <https://indwell.ca/hamilton-is-home/>.

¹¹ While it appears that Mr. Cubitt has engaged with municipal councillors and other Hamilton public office holders, for practical purposes, we have focused our investigation on communications with the public office holders identified by the Complainant. We have not specifically examined Mr. Cubitt's communications with Justin Lewis (Director, Housing Secretariat), Jeff Wingard (former co-director, Housing Secretariat) or Michelle Baird (Director, Housing Services) since they do not fall within the definition of "public office holders" under the LR By-law.

(ii) an owner or operator of a business or other entity located in the ward;

"lobby", used as a verb, means to **communicate** with a **public officer holder** on:

- (a) any of the following subject matters with the goal of advancing a business or financial interest:
- i the development, introduction, passage, defeat, amendment or repeal of a City by-law, bill or resolution on any matter;
 - ii the development, approval, amendment or termination of a City policy, program, directive, guideline, including but not limited to a service delivery model;
 - iii the purchase of goods, services or construction and the award of a contract by the City;
 - iv the approval, approval with conditions, or refusal of an application for a service, grant, planning approval, permit or other licence or permission by the City;
 - v the award of any financial contribution, grant or other financial benefit by the City;
 - vi the transfer to or from the City of any interest in or asset of any business, enterprise or institution;
 - vii to arrange a meeting between a public office holder and any other person on any of the subject matters listed in paragraphs (i) to (vi) inclusive; and
- (b) the hiring, promoting, demoting, disciplining or terminating of an employee of the City who is a member of the City's Senior Management Team.

"lobbyist" means a consultant lobbyist, in-house lobbyist or voluntary unpaid lobbyist and:

- (a) "consultant lobbyist" means an individual who lobbies for payment on behalf of a client (another individual, a business or other entity);
- (b) "in-house lobbyist" means an individual who is an employee, partner or sole proprietor and who lobbies on behalf of his or her own employer, business or other entity; and
- (c) "voluntary unpaid lobbyist" means an individual who lobbies without payment on behalf of an individual, business or other entity for the benefit of the individual, business or other entity.

"public office holder" means:

- (a) a member of Council and any person on his or her staff; and
- (b) an employee of the City who is a member of the City's Senior Management Team¹²;

“registration” means a first filing by a lobbyist regarding a subject matter he or she intends to lobby on as set out in subsection 7(1);

“return” means an update of a registration filed by a lobbyist as set out in subsection 7(2).

Responsibilities of the Lobbyist Registrar

3. The Lobbyist Registrar’s responsibilities include ... (d) conducting inquiries in respect of a request made by ... a member of the public about compliance with this By-law, which may include requesting that a public office holder gather information concerning lobbying of him or her and provide that information to the Lobbyist Registrar.

Lobbying Exemptions

5.(1) Lobbying does not include:

- (a) communication that occurs during a meeting of Council or a Committee of Council;
- (b) communication that occurs during a public process such as a public meeting, hearing, consultation, open house or media event held or sponsored by the City or a public office holder or related to an application;
- (c) communication that is restricted to a request for information;
- (d) communication that is restricted to compliments or complaints about a service or program;
- (e) communication with a public office holder by an individual on behalf of an individual, business or other entity about:

¹² According to the City’s Legal Department, there is no “Senior Management Team” at the City per se; rather, there is a Senior Leadership Team (the most senior management of the City), a Corporate Leadership Team and an Extended Leadership Team. The term Senior Leadership Team has been in place since at least April 22, 2022. According to SLT TOR_2023.09.06, “Terms of Reference: Senior Leadership Team,” updated September 6, 2023, the City’s Senior Leadership Team is collectively responsible for the administration of the City of Hamilton corporation. Specific roles include ensuring alignment across departments, strategizing around emerging issues and Council deliverables; providing guidance and direction to staff; and driving workplace culture and psychological safety goals. The membership of the City’s Senior Leadership Team is comprised of the City Manager; the General Manager, Community Services; General Manager, Finance and Corporate Services; General Manager, Health and Safety Communities; General Manager, Planning and Economic Development; General Manager, Public Works; Executive Director, Human Resources; and the Director, Communications and Strategic Initiatives.

- (i) the enforcement, interpretation or application of any Act or by-law by the public office holder and with respect to the individual, business or other entity;
 - (ii) the implementation or administration of any policy, program, directive or guideline by the public office holder and with respect to the individual, business or other entity;
 - (iii) a personal matter of the individual, business or other entity unless it is communication that is in respect of a matter that falls under the definition of lobbying, that is for the special benefit of the individual, business or other entity;
- (f) communication by an applicant, an interested party or their representatives with respect to an application for a service, grant, planning approval, permit or other license or permission:
- (i) with a public office holder if the communication is restricted to providing general information on an application, including a proposed or pending application, or to inquire about the application review process;
 - (ii) with an employee of the City if the communication is part of the normal course of the approval process;
 - (iii) with an employee of the City if the communication is with respect to planning or development applications and the officer or employee has a role in the processing of a planning or development application during the formal preapplication consultation, the filing of the application and the application review process, including the preparation of development agreements;
- (g) submitting a bid proposal as part of the procurement process and any communication with designated employees of the City as permitted in the procurement policies and procurement documents of the City;
- (h) communication with a public office holder by an individual on behalf of an individual, business or other entity in direct response to a written request from the public office holder;
- (i) communication directly related to those City-initiated consultative meetings and processes where an individual is participating as a stakeholder;
- (j) communication for or against a policy or program that state a position where the primary focus is a broad community benefit or detriment, whether City-wide or local, and where that position would have no direct, indirect or perceived benefit to a business or financial interest of the individual, business or other entity on whose behalf the communication is undertaken;

- (k) communication regarding a business or financial interest by not-for-profit businesses or other not-for-profit entity where such business or entity has no paid staff; or
- (l) communication with a public officer holder by their constituent regarding that constituent's business or financial interest.

5(2) The Lobbyist Registrar may exempt lobbying from some or all the requirements of this By-law if he or she is satisfied in advance by a lobbyist that registration could reasonably be expected to prejudice the economic interests of the City of Hamilton or the competitive position of the City of Hamilton.

Lobbyist Exemptions

6. Lobbyist does not include the following individuals when acting in their public capacity:

government or public sector not including the City and other municipal bodies

- (a) members of the Senate or House of Commons of Canada, the legislative assembly of a province, the council or legislative assembly of a territory, or persons on the staff of the members;
- (b) members of a First Nation council as defined in the Indian Act or of the council of an Indian band established by an Act of the Parliament of Canada, or persons on the staff of the members; To Establish and Maintain a Lobbyist Registry
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- (c) employees or consultants retained by the Government of Canada, the government of a province or territory, a First Nation council, a federal or provincial crown corporation or other federal or provincial public agency;
- (d) members of a council or other statutory body, including a local board, charged with the administration of the civil or municipal affairs of a municipality in Canada other than the City, persons on staff of the members, or officers or employees of the municipality or local board;
- (e) members of a national or sub-national foreign government, persons on the staff of the members, or officers, employees, diplomatic agents, consular officers or official representatives in Canada of the government;

the City and other municipal bodies

- (f) public office holders;
- (g) members or employees of a local board of the City; or

(h) members of an advisory committee appointed by Council.

7.(1) A **lobbyist** shall file a registration for each subject matter he or she intends to **lobby** on at least 1 business day before the first lobbying **communication** occurs and the registration shall include:

- (a) his or her name, address and contact information;
 - (b) if he or she is a consultant lobbyist, in-house lobbyist or voluntary unpaid lobbyist;
 - (c) the name of the individual, client or other entity, including all business names under which the individual, client or other entity is operating, on whose behalf he or she is lobbying;
 - (d) the name of the individual or individuals he or she is lobbying;
 - (e) the subject matter and date on which the lobbying will start and finish, with the date on which the lobbying finishes being no more than one year after the date on which the lobbying starts; and (f) such further information as the Lobbyist Registrar may require.
- (2)(a) A lobbyist shall file a return updating any change to his or her registration immediately.
- (b) If lobbying continues for more than one year, a lobbyist shall file a new registration for each year the lobbying continues.
- (3) The lobbyist is solely responsible for meeting the requirements with respect to registrations and returns set out in this section.

BACKGROUND

[8] As indicated above, Graham Cubitt is affiliated with Indwell (not-for-profit and registered charity), Flourish (not-for profit) and Hamilton is Home (coalition of not-for-profits). Mr. Cubitt's wife, Emma Cubitt, is, according to provincial corporation filings, the sole director and officer of Invizij Architects Inc. (notwithstanding that other principals are identified on the firm's website) and is routinely engaged on Indwell projects.

[9] According to a June 7, 2023 profile,¹³ Indwell bought its first apartment building in 2000 and now owns and manages in the order of 19 buildings, 10 in Hamilton. It has numerous other affordable housing projects planned or under construction.

[10] In 2020, Indwell co-founded Hamilton is Home (hereinafter "Hamilton is Home" or "HIH"), described on the City's website as a collective launched by Hamilton's seven active

¹³ Nathan Whitlock, "Building the Places to Call Home," Hamilton City Magazine, June 7, 2023: <https://hamiltoncitymagazine.ca/building-the-places-to-call-home/>.

affordable housing developers. The developers began to formally meet in early 2020 “around the idea of pitching a group of projects to the Federal government for funding from the Co-Investment Fund, the flagship program of CMHC’s National Housing Strategy.”¹⁴

[11] Regarding Hamilton is Home communications with public officials, the City’s website states:

To address the funding need, the collective has engaged with CMHC staff, Federally with Filomena Tassi, the Minister of Labour, and with Adam Vaughan, the Parliamentary Secretary to the Minister of Families, Children, and Social Development (Housing), and provincially, Donna Skelly, Parliamentary Assistant to the Minister of Economic Development, Job Creation and Trade (Job Creation and Trade) and Steve Clark, Minister of Municipal Affairs and Housing. The City of Hamilton is supportive of the initiative, with senior City of Hamilton staff engaged in discussion around processes that could accelerate solutions to homelessness and affordable housing, and a motion passed in support of the Hamilton is Home initiative through the City of Hamilton’s Emergency and Community Services Committee, which was then ratified at Council.

[12] While Hamilton is Home is described as a collective of not-for-profit developers, we note from our review of communications that its organizers include related service providers such as Natalie Morgan of Haerko Inc., a provider of consulting and project management services for the non-profit housing sector, according to its website.

[13] In 2022, Indwell established a separate not-for-profit company called Flourish, which provides consulting services to municipalities, other not-for-profits and faith-based organizations etc. through all stages of affordable housing development, including site selection, fundraising, planning, construction and supportive housing program management. Mr. Cubitt is the President of Flourish and has been communicating with public office holders using a Flourish email address in recent years, whether communicating on behalf of Indwell, Hamilton is Home or a subset of Hamilton is Home developers.

[14] The City’s housing policies have correspondingly evolved in recent years with the adoption of its Housing Sustainability and Investment Roadmap (“HSIR” or “the Housing Roadmap”).¹⁵ Prepared by the City’s Housing Secretariat Division, which was formally established when the Roadmap was adopted by Council in April 2023,¹⁶ the Housing Roadmap is described as building on the City’s Housing and Homelessness Action Plan first created in 2013 and renewed in 2019.

¹⁴<https://www.hamilton.ca/people-programs/cityhousing-hamilton/development-revitalization/development-stories/hamilton->

home#:~:text=Hamilton%20is%20Home%20is%20an,growing%20need%20for%20affordable%20housing.

¹⁵ <https://www.hamilton.ca/sites/default/files/2023-12/housing-sustainability-investment-roadmap-nov23-update.pdf>.

¹⁶ <https://www.hamilton.ca/city-council/news-notice/news-releases/city-council-passes-motion-create-housing-sustainability>

The HSIR describes the evolution of the affordable housing agenda over recent years as involving collaboration with multiple stakeholders:

In the development of the [Housing] Roadmap and its principles, City staff worked with various stakeholders, including more than 44 community groups that engaged in dialogue with CityLAB students in the fall of 2022. Follow up discussions between City staff, consultants and community participants were further supported by a cross-departmental team of City staff whose work connects with housing related issues. This Core Team collaborated on the development of a cross-departmental work plan, informed by academic thought leaders through the Canadian Housing Evidence Collaborative. Community partners and stakeholders strongly supported an actionable and tactical approach to addressing Hamilton's affordable housing issues. Establishing an affordable housing secretariat within city government to work across divisions and with the community was seen as a critical step to coordinating and resourcing the work, implementing solutions and accelerating progress towards shared goals. The City was urged to embrace an action-oriented implementation focus for the Roadmap, involve the community as true partners in the work and to expedite City processes wherever possible. Non-profit affordable housing developers indicated a willingness to partner with the City on solutions to eliminate the delays that often lead to increased costs in order to maximize available resources.

[15] On November 22, Council approved the Housing Secretariat's recommendation to develop an intake process for receiving, evaluating and prioritizing affordable housing applications to create additional units of affordable and supportive housing projects using select available City funding and to report back to the General Issues Committee with results from the intake process. In response to Council's approval, staff developed the Affordable Housing Development Project Stream Evaluation Process ("Project Stream"), including an application form posted to the City's website on December 12, 2023 and an evaluation matrix. The Project Stream was formally approved and adopted on June 6, 2024 and includes a delegation of authority to the Director of the Housing Secretariat (Justin Lewis) to enter into financial commitments of up to \$2.5 Million per project from existing affordable housing funds/reserve funds.

[16] Mr. Lewis joined the City as Housing Secretariat Director in July 2023. According to Mr. Lewis, who we interviewed on June 14, 2024, various City employees continue to meet regularly with Hamilton is Home. Although he characterizes the meetings as being organized by Hamilton is Home, he does not view Hamilton is Home as engaging in advocacy towards the City per se; rather, it is a situation of the City and Hamilton is Home working in partnership on affordable housing issues. That being said, he was surprised to hear that neither Mr. Cubitt nor Hamilton is Home had registered as lobbyists. He stated that he routinely advises those he meets with to abide by the LR By-law.

[17] Mr. Lewis denied that the City afforded preferential treatment to any of the organizations with whom Mr. Cubitt is affiliated. Mr. Lewis indicated that Hamilton is Home meetings with the City are open to all affordable housing developers and not only those who are members of the

coalition. Mr. Lewis stated that one of the reasons for developing the Project Stream was to address concerns around the transparency of selection of affordable housing projects/providers without having to resort to an RFP/tendering process for every project. The Project Stream also streamlines affordable housing development by permitting non-profit developers to submit proposals at any time to enable funding from higher levels of government to be awarded to pre-approved projects as soon as the funding becomes available.

INVESTIGATION REGARDING MR. CUBITT'S COMMUNICATIONS WITH HAMILTON PUBLIC OFFICE HOLDERS

[18] For practical purposes, we confined our investigations to recorded verbal communications (meetings and phone calls as described in calendar entries) and written communications between Mr. Cubitt and the public office holders implicated by the summary information/grounds provided by the Complainant, namely, Mayor Horwath's Office; former GM Jason Thorne; Angie Burden, currently GM, Community Services; and former GM, Health and Safety Communities. Counting email chains as single communications, we reviewed 71 communications involving former GM Thorne, 29 communications involving the Mayor's Office and 30 communications involving GM Angela Burden for a total of 130 communications or series of communications.¹⁷ Of those, we narrowed those down to 46 communications, which are summarized below.

Emails Potentially Raising Concerns About Lobbying

Mayor Andrea Horwath and Staff of the Mayor's Office

[19] We identified the following communications involving the Mayor's office as potentially constituting lobbying by Mr. Cubitt:

- 2023/7/13 email from Graham Cubitt to Mayor's then Chief of Staff Kara McLean: Further to a recent call between them, Mr. Cubitt confirms that Hamilton is Home's "asks" of the City are to (1) commit to 15% capital funding of Hamilton is Home projects; (2) apply for Ministry of Municipal Affairs and Housing capital on behalf of Hamilton is Home developers; and (3) provide rent supplements in due course.
- 2023/8/11 meeting attended by four Hamilton is Home members (including Graham Cubitt) and three members of the Mayor's Office (including Mayor Horwath). (We have assumed that this meeting was to discuss the goals of Hamilton is Home as described above, i.e., facilitating Hamilton is Home member projects via 15% capital commitment and applying for provincial funding on behalf of the involved developers).
- 2023/11/30 email to Mayor Horwath and her staff inviting them to tour an existing facility of Schlegel Homes and view a presentation regarding a proposed development project consisting of long-term care/retirement facility

¹⁷ Many of the "communications" are comprised of lengthy email strings involving numerous messages back and forth spanning many pages.

(Schlegel), affordable/supportive housing (Indwell), and an on-site teaching facility (Mohawk College).

- 2024/1/3 email from Graham Cubitt to Siri Agrell (then Deputy Chief of Staff, Mayor's Office) providing Hamilton is Home supportive housing project card setting out projects to address the homelessness crisis.
- 2024/1/10 Meeting between Graham Cubitt and Siri Agrell re: homelessness strategy (supportive housing).
- 2024/1/11 Graham Cubitt email to Siri Agrell: "Thanks for meeting with us yesterday to discuss supportive housing and the exit strategy to our encampment crisis... We're fully committed as Hamilton is Home members to building out the supportive housing options that are needed... We look forward to following up with you and the Mayor shortly on advancing to next steps."
- 2024/2/2 Graham Cubitt email to Siri Agrell providing theoretical budget for Hamilton is Home projects using municipal debt capacity.
- 2024/2/26 letter from Graham Cubitt on behalf of Hamilton is Home to Mayor Horwath. Letter references General Issues Committee decision voting against staff proposal to make Lake Street South parking lots available for affordable housing on account of concerns about insufficient parking. Mr. Cubitt suggests that plans can be reworked to provide more parking spaces at the proposed sites.
- 2024/3/26 Meeting between Graham Cubitt, Daniela Giulietti (YWCA Hamilton), Justin Lewis, Morgan Stahl, Kara Mclean and Uzma Qureshi regarding revisiting the Hamilton is Home coalition's projects and need for a commitment of municipal contributions through the City of Hamilton's Housing Secretariat.
- 2024/5/28 email from Graham Cubitt to Mayor Horwath and Uzma Qureshi providing draft Hamilton is Home postcard updated to include more projects and rental units. "With the announcement today of the \$357m co-operation agreement, it'd be very timely if this slate of projects could get included in early announcements."
- 2024/5/28 Email chain commenced by Councillor Ted McMeekin forwarding \$357 Million federal funding announcement to Councilor Brad Clark, Graham Cubitt, Mayor Horwath, Justin Lewis, GM Grace Mater, Councillor Nrinder Nann, Councilor Mark Tadeson and Michelle Baird. Graham Cubitt replies that this is great news and adds, "I know Indwell's Acorn Flats project at 311 Robert Street is a prime candidate for this funding program, as it has a building permit ready for pick-up at City Hall, and the Province's commitment is all that's missing to proceed. Has MMAH sent Hamilton any updates on this as Service Manager?"

- 2024/6/12 Graham Cubitt to Uzma Qureshi with invitation to tour Indwell's Acorn Flats or Sacajawea's Gage Ave project with Minister Calandra. Also asking if they can touch base in person over coffee on how they can support Mayor Horwath's efforts in advocating for Ministry of Housing funding re supportive housing.

Former GM Jason Thorne

[20] We identified the following communications involving Mr. Thorne as potentially constituting lobbying by Mr. Cubitt:

- March 2-9, 2016 Group exchange re: 311 Strathearne Avenue development application. Graham Cubitt complains about by Planning and Zoning staff questions posed to Emma Cubitt. He copies Jason Thorne and Councillor Merulla on his email to City planner, indicating that he is making the councilor aware that the building permit for this project -- funded by three levels of government -- is delayed. The issue is resolved before Councillor Merulla responds.
- September 23, 2016 Graham Cubitt to Jason Thorne re: Partnering with City to advance Passive House design standards: "Indwell is pleased to be launching two exciting new affordable housing projects here in Hamilton... we are also looking for ways to drastically reduce utility costs and our environmental impacts through significantly cutting greenhouse gas emissions. To that end, we intend to use the Passive House design standard for our new projects... We would like to formally work with the City of Hamilton on an EIP-funded demonstration project... Indwell will apply for NRCan's Energy Innovation Program funding with the City of Hamilton as a partner... By working together, Indwell can help the City of Hamilton cover the costs of taking leadership on creating the regulations, practices, and industries necessary to enable positive climate impacts for communities across Canada... There is an October 30th deadline for the Energy Innovation Program, so we would love to discuss this opportunity with you at your earliest convenience."
- October 7, 2016 Group exchange initiated by Graham Cubitt re: Indwell's Passive Design proposal. Mr. Cubitt emails Councillor Aidan Johnson following up on a discussion they had when they spoke at "Ted's event" regarding adopting the Passive House design approach for Indwell's new affordable housing projects. Councillor Johnson replies that he is copying Jason Thorne for further action. Jason Thorne replies that CBO Ed VanderWindt and another individual would be the best people to speak to. Mr. Cubitt replies that he already spoke to Ed, who had some good suggestions. What they are looking to do is use the two upcoming affordable housing projects to advance environmentally sustainable building practices using passive design strategies. Councillor Johnson then directs staff to prepare wording for a motion to be brought to Council. Mr. Cubitt replies with suggested text for the motion as follows: "*Be it resolved that the City of Hamilton endorses Indwell Community*

Homes in its efforts to achieve the ambitious targets for environmental sustainability set out in the City of Hamilton's Community Climate Change Action Plan (ratified October 2015), in particular through adopting Passive House design strategies for its upcoming housing projects in Wards 2 & 4. The City anticipates working with Indwell to explore new building technologies, codes, and relevant supporting strategies to enable local and national action on climate change, acknowledging the role of the charitable, private, and public sectors – including research through our universities, Natural Resources Canada, and industry partners. He then indicates “we’ll leave this to the professionals though!” Cllr Johnson responds and indicates the above looks good to him. He expects that staff will have tweaks. He is asking the clerks to liaise on this ASAP and prepare for Wednesday.

- January 26, 2017 Graham Cubitt to Jason Thorne and others inviting them to tour George & Mary’s Tavern (205 Melvin Avenue) before work begins. “As they work together creating sustainable affordable housing, they’d love to share the “before” with them so the “after” fits into better context. It may also provide renewed motivation for their team in understanding the urgency of the housing crisis people face and how what they do each day can enable solutions.” Jason Thorne responds with interest, copying various City staff.
- November 16-24, 2017 Graham Cubitt emails with Jason Thorne and others re: conditional building permit for 500 James Street North. Graham complains regarding interaction with City staff in relation to fees charged to Indwell, there being no mechanism to meet the goal of building 252 low-income units per year and little big-picture understanding of processes, fees, timelines, departments, etc. Jason responds that his department’s development approval function (building, planning, engineering, etc.) operates primarily on a cost recovery basis. He defers to the CBO regarding the specifics of Indwell’s application. Graham replies that he understands the cost-recovery model but disagrees with how it’s applied and they have suggestions on how this model can be re-calibrated so the costs are less. If this is something that isn’t possible through internally amending processes, they can work with councillors on changing the waivers/exemptions so they can achieve their civic goals.
- February 9-13 2018 Graham Cubitt to Jason Thorne and others re: Removing H-holding Provision: By-law #17-152. Graham asks that “H” holding symbol be removed from Site Plan Approval for 500 James. “Without belabouring a concern we raised very early in the planning process, this holding condition should never have been applied to the property related to RSC enforcement. it was the Planner’s excessive caution that created the problem we’re all dealing with now. (As I mentioned to Rob, this should be addressed on a policy level so future files don’t face the same issues.)”
- March 5, 2020 Graham Cubitt email to Jason Thorne. Graham indicates “nice episode of “The Agenda”. Interesting discussion on complex issues”. On the topic of developing new urban density, particularly rental, Graham would love

to connect on an idea that is emerging from their community housing sector. They have come together this week to pitch Minister Tassi and MPs Vaughan and Bratina on an ambitious plan to build affordable housing in Hamilton: seeking \$900M over three years to build 3,000 units. It will take all of them doing their best and the City playing a key role. Before getting too far along, Graham would like to get Jason's insights on a few things and wants to connect when he has a chance.

- July 23, 2020 Graham Cubitt email to Janette Smith (former City Manager), Jason Thorne, Paul Johnson (former GM, Healthy and Safe Communities), c.c.: George Sweetman, Jeff Neven (Indwell) and Edward John (former Director of Housing Services) re: Hamilton is Home. Mr. Cubitt thanks addressees for their involvement in leading the city through COVID. Their community housing sector presented Minister Filomena Tassi (Minister responsible for the Federal Economic Development Agency for Southern Ontario), MP Bob Bratina and MP Adam Vaughan with a plan called "Hamilton is Home" in early March. They are proposing to create 3,000 new affordable apartments in the next three years with majority funding through the National Housing Strategy. He then discusses CMHC's new approach that requires a co-investor, that includes the municipality and private sources. He would like to discuss the strategies Hamilton could take regarding investments like process changes or municipal lands that would not have direct levy impacts but would be significant co-investments in making Hamilton is Home possible. A number of these came from the Housing Division and Planning's current engagements and progressive leadership already in effect. He is asking to meet in early August to discuss this and looks forward to working closely with them and Council "achieving the transformative housing goals set out in our Official Plan and so desperately needed by our community".
- July 31, 2020 Graham Cubitt emails with Councillor Farr, Councillor Nann, Jason Thorne, Paul Johnson and others re: Encampment Solutions. **Email 1:** Mr. Cubitt writes to Councillors Farr and Nann, copying Paul Johnson, regarding encampments impacting Wards 2 & 3, requesting to "connect ... on some immediate/interim and permanent solutions that could emerge." **Email 2:** Paul Johnson replies, "Thanks for the email. Sounds like you have some capacity. We would love to refer folks to your housing immediately." There are some other related emails of acknowledgement and thanks. **Email 3:** Graham then forwards that chain to Jason Thorne and indicates "Thanks for the discussion. We're exploring options and look forward to working with you, the community, and Council on solutions, immediate and longer term."
- October 9, 2020 Graham Cubitt email to Jason Thorne, c.c.: Paul Johnson, Edward John, and George Sweetman. Further to recent discussion regarding Hamilton is Home phasing plan, they are pleased to provide this outline (attached) of the projects that can start development in the next six months (Oct 2020 to March 2021). Great news as there are 10 projects across the city, totalling over 900 affordable housing units. There are two projects under or

ready for construction (155 units), four projects totalling 617 units have been submitted for formal consultation and four projects totalling 176 units will be submitted for formal consultation between Oct 2020 and Feb 2021. The projects address the full spectrum of affordable housing needs of the entire community, including supported housing for the City and CMHC defined priority groups, seniors and working households. Given the mounting crisis and the strategic timelines associated with federal and provincial funding – particularly emerging pandemic-related funds, these projects’ delivery is critical. They are following up on how these projects can be formally identified with the new internal prioritization process Jason had suggested. They are facing the standard developmental stumbling blocks on the frontrunner projects in this first wave, heightening their interest the dedicated team and single point of contact approach. As they work this out with Jason, it would also benefit work they are doing with area MP’s to align CMHC support, conversations with MOE and a refocused environmental process, and community networking. It would be also good to share this progress with Council.

- October 27, 2020 email from Graham Cubitt to Jason Thorne. Mr. Cubitt writes that as Jason has likely heard, CMHC’s new rapid housing initiative was just released today. He is asking Jason if they can talk briefly sometime later this week about a couple projects. They have two or three projects that could likely meet these targets, but would need to find strategic alignment of planning elements in particular. Challenges: need to own the site to score high, need to complete within 12 months of signing contribution agreement, needs to be a conversion or modular, need to have confirmed operating funding.
- December 13, 2020 Graham Cubitt email to Jason Thorne re: Housing initiative. Mr. Cubitt is attaching a concept housing plan budget that he put together for the Commonwealth Games. “Delinked from CWG, maybe it would be helpful in understanding how the City could catalyze significant senior level funding?” This strategy could end the ALC crisis, homelessness and much more. The Province would save their investment in just a few years and this is half of what the RHI allows in per-unit contributions. Mr. Cubitt is indicating it would be great to meet with Jason and Mike Zegeric (GM Finance & Corporate Services) to review the next few years’ possibilities for new projects. Right now, he doesn’t think most in the community housing sector understand the constraints the City has to work within. He also knows that City doesn’t realize the opportunities that could be seized by committing to projects early. CMHC funding is quite available for instance, but it takes municipal commitment which right now always comes late in the project planning. There are also a lot of municipal sites that could be repurposed as housing (and could even stay as municipally-owned). He is not sure who is responsible for them, but it would be great to connect on this and have a list ready for housing funding as it emerges.
- November 10, 2020 emails between Graham Cubitt and Jason Thorne. **Email 1:** The first e-mail is from Graham to Jason indicating he wondered if Jason had

a few minutes this week to talk about the potential for Ministerial Zoning Orders (“MZO”). There are at least two different sites that could fit well with the Rapid Housing Initiative deadlines – particularly if RSCs are in place or not needed – if the zoning was ready. Graham knows Jason talked with Terri Johns about this before and suggested the internal process could be accelerated to make MZO unnecessary, but with the extreme timelines CMHC has imposed, Mr. Cubitt is asking if this is now a better option. The related issue is that they are still running stuck with development planning at lower/management levels not understanding Council and SLT’s commitment to removing barriers to affordable housing. They are struggling to get site plan sign-off for Royal Oak Dairy, for instance, which could impact their ability to add the stables there in to the City’s RHI proposal. Mr. Cubitt is asking if Jason can help fix that delay too. He can take a call at Jason’s convenience. **Email 2:** Jason responds and indicates if Terri wants to call him, she can, but Jason thinks Graham may be mixing up site plan with zoning. MZOs can change zoning, but they do not eliminate the need for site plan. He also needs to say that he doesn’t agree with Graham’s comment about lower/management levels not understanding. They are working extremely hard to support housing projects, but they cannot and will not set aside good planning principles, or ignore site plan requirements to do so. If there is a specific ask being made of Graham by staff that he thinks is unreasonable, then Jason is asking him to please have Terri follow up with him with those details. **Email 3:** Graham then responds and indicates they will connect with Terri on the MZOs. Graham was reading in the paper that this option was discussed at Council last week. He does acknowledge that they are just for zoning, but as the site plan process is where the City has latitude to define the process, it’s where the normal application of good planning principles can be shifted to use different, but equally good principles that can take much less time. Graham appreciates Jason’s defence of staff (he does the same when necessary) but they have continuing examples where the big picture is lost in the meaningless and stubborn adherence to standard practice. Graham will give it a final push this week to try and wrap up the site plan for Royal Oak with Terri’s help, but if they can’t, Graham will give Jason a call. It’s going to impact the City’s RHI potential, otherwise.

- October 8, 2022 Hamilton is Home Roundtable with City organized by Natalie Morgan (Hamilton is Home/Haerko Inc.). Meeting to discuss potential investment/funding options for the 919 HIH-related projects. An agenda with specific topics and summary of development costs for non-profit projects from 2022-2024 is attached.
- November 22, 2022 Hamilton is Home Roundtable with City organized by Natalie Morgan (Hamilton is Home/Haerko Inc.). Agenda includes highlights of previous meeting, HIH potential as advisory for housing roadmap, prioritization of action items, update on key initiatives, provincial and federal announcements, etc.

- December 14, 2022 Hamilton is Home Roundtable with City organized by Natalie Morgan. A 19-p. agenda was attached that includes a housing roadmap, update on key initiatives, etc.
- January 30, 2023 Hamilton is Home Roundtable with City organized by Natalie Morgan. Jason Thorne and Mike Zergarac “not required to attend but they will have these invites as placeholders for the instances where their input/approval is needed.”
- February 23, 2023 Hamilton is Home Roundtable with City. A 5 pp. agenda was attached that included highlights of the Jan 30th meeting, general overview of March 8th meeting, HSIR Committee planning and progress update, affordable housing action items matrix and update on HiH projects for RHI-3.
- May 29, 2023 Hamilton is Home Roundtable with City organized by Natalie Morgan.
- July 19, 2023 Hamilton is Home July Roundtable with City organized by Natalie Morgan. Meeting invite to discuss matters related to affordable housing in Hamilton.
- December 10, 2023 Graham Cubitt email to Councillor Cameron Kroetsh, c.c. Justin Lewis, Jeff Wingard and others re: Development Application. The original e-mail in the chain is from Graham. He is following up on the GIC report approved last week regarding the sites for affordable housing development. Most of the sites have been assessed as viable by the Hamilton is Home coalition and various members are interested in pursuing specific properties. Their input on the potential for 171 Main St E was not requested and before Council accepts this report on Wednesday, Mr. Cubitt is requesting that Council delay this decision until February. During this time, Graham will assist them in determining an opportunity for affordable and rental housing development at this property. Councillor Kroetsch responds indicating he already asked staff to help him with an amendment to just earmark it for affordable housing without delay (not waiting until February). He expects there will be something coming forward at Council, no convincing needed. This email is then forwarded to Jason Thorne.

GM Angela Burden

[21] We identified the following communications with Ms. Burden as potentially constituting lobbying by Mr. Cubitt:

- 2022/07/19 Meeting Angie Burden, Graham Cubitt and Others: “Interim Meeting with HiH – Municipal Strategy for Joint Investment in Affordable Housing” (organized by Haerko Inc., a real estate project management consulting company).

- 2022/10/03 Hamilton is Home Roundtable Meeting with City organized by Natalie Morgan (Hamilton is Home/Haerko Inc.) – Angela Burden, Graham Cubitt and others.
- 2022/11/17 Meeting between Angie Burden, Graham Cubitt and Others re: Indwell Affordable Housing Actions List.
- 2022/11/22 Hamilton is Home Roundtable with City – Angie Burden, Graham Cubitt and others, organized by Natalie Morgan.
- 2022/12/09 Meeting between Angie Burden and Graham Cubitt – no topic specified.
- 2022/12/13 Hamilton is Home Roundtable with City – Angie Burden, Graham Cubitt and others, organized by Natalie Morgan. 2023/01/30 Hamilton is Home Roundtable with City – Angie Burden, Graham Cubitt and others, organized by Natalie Morgan.
- 2023/02/02 Call between Angie Burden and Graham Cubitt re: Touch base.
- 2023/03/08 Hamilton is Home Roundtables with City -- Angie Burden, Graham Cubitt and Others, organized by Natalie Morgan.
- 2023/03/30 Hamilton is Home Roundtable with City -- Angie Burden, Graham Cubitt and Others, organized by Natalie Morgan.
- 2023/05/24 Meeting between Angie Burden and Graham Cubitt re: touch base (in person).
- 2023/05/31 and 2023/06/02 E-mail Chain between Angela Burden and Graham Cubitt. **Email 1:** Graham Cubitt email to Angela Burden. “Thanks again for connecting over coffee last week [May 24, 2023 per calendar entry]. Following up on our conversation, here are two MOUs from St. Thomas and Chatham-Kent attached. These set the framework for how Indwell is working with the respective municipality. Maybe these hold inspiration for how Hamilton could work with allies? **Email 2:** Angela Burden replies, “Jeff and I will review and let’s connect.”
- 2023/06/26-27 and 2023/07/04 Graham Cubitt emails with Michelle Baird, Angela Burden, Jeff Wingard, c.c.: Jeff Neven and Jessica Brand of Indwell re: Connecting on strategic implementation strategies. **Email 1:** Graham Cubitt 2023/06/26 email to Michelle Baird, Angela Burden, Jeff Wingard, cc. others at Indwell. “Angie suggested we try to get together in early July to catch up and review the HiH supportive housing projects, etc.... The City’s key role as Service Manager will be crucial to this strategy as we know MMAH is open to updated investment plans that identify investment needed to create sustained solutions. **Email 2:** Graham Cubitt 2023/06/27 – Graham Cubitt email to

Michelle Baird, cc others: “Thanks for your efforts hosting the meeting tonight... I'm concerned that our Hamilton is Home supportive housing solutions aren't being picked up by City Hall. We haven't heard back from the Mayor's Office yet...but all Councillors have now seen the card and are aware there are solutions available. I also had a very good discussion with MPP Skelly's office, and will be following up with an outline of what's needed from the Province... This is where we need your help as the Service Manager; as per the letter from Minister Clark, they don't find agencies directly, just through the SM. By presenting this joint strategy, we have the best chance of success. I know you're swamped, but we look forward to connecting as soon as possible to help stop the spiral of despair so many are now starting to express.” **Email 3:** Angela Burden 2023/07/04 reply: “Jeff is leading this work from the lens of the secretariat.” She indicates she is directing her staff regarding scheduling a meeting between Indwell, herself, Michelle Baird and Jeff Wingard.

- 2023/07/19 E-mail from Graham Cubitt to Angie Burden, Michelle Baird and Jeff Wingard. “In terms of working on the municipal investment strategy for both the supportive and general affordable units, I’d like to connect with Mike Zergarac (GM, Finance & Corporate Services) on the best way to get a municipal commitment this fall so all the projects can apply for COI, acknowledging that the funds aren’t needed for possibly years. Probably best to raise this at this afternoon’s meeting?”

RESPONSE OF MR. CUBITT

[22] The LR By-law is sparse to non-existent when it comes to procedures that the Lobbyist Registrar is required to follow. On the basis of procedural fairness and analogizing to the City’s Code of Conduct By-law which I administer as the City’s Integrity Commissioner, I believe it is imperative to give the person accused of breaching the LR By-law the particulars of the case against him and an opportunity to respond. Accordingly, my office provided Mr. Cubitt with a summary of the case against him and an opportunity to respond by email on Saturday, August 17, 2024.¹⁸

[23] We received a response on Mr. Cubitt’s behalf from the law firm Ross & McBride LLP on August 30, 2024. His responses are set out with respect to each of the relevant issues in the next section, together with our comments thereon.

¹⁸ He was sent the summaries of, and our preliminary conclusions regarding, each of the emails we had provisionally determined constituted lobbying, in the same format as Appendix “A” of this Report. He was subsequently advised via counsel that his Response did not need to address communications with the Mayor’s Office that we had sent him, as we had satisfied ourselves that at all material times, he was a resident of the City of Hamilton and therefore a “constituent” of the Mayor as per the exemption set out in s. 5. (1)(l) of the LR By-law.

ANALYSIS AND FINDINGS

Issues to be Determined

[24] We determined that Mr. Cubitt has not registered as a lobbyist since the LR By-law took effect on August 1, 2015.

[25] Whether Mr. Cubitt has contravened s. 7. (1) of the LR Bylaw, which requires that a registration be filed in advance of lobbying “public office holders,” requires a determination of the following issues:

1. Was the communication with a public office holder (definition of lobby)?
2. Was the communication on behalf of an individual, employer or organization for whom the person volunteers (definition of lobbyist¹⁹)?
3. Was the communication carried out with goal of advancing a business or financial interest (definition of lobby)?
4. Did the communication relate to one or more of the enumerated subject matters (definition of lobby)?
5. Are there any exemptions that apply to the communications (exemptions to the definition of lobbying)?

Issue 1: Was the communication with a public office holder?

[26] Given that “lobby” under the LR By-law means to communicate with a public office holder under specified circumstances, it must be established that there has been communication with public office holders.

Who is a public office holder?

[27] Under the LR By-law, "**public office holder**" means: (a) a member of Council and any person on his or her staff; and (b) an employee of the City *who is a member of the City's Senior Management Team* [emphasis added].

[28] As set out at footnote 11, the City’s Senior Management Team is now referred to as the City’s Senior Leadership Team, which is comprised of the City Manager; the General Manager, Community Services; the General Manager, Finance and Corporate Services, the General Manager, Health and Safety Communities; the General Manager, Planning and Economic Development; the General Manager, Public Works; the Executive Director, Human Resources; and the Director, Communications and Strategic Initiatives.

[29] I note that the definition of “public officer holder” in Part V.1 (Accountability and Transparency) of the *Municipal Act, 2001* is as follows:

¹⁹ There are exemptions to the definition of lobbyist; however, none of them apply.

“public office holder” means,

- (a) a member of the municipal council and any person on his or her staff,
- (b) an officer *or employee* of the municipality,
- (c) a member of a local board of the municipality and any person on his or her staff,
- (d) an officer, director or employee of a local board of the municipality, and
- (e) such other persons as may be determined by the municipality who are appointed to any office or body by the municipality or by a local board of the municipality.
[Emphasis added]

[30] The power to exclude persons falling within subsections (a) to (d) above is not expressly included in the discretion of the municipality under s. 223.9(2) of the Act to craft lobby registry by-laws; however, given that the Act generally affords the municipalities broad discretion to regulate lobbying, including the discretion not to regulate lobbying at all, I will use the definition set out in the LR By-law.

Has there been communication with public office holders?

[31] Regarding section (a) of the definition of “public office holder,” being a member of Council and any person on his or her staff,” Mr. Cubitt has communicated with Mayor Horwath, members of her staff as well as various councillors such as Councillors McMeekin and Kroetsch, and former Councillors Johnson and Merulla.

[32] Regarding section (b) of the definition, being “an employee of the City who is a member of the City's Senior Management Team,” Mr. Cubitt has communicated with the GM, Healthy and Safe Communities/Community Services and the former GM, Planning & Economic Development.

Mr. Cubitt's Response

[33] Mr. Cubitt acknowledges that he has communicated with public office holders.

Conclusion regarding Issue 1

[34] I conclude that there has been communication with public office holders.

Issue 2: Was the communication on behalf of an individual, employer or organization for whom the person volunteers?

[35] The evidence indicates that Mr. Cubitt has communicated on behalf of Indwell, Flourish, Hamilton is Home members and a subset of Hamilton is Home members, namely, YWCA Hamilton, Sacajawea, Indwell, and Good Shepherd. As indicated above, it is our understanding based on corporate websites and our review of the communications that Mr. Cubitt is an employee of Indwell (Director of Projects & Development), an employee of Flourish (President) and a volunteer with the Hamilton is Home (Chair).

Mr. Cubitt's Response

[36] Mr. Cubitt's Response provides:

Please be advised that Mr. Cubitt is solely an employee of Indwell and does not advocate with the city of Hamilton on behalf of Flourish or Invizij Architects Inc., nor does he receive any direct or indirect compensation as chair of the Hamilton is Home Coalition... Hamilton is Home is a coalition of non-profits and charities of which Indwell is a member. Indwell does not receive any compensation, direct or indirect from this membership. Hamilton is Home is solely an information sharing and mutual support resource for addressing homelessness, supportive housing and affordable housing development.

[37] The discrepancy appears to relate to Flourish's apparent status as a consulting arm of Indwell rather than a separate non-for-profit corporation and the suggestion that Mr. Cubitt is not marketing Flourish's consulting services to Hamilton, which we would agree with.

Conclusion regarding Issue 2

[38] Based on the above, I conclude:

- Mr. Cubitt would be characterized as an in-house lobbyist on behalf of Indwell to the extent that communications on behalf of this not-for-profit corporation can be characterized as lobbying;
- Taking Mr. Cubitt's evidence that Indwell is not financially compensated for his communications on behalf of YWCA Hamilton, Sacajewea, Good Shepherd and other Hamilton is Home developers, Mr. Cubitt would be characterized as a volunteer lobbyist as opposed to a consultant lobbyist to the extent that his communications on behalf of these developers can be characterized as lobbying.

[39] Mr. Cubitt has on occasion intervened following City planner inquiries of his wife Emma Cubitt in her capacity as a private sector architect (Invizij Architects Inc.) engaged on Indwell projects; however, these communications appear to be directed to the interests of Indwell in expediting projects. While Emma Cubitt and Invizij may indirectly benefit from Indwell projects being expedited, it cannot be said that Mr. Cubitt's communications are "on behalf of" Emma Cubitt or Invizij per se. If I am wrong in respect of communications being made on behalf of Invizij, then Mr. Cubitt would be characterized as a voluntary unpaid lobbyist for Invizij to the extent that his communications on its behalf can be characterized as lobbying.

[40] In summary, to the extent that Mr. Cubitt's communications can be characterized as lobbying, he qualifies as an in-house lobbyist and/or voluntary unpaid lobbyist.

Issue 3: Were the communications were carried out with the goal of advancing a business or financial interest?

[41] The definition of “lobby” includes communication on seven enumerated subject matters “with the goal of advancing a business or financial interest.”

Do Indwell, Flourish, Hamilton is Home and their respective members have business or financial interests?

[42] As noted above, Indwell, Flourish, Hamilton is Home and subset members YWCA Hamilton, Sacajawea, Indwell, and Good Shepherd are not-for-profit entities. There arises a preliminary issue of whether it is possible for a not-for-profit entity to have a business or financial interest. In my opinion, the answer is yes. Although Indwell is a charitable organization and Hamilton is Home is a coalition that includes Indwell along with six similar organizations, it is clear that these organizations do have business and financial interests if only in the sense that charitable organizations need revenue and property to accomplish their charitable objectives.²⁰

[43] This is particularly so in the context of not-for-profit real estate development (Indwell) or non-profit real estate development consulting (Flourish). The volume and reach of the work of these entities bears this out.

[44] In the reporting period ending 2023-03-31, Indwell reported to Canada Revenue Agency²¹ revenues of \$28,343,059.00, of which \$15,578,126.00 (54.96%) was derived from government funding. In the same period, its expenses totalled \$14,755,267.00 with \$12,973,873 (97.93%) of this amount being allocated to charitable programs and \$1,251,161.00 (8.48%) being allocated to management and administration. Total compensation for all positions was \$6,796,430, professional and consulting fees were \$115,260 and compensated full-time positions included 8 in the \$80,000 to \$119,999 category and 2 in the \$120,000 to \$159,000 category. On March 22, 2024, it was announced that Indwell had launched the Hope & Homes Hamilton Community Bond to raise \$5 Million in financing to launch four affordable/supportive projects.²²

[45] Neither “business interest” nor “financial interest” are defined in the By-law and we were unable to find any overarching definitions of these terms other than highly context-specific interpretations; however, I note that “business” may be used to describe the activities of non-profit corporations as well as for-profit corporations. For example, the Cornell University Legal Information Institute legal dictionary provides that

A business involves a natural person or entity performing an activity or trade with the intent of making a profit. The activity or trade may be

²⁰<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/fundraising-registered-charities-guidance.html>.

²¹<https://www.canada.ca/en/revenue-agency/services/charities-giving/list-charities/list-charities-other-qualified-donees.html>.

²² “Indwell to Create 140 Units of Supportive Housing in Hamilton, Ontario Using Innovative Financing Strategy,” Financial Post/Global Newswire, March 22, 2024: <https://financialpost.com/globe-newswire/indwell-to-create-140-units-of-supportive-housing-in-hamilton-ontario-using-innovative-financing-strategy>.

commercial, industrial, professional, or otherwise. A business commonly involves providing goods or services for the public while operating at a profit.

Nonetheless, making a profit is not the only criterion to establish the existence of a business. Non-profit organizations may also undertake a business without the intention of making a profit. Instead, they may pursue a charitable or social purpose or any other type of organizational mission.²³

[46] The *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15 additionally refers to business carried out by not-for-profit corporations, although the term is not defined.

[47] Since “business or financial interest” are not defined in the By-law and there is no clear definition, these terms should be interpreted in light of the overall purpose of the By-law and the Accountability and Transparency provisions of the *Municipal Act, 2001*.

[48] According to the City’s website, the Lobbyist Registry is an accountability and transparency tool designed to allow members of the public to clearly see who is lobbying the City of Hamilton’s public office holders. The Lobbyist Registry contains a subject matter category for affordable housing as well as planning and development and economic development. We note that representatives of various other not-for-profit entities have filed registrations under the affordable housing category (as well as other categories).

[49] Additionally, the LR By-law is clearly drafted on the assumption that non-for-profit entities may have business or financial interests. This assumption is demonstrated by the following:

- The fact of there being a “voluntary unpaid lobbyist” category. It is reasonable to assume this is designed to capture lobbying on behalf of non-profit entities since it would be unusual for an individual to lobby for a for-profit entity on an unpaid basis, other than perhaps as an unpaid intern who is lobbying for work experience. Since the By-law definition of lobby is defined as communication with the goal of advancing a business or financial interest, it must be assumed that non-profit entities may have business or financial interests.
- The s. 5(1)(k) lobbying exemption for communication regarding a business or financial interest by *not-for-profit businesses* or other not-for-profit entity where such business or entity has no paid staff. In my view, this exemption contemplates that not-for-profit businesses and other not-for-profit entities may have business or financial interests – and that this is the case regardless of whether or not the non-profit entity has paid staff. While the wording is such that this exemption could be read as exempting *communication by a not-for-profit entity with no paid staff* communicating regarding a business or financial interest of *another* individual, business or entity, this would not fit within the

²³<https://www.law.cornell.edu/wex/business#:~:text=A%20business%20involves%20a%20natural,industrial%2C%20professional%2C%20or%20otherwise.>

overarching framework of the LR By-law that imposes requirements, restrictions and penalties on *individuals*.

- The s. 5(1)(j) lobbying exemption for communication for or against a policy or program that state a position where the primary focus is broad community benefit or detriment... and where that position would have no direct, indirect or perceived benefit to a business or financial interest of the individual, business or other entity on whose behalf the communication is undertaken. In my view, this exemption contemplates the possibility of communications advancing public and private interests at the same time. This exemption makes it clear that lobbying includes public policy related communication even if the benefit to the individual, business or other entity is only indirect.

[50] For all of the above reasons, I find that Indwell, Flourish, Hamilton is Home and various members of Hamilton is Home such as YWCA Hamilton, Sacajawea, Indwell, and Good Shepherd have business and financial interests. It goes without saying that Invizij Architects Inc. also has business and financial interests.

Was there communication “with the goal of advancing a business or financial interest” in this case?

[51] Mr. Cubitt has been upfront with public office holders regarding his “asks,” i.e., goals on behalf of Indwell, Flourish and Hamilton is Home inclusive of its member organizations. These are (1) that planning and development permits and approvals for Indwell projects be expedited; and (2) that municipal resources, whether it be money, land or political capital, be directed to Indwell and Hamilton is Home members to expedite or ensure the viability of their projects.

[52] While one of the ultimate goals of Mr. Cubitt, Indwell, Flourish, Hamilton is Home and member organizations or indeed Invizij Architects Inc. is undoubtedly to provide more supports for Hamilton’s homeless or otherwise vulnerable populations, which is laudable, it is evident that these organizations have a business or financial interest of maximizing support for their initiatives as opposed to others in their field and in them receiving the associated federal, provincial and municipal resources and municipal permits/approvals for this purpose rather than others. If these organizations were content to have support for the homeless and vulnerable provided anywhere or by anyone, non-profit or not, Mr. Cubitt’s asks would be framed much more broadly, not merely directed to the projects of entities which he has an interest in advancing.

Mr. Cubitt’s Response

[53] While Mr. Cubitt’s communications are characterized as reflecting advocacy in good faith for affordable and supportive housing, there is no specific suggestion that the business and financial interests of Indwell or other Hamilton is Home developers are not at play.

Conclusion regarding Issue 3

[54] I am satisfied that there have been communications going beyond mere general advocacy which had the clearly articulated goal of advancing specific business or financial interests of Indwell/Flourish, Hamilton is Home and its member organizations.

Issue 4: Was the communication about one or more of the enumerated subject matters?

[55] In order to constitute lobbying, the communication must be on, i.e., regarding or pertaining to, at least one of the following subject matters:

- (i) the development, introduction, passage, defeat, amendment or repeal of a City by-law, bill or resolution on any matter;
- (ii) the development, approval, amendment or termination of a City policy, program, directive, guideline, including but not limited to a service delivery model;
- (iii) the purchase of goods, services or construction and the award of a contract by the City;
- (iv) the approval, approval with conditions, or refusal of an application for a service, grant, planning approval, permit or other licence or permission by the City;
- (v) the award of any financial contribution, grant or other financial benefit by the City;
- (vi) the transfer to or from the City of any interest in or asset of any business, enterprise or institution;
- (vii) to arrange a meeting between a public office holder and any other person on any of the subject matters listed in paragraphs (i) to (vi) inclusive; or
- (viii) the hiring, promoting, demoting, disciplining or terminating or an employee of the City who is a member of the City's Senior Management Team (not necessary to establish a goal of advancing a business or financial interest for this subject matter).

[56] I will use the following shorthand to refer to these subject matters: (i) legislation (2) policy/program change (iii) procurement; (iv) permits/approvals; (v) financial contribution; (vi) asset transfer; (vii) prescribed meeting; and (viii) Senior Management Team change.

[57] Having developed and/or planned multiple projects in Hamilton on behalf of Indwell and Flourish, Mr. Cubitt has an extensive history of communicating with Hamilton public office holders and staff in relation to permits and approvals. In recent years, with the issues of housing and homelessness taking on more prominence, Mr. Cubitt's communications with the City have evolved to include considerations of housing policy, including the allocation of City funds, tangible assets and political capital and processes and policies to make it easier and less expensive for affordable housing developers to obtain permits and approvals related to development and construction.

[58] I find based on my extensive review of Mr. Cubitt's communications with Hamilton public office holders that they generally relate to legislation, policy/program change, permits/approvals, financial contributions, asset transfer and prescribed meetings. Regarding legislation, a clear example is when Mr. Cubitt communicated with Mayor Horwath urging her to find a workaround in relation to the defeat of the staff proposal to make available parking lots on Lake Street South in Stoney Creek available for affordable housing. Regarding policy, there are many examples of Mr. Cubitt urging public office holders to act on affordable housing including expediting processes for planning and approvals. There are numerous communications with respect to permits and approvals for Indwell planning and development applications. Not unexpectedly, many of Mr. Cubitt's communications with former GM Jason Thorne relate to permits/approvals. With respect to financial contribution and asset transfer, Mr. Cubitt has urged public office holders to provide a 15% capital commitment towards Hamilton is Home projects, which could take various forms including cash or lease/sale of land.

Mr. Cubitt's Response

[59] Mr. Cubitt's response does not address this issue.

Conclusion regarding Issue 4

[60] I find that there have been communications on the enumerated subject matters and as such this final element of the definition of lobbying is met.

Issue 5: Are there any applicable lobbying exemptions that apply?

Lobbying Exemptions

[61] Under s. 5(1) of the By-law, there are numerous enumerated circumstances where communications do not constitute lobbying notwithstanding that they are made to public office holders on the enumerated subject matter with the goal of advancing a business or financial interest. Listed below are short form descriptions of the various exemptions along with an example of Mr. Cubitt's communications that fall under the exemption or reasoning as to why the exemption does not apply.

- council or committee delegations – e.g., Mr. Cubitt's various delegations to Committees of Council;
- public meeting or process communications – e.g., Mr. Cubitt's attendances at Committee of Adjustment;
- requests for information – some of Mr. Cubitt's communications could be characterized as requests for information (however, we generally view them as requests for policy change);
- compliments/complaints – Mr. Cubitt's various complaints about questions posed by planning and zoning staff (however, sometimes they are requesting a policy change);

- application of legislation to a particular individual or entity – possible characterization of some communications (they generally go further);
- implementation or administration of policy or program with regard to a particular individual or entity – same as above;
- personal matter of a particular individual or entity that does not otherwise fall within the definition of lobbying – n/a (I view this as applying to non-business and non-financial interests such as those related to familial ties or other personal sentimental matters);
- routine questions or information exchanges on proposed or pending applications – many of Mr. Cubitt’s communications copied to former GM Jason Thorne fall into this category;
- in the normal course of the approval process – e.g., Mr. Cubitt’s meetings with Jason Thorne and others for normal course development/planning review consultation meetings and hearings;
- regarding planning and development applications with an employee who has a role in the application review/development agreement process – e.g., Mr. Cubitt’s various communications with Jason Thorne regarding Indwell’s pending projects;
- procurement process – Housing Secretariat Director Justin Lewis indicated that the Affordable Housing Project Development Stream obviated the need for City to tender projects; however, we did not characterize any of the communications we reviewed as relating to a procurement process;
- in direct response to a written request from a public office older – e.g., 2023/6/23 email from Mr. Cubitt confirming Mayor’s belief that meeting scheduling is underway in response to a third-party inquiry (notwithstanding that the email does contain a further “plug” for the projects of YWCA Hamilton, Sacajawea, Indwell, and Good Shepherd);
- City-initiated consultative meetings – e.g., Mr. Cubitt’s communications with GM Angela Burden regarding meetings organized by her department;
- policy-related and community-focused where no direct, indirect or perceived benefit to the individual or entity on whose behalf the communication is undertaken – e.g., Mr. Cubitt’s general statements on affordable housing such as his congratulations letter to Mayor Horwath;
- regarding a business or financial interest by not-for-profit businesses or other not-for profit entity where such entity has no paid staff – possibly applicable to Hamilton is Home, although the participants are advancing the interests of their member organizations;

- by a constituent regarding the constituent’s business or financial interest – this exemption applies in respect of communication with the Mayor’s office on behalf of Indwell, Flourish and Hamilton is Home since these organizations are entities located in Hamilton (with respect to the Mayor, constituent is defined as including an owner or operator of a business or other entity located in the City of Hamilton).

[62] In addition to the exemptions under s. 5(1), there is an exemption whereby “the Lobbyist Registrar may exempt lobbying from some or all of the requirements of this By-law if he or she is satisfied *in advance* by a lobbyist that registration could reasonably be expected to prejudice the economic interests of the City of Hamilton or the competitive position of the City of Hamilton” [*emphasis added*]. I have determined that given that there is a wide range of communication that is already either exempted or falls outside of the definition of lobbying, which includes communication in response to a written request from a public office holder, this exemption should not apply. Additionally, for the purpose of this inquiry regarding past communications, Mr. Cubitt has not met the requirement of satisfying the Lobbyist Registrar “in advance” of any proposed communications.

[63] In summary, I have found that of the 130 communications reviewed, 84 either qualified for an exemption (the bulk of communications) or did not meet the definition of lobbying. As set out under “Investigation,” we provided 46 emails to Mr. Cubitt for his response that we had preliminarily determined constituted lobbying which did not fall within any of the numerous exemptions provided in the LR By-law.

Mr. Cubitt’s Response

Section 5(1) of the LR By-law

[64] It is contended on behalf of Mr. Cubitt that s. 5(1) exemptions apply to all of the communications we identified as constituting lobbying. Specifically, Mr. Cubitt relies on the following exemptions:

- “City-initiated community collaboration” (apparent reference to s. 5(1)(i))
- “Only providing general information for proposed grants, projects, or developments” (apparent reference to s. 5(1)(f)(i))
- “Communicating in the normal course of the application process” (apparent reference to s. 5(1)(f)(ii))
- “Registering a complaint regarding a particular service that impacts his business” (apparent reference to s. 5(1)(d)); and
- “Any and all such exemptions as is permitted”

[65] With respect to overall approach, Mr. Cubitt’s Response provides:

The analysis in the preliminary inquiry provides a needlessly restrictive and onerous application of the exemptions to Mr. Cubitt's correspondence. All communications were made in good faith with the intention of supporting the community in the face of a housing and encampment crisis and should not be unnecessarily broadened to go beyond their intent or effect as they clearly fall in line with what is permitted in section 5(1).

[66] The only exemption elaborated upon by Mr. Cubitt's counsel is that for City-initiated community collaboration. In this regard, the Response provides:

All meetings with Mr. Cubitt where the City of Hamilton was present were open and/or known to other members of the Community across different industries. Hamilton is Home is part of a coalition of organizations that support affordable and sustainable housing, all of whom are invited to attend any meeting with the City. Meetings are also open to Nonmembers who are often present, including organizations in the finance industry, Hamilton Coalition of Indigenous leaders, non-member Non-profit organizations, and other groups and members of the community who advocate for housing issues such as sustainable and affordable housing policies. As these meetings were open and/or known by other members in the community, they are not included as lobbying stated in section 5(1)(a).

Furthermore, Mr. Cubitt, on behalf of these charitable organizations, has done a lot of work in support of affordable and supportive housing and has become a leading expert on addressing issues regarding the housing and encampment crisis. As such, members of the City Council, City staff, and the Mayor's office invite Mr. Cubitt and groups like Hamilton is Home to participate in conversations and create plans on how to properly address these issues for the benefit of the Hamilton community.

The Mayor's office has, in fact, created an open initiative through the Housing Secretariat for organizations to collaborate with various City departments and stakeholders with the intent of driving meaningful change in Hamilton's housing landscape.¹ The emails from Mr. Cubitt providing such input or requests are made in good-faith in response to such initiatives which are, by definition, City-initiated, and are therefore not considered lobbying under section 5(1)(i). Further to these open initiatives, Mr. Cubitt has received direct invitations to give input on matters such as the encampment crisis from staff in the City's Housing Division.

Thus, the communications between public officials and Mr. Cubitt as a stakeholder to these issues regarding changes in housing policies and developments are not only initiated by the City, but encouraged for the benefit of the community, whether open or directed, and are not considered to be lobbying under section 5(1)(i). All communications by our client were made in good faith with the intention of supporting the community as a whole in the face of a housing and encampment crisis.

[67] Based on the above, taken in combination with the evidence of Housing Secretariat Director Justin Lewis, I am prepared to give Mr. Cubitt the benefit of the doubt with respect to the roundtable meetings of Hamilton is Home as falling within the s. 5(1)(i) exemption for “City-initiated consultative meetings and processes where an individual is participating as a stakeholder” notwithstanding that the meetings appear to be the brainchild of Mr. Cubitt and were not organized by anyone at the City.

[68] As set out above, the Response further argues that Mr. Cubitt is an affordable/supportive housing expert whose views are frequently sought out by public office holders such that all of his communications with public office holders on this topic should be regarded as exempted City-initiated collaboration. Given that there are specific exemptions for “communication directly related to those City-initiated consultative meetings and processes where an individual is participating as a stakeholder” (s. 5(1)(i)) and communication “in direct written response to a written request from a public office holder” (s. 5(1)(h)), both of which are framed narrowly, I find no basis for finding that Mr. Cubitt’s communications generally ought to be exempted on the basis of the regard in which Mr. Cubitt asserts he is held by Hamilton public office holders or certain of them.

[69] With respect to the other exemptions relied on, namely s. 5(1)(f)(i) (general information), s. 5(1)(f)(ii) (normal course communications) and s. 5(1)(d) (complaints), I do not agree that my application of these exemptions is needlessly restrictive. If communication in these areas extends into the realm of policy-making, which I find it does, I do not believe it is asking too much of Mr. Cubitt that he be asked to file a lobbying registration in relation to the policy asks he is making of public office holders.

Section 5(2) of the LR By-law

[70] Mr. Cubitt further relies on s. 5(2) whereby the Lobbyist Registrar may exempt lobbying from some or all of the requirements of this By-law if he or she is satisfied in advance by a lobbyist that registration could reasonably be expected to prejudice the economic interests of the City of Hamilton or the competitive position of the City of Hamilton. It is submitted on behalf of Mr. Cubitt as follows:

Hamilton is Home is a reputable group known for providing charitable support for those suffering from homelessness and unable to afford housing. They are a vital part of the community’s efforts in solving the current housing crisis. By narrowing the scope of lobbying exemptions and exclude [sic] our client’s communications that are made in good faith to support the community would be onerous and counterproductive to the City’s efforts, and if suspended, would prevent our client from participating in the conversation going forward, thereby negatively impacting both their competitive and economic interests, respectively.

[71] As set out in the previous section, there are many situations in which communicating on policy and legislative change is permissible. These include responding to written requests from public office holders and participating in City-initiated consultative processes, which I find that Hamilton is Home roundtables effectively have become. To the extent that these meetings are not

City-initiated, I am prepared to exempt Hamilton is Home meeting participants from s. 7(1)(d) of the By-law, which requires lobbyists to provide the names of the individuals who will be lobbied given that the public office holders in attendance would not always be known in advance to the participants. I otherwise do not find the requirement to register to be so onerous as to prejudice the economic interests of the City since registrations are valid for one year and there is no fee to file a registration or return.

Conclusion regarding Issue 5

[72] I have accepted Mr. Cubitt's submission that they should not include the roundtable meetings of Hamilton is Home, past, present or future. I find, however, that the emails summarized in Appendix "A" constitute lobbying for which there is no exemption in the LR By-law, as explained in greater detail following each communication summary in Appendix "A".

CONCLUSIONS REGARDING THIS INQUIRY

[73] I conclude that Mr. Cubitt has lobbied Hamilton public office holders on multiple occasions without registering as a lobbyist on the Lobbyist Registry in advance of doing so or at all in the 9 year since the Hamilton Lobbyist Registry By-law came into effect, in violation of s. 7. (1) of that By-law. The communications that constitute lobbying include communications with GM Angela Burden and former GM Thorne advocating legislative/policy changes including relaxation of rules and allocation of City resources. A complete list of the communications that constitute unexempted lobbying in respect of which I have found that Mr. Cubitt breached the LR By-law is found at Appendix "A".

APPROPRIATE PENALTY

[74] Section 9(1) provides that the Lobbyist Registrar *may* prohibit an individual from lobbying, as follows, if the Lobbyist Registrar finds that the individual has contravened any of the provisions of this By-Law:

- (a) For 30 days for a first contravention;
- (b) For 60 days for a second contravention;
- (c) For a period of time longer than 60 days as determined by the Lobbyist Registrar for a third or subsequent contravention.

[75] Pursuant to s. 9(2), when the Lobbyist Registrar prohibits an individual from lobbying, the Lobbyist Registration shall:

- (a) Notify the individual and all public office holders of the prohibition and the reason or the prohibition in such manner as the Lobbyist Registrar determines;
and

(b) Post the prohibition and the reason for the prohibition on the City's website.²⁴

[76] Section 5(2) of the LR By-law provides:

The Lobbyist Registrar may exempt lobbying from some or all the requirements of this By-law if he or she is satisfied in advance by a lobbyist that registration could reasonably be expected to prejudice the economic interests of the City of Hamilton or the competitive position of the City of Hamilton.

[77] Although it appears that Mr. Cubitt's unregistered lobbying has been ongoing over a period of many years, this is the first finding of a contravention to my knowledge. The City's economic interests in seeing the affordable housing projects of Indwell and other Hamilton is Home members materialize also must be considered. If Mr. Cubitt is prohibited from lobbying for 30 days, the City may be hamstrung in responding to changing circumstances; however, the City is not precluded from making a written request to Mr. Cubitt for his input on housing matters as necessary as his response to same would not constitute lobbying. I acknowledge that some of the instances of prohibited lobbying are dated, that the LR By-law is complex and that Mr. Cubitt has laudable goals. Ultimately, however, he operates a multi-million dollar "business" (in the words of his counsel) whose workers and for-profit service providers, not all at arm's length, stand to benefit financially from the political and economic resources of the City as do the other developers being assisted by Mr. Cubitt. There is no blanket exemption for not-for-profit entities, there are numerous other housing providers and developers who have duly filed registrations under the Lobbyist Registry "affordable housing" category. This is a simple step that can be completed annually at no cost. In all the circumstances, I find that a 30-day penalty is appropriate.

CONCLUSIONS REGARDING THE COMPLAINT

[78] I have found that Graham Cubitt violated Section 7(1) of the LR Bylaw which prohibits lobbying without registration as such on the Lobbyist Registry. Mr. Cubitt is prohibited from lobbying for 30 days. This prohibition period will commence on the date of the Hamilton Council meeting at which this Report is tabled.

[79] If Mr. Cubitt intends to engage in further lobbying as he has undertaken over the past 9 years, I urge him to register as a lobbyist pursuant to the LR By-law.

[80] This concludes my investigation.

Respectfully Submitted,



David G. Boghosian,
Lobbyist Registrar,
City of Hamilton

²⁴ This report is being provided to Council for information purposes only as decisions of the Lobbyist Registrar are not subject to Council review as is the case with respect to recommendations of the Integrity Commissioner: see s. 9. (1), LR By-law.

APPENDIX “A”

SUMMARY OF COMMUNICATIONS CONSTITUTING LOBBYING FOR WHICH NO EXEMPTION TO REGISTRATION APPLIES

Former GM Jason Thorne

-March 2-9, 2016 Group exchange re: 311 Strathearne Avenue development application. Graham Cubitt complains about by Planning and Zoning staff questions posed to Emma Cubitt. He copies Jason Thorne and Councillor Merulla on his email to City planner, indicating that he is making the councilor aware that the building permit for this project -- funded by three levels of government -- is delayed. The issue is resolved before Councillor Merulla responds.

- This is lobbying because Mr. Cubitt is communicating with two public office holders (Jason Thorne and Councillor Merulla) regarding a pending permit application.
- While an exemption may apply with respect to Jason Thorne given his role in dealing with planning and building matters, the communication with Councillor Merulla for the purpose of expediting the issuance of the permit does not fall under any exemption.

- September 23, 2016 Graham Cubitt to Jason Thorne re: Partnering with City to advance Passive House design standards: “Indwell is pleased to be launching two exciting new affordable housing projects here in Hamilton... we are also looking for ways to drastically reduce utility costs and our environmental impacts through significantly cutting greenhouse gas emissions. To that end, we intend to use the Passive House design standard for our new projects... We would like to formally work with the City of Hamilton on an EIP-funded demonstration project... Indwell will apply for NRCan’s Energy Innovation Program funding with the City of Hamilton as a partner... By working together, Indwell can help the City of Hamilton cover the costs of taking leadership on creating the regulations, practices, and industries necessary to enable positive climate impacts for communities across Canada... There is an October 30th deadline for the Energy Innovation Program, so we would love to discuss this opportunity with you at your earliest convenience.”

- This is lobbying because it pertains to a policy change with the goal of advancing a business or financial interest of Indwell (Innovation Program funding).
- No applicable exemption.

-October 7, 2016 Group exchange initiated by Graham Cubitt re: Indwell’s Passive Design proposal. Mr. Cubitt emails Councillor Aidan Johnson following up on a discussion they had when they spoke at “Ted’s event” regarding adopting the Passive House design approach for Indwell’s new affordable housing projects. Councillor Johnson replies that he is copying Jason Thorne for further action. Jason Thorne replies that CBO Ed VanderWindt and another individual would be the best people to speak to. Mr. Cubitt replies that he already spoke to Ed, who had some good suggestions. What they are looking to do is use the two upcoming affordable housing

projects to advance environmentally sustainable building practices using passive design strategies. Councillor Johnson then directs staff to prepare wording for a motion to be brought to Council. Mr. Cubitt replies with suggested text for the motion as follows: *“Be it resolved that the City of Hamilton endorses Indwell Community Homes in its efforts to achieve the ambitious targets for environmental sustainability set out in the City of Hamilton’s Community Climate Change Action Plan (ratified October 2015), in particular through adopting Passive House design strategies for its upcoming housing projects in Wards 2 & 4. The City anticipates working with Indwell to explore new building technologies, codes, and relevant supporting strategies to enable local and national action on climate change, acknowledging the role of the charitable, private, and public sectors – including research through our universities, Natural Resources Canada, and industry partners.* He then indicates “we’ll leave this to the professionals though!” Cllr Johnson responds and indicates the above looks good to him. He expects that staff will have tweaks. He is asking the clerks to liaise on this ASAP and prepare for Wednesday.

- This is lobbying because it pertains to the development or introduction of a City resolution with the goal of advancing Indwell’s interest in attracting Natural Resources Canada funding for projects utilizing Passive House design strategies.
- No applicable exemption.

-January 26, 2017 Graham Cubitt to Jason Thorne and others inviting them to tour George & Mary’s Tavern (205 Melvin Avenue) before work begins. “As they work together creating sustainable affordable housing, they’d love to share the “before” with them so the “after” fits into better context. It may also provide renewed motivation for their team in understanding the urgency of the housing crisis people face and how what they do each day can enable solutions.” Jason Thorne responds with interest, copying various City staff.

- This is lobbying because it pertains to a permit/approval matter or the development, approval or amendment of a City policy, directive or guideline, i.e., expediting permits and approvals for affordable housing.
- This communication goes beyond communication “restricted to providing general information on an application” per exemption 5(f)(i).

-November 16-24, 2017 Graham Cubitt emails with Jason Thorne and others re: conditional building permit for 500 James Street North. Graham complains regarding interaction with City staff in relation to fees charged to Indwell, there being no mechanism to meet the goal of building 252 low-income units per year and little big-picture understanding of processes, fees, timelines, departments, etc. Jason responds that his department’s development approval function (building, planning, engineering, etc.) operates primarily on a cost recovery basis. He defers to the CBO regarding the specifics of Indwell’s application. Graham replies that he understands the cost-recovery model but disagrees with how it’s applied and they have suggestions on how this model can be re-calibrated so the costs are less. If this is something that isn’t possible through internally amending processes, they can work with councillors on changing the waivers/exemptions so they can achieve their civic goals.

- This is lobbying as Mr. Cubitt is requesting a change to the City's policies regarding development approval fees.
- No applicable exemption.

-February 9-13 2018 Graham Cubitt to Jason Thorne and others re: Removing H-holding Provision: By-law #17-152. Graham asks that "H" holding symbol be removed from Site Plan Approval for 500 James. "Without belabouring a concern we raised very early in the planning process, this holding condition should never have been applied to the property related to RSC enforcement. it was the Planner's excessive caution that created the problem we're all dealing with now. (As I mentioned to Rob, this should be addressed on a policy level so future files don't face the same issues.)"

- This is lobbying as it relates to the applicability of holding provisions on a policy level.
- No applicable exemption.

-March 5, 2020 Graham Cubitt email to Jason Thorne. Graham indicates "nice episode of "The Agenda". Interesting discussion on complex issues". On the topic of developing new urban density, particularly rental, Graham would love to connect on an idea that is emerging from their community housing sector. They have come together this week to pitch Minister Tassi and MPs Vaughan and Bratina on an ambitious plan to build affordable housing in Hamilton: seeking \$900M over three years to build 3,000 units. It will take all of them doing their best and the City playing a key role. Before getting too far along, Graham would like to get Jason's insights on a few things and wants to connect when he has a chance.

- This is lobbying as the goals of Hamilton is Home implicate most or all of the enumerated subject matter.
- No applicable exemption. To the extent that it is communication for or against a policy or program where the primary focus is community benefit, exemption 5(j) is not applicable as the test of no direct, indirect or perceived benefit to a business or financial interest of the individual or entity on whose behalf other communication is undertaken (Indwell and a limited number of community housing developers) is not met.

-July 23, 2020 Graham Cubitt email to Janette Smith (former City Manager), Jason Thorne, Paul Johnson (former GM, Healthy and Safe Communities), c.c.: George Sweetman, Jeff Neven (Indwell) and Edward John (former Director of Housing Services) re: Hamilton is Home. Mr. Cubitt thanks addressees for their involvement in leading the city through COVID. Their community housing sector presented Minister Filomena Tassi (Minister responsible for the Federal Economic Development Agency for Southern Ontario), MP Bob Bratina and MP Adam Vaughan with a plan called "Hamilton is Home" in early March. They are proposing to create 3,000 new affordable apartments in the next three years with majority funding through the National Housing Strategy. He then discusses CMHC's new approach that requires a co-investor, that includes the municipality and private sources. He would like to discuss the strategies Hamilton could take

regarding investments like process changes or municipal lands that would not have direct levy impacts but would be significant co-investments in making Hamilton is Home possible. A number of these came from the Housing Division and Planning's current engagements and progressive leadership already in effect. He is asking to meet in early August to discuss this and looks forward to working closely with them and Council "achieving the transformative housing goals set out in our Official Plan and so desperately needed by our community".

- Same analysis as above.

-July 31, 2020 Graham Cubitt emails with Councillor Farr, Councillor Nann, Jason Thorne, Paul Johnson and others re: Encampment Solutions. **Email 1:** Mr. Cubitt writes to Councillors Farr and Nann, copying Paul Johnson, regarding encampments impacting Wards 2 & 3, requesting to "connect ... on some immediate/interim and permanent solutions that could emerge." **Email 2:** Paul Johnson replies, "Thanks for the email. Sounds like you have some capacity. We would love to refer folks to your housing immediately." There are some other related emails of acknowledgement and thanks. **Email 3:** Graham then forwards that chain to Jason Thorne and indicates "Thanks for the discussion. We're exploring options and look forward to working with you, the community, and Council on solutions, immediate and longer term."

- Same analysis as above.

-October 9, 2020 Graham Cubitt email to Jason Thorne, c.c.: Paul Johnson, Edward John, and George Sweetman. Further to recent discussion regarding Hamilton is Home phasing plan, they are pleased to provide this outline (attached) of the projects that can start development in the next six months (Oct 2020 to March 2021). Great news as there are 10 projects across the city, totalling over 900 affordable housing units. There are two projects under or ready for construction (155 units), four projects totalling 617 units have been submitted for formal consultation and four projects totalling 176 units will be submitted for formal consultation between Oct 2020 and Feb 2021. The projects address the full spectrum of affordable housing needs of the entire community, including supported housing for the City and CMHC defined priority groups, seniors and working households. Given the mounting crisis and the strategic timelines associated with federal and provincial funding – particularly emerging pandemic-related funds, these projects' delivery is critical. They are following up on how these projects can be formally identified with the new internal prioritization process Jason had suggested. They are facing the standard developmental stumbling blocks on the frontrunner projects in this first wave, heightening their interest the dedicated team and single point of contact approach. As they work this out with Jason, it would also benefit work they are doing with area MP's to align CMHC support, conversations with MOE and a refocused environmental process, and community networking. It would be also good to share this progress with Council.

- Same analysis as above.

-October 27, 2020 email from Graham Cubitt to Jason Thorne. Mr. Cubitt writes that as Jason has likely heard, CMHC's new rapid housing initiative was just released today. He is asking Jason if they can talk briefly sometime later this week about a couple projects. They have two or three projects that could likely meet these targets, but would need to find strategic alignment of planning elements in particular. Challenges: need to own the site to score high, need to complete within 12

months of signing contribution agreement, needs to be a conversion or modular, need to have confirmed operating funding.

- This is lobbying because it implicates change to City’s planning processes and financial contribution from the City.
- No applicable exemption.

-December 13, 2020 Graham Cubitt email to Jason Thorne re: Housing initiative. Mr. Cubitt is attaching a concept housing plan budget that he put together for the Commonwealth Games. “Delinked from CWG, maybe it would be helpful in understanding how the City could catalyze significant senior level funding?” This strategy could end the ALC crisis, homelessness and much more. The Province would save their investment in just a few years and this is half of what the RHI allows in per-unit contributions. Mr. Cubitt is indicating it would be great to meet with Jason and Mike Zegeric (GM Finance & Corporate Services) to review the next few years’ possibilities for new projects. Right now, he doesn’t think most in the community housing sector understand the constraints the City has to work within. He also knows that City doesn’t realize the opportunities that could be seized by committing to projects early. CMHC funding is quite available for instance, but it takes municipal commitment which right now always comes late in the project planning. There are also a lot of municipal sites that could be repurposed as housing (and could even stay as municipally-owned). He is not sure who is responsible for them, but it would be great to connect on this and have a list ready for housing funding as it emerges.

- This is lobbying as it implicates most or all of the enumerated subject matter, i.e., legislation, policy, financial contribution, etc.
- No applicable exemption.

-November 10, 2020 emails between Graham Cubitt and Jason Thorne. **Email 1:** The first e-mail is from Graham to Jason indicating he wondered if Jason had a few minutes this week to talk about the potential for Ministerial Zoning Orders (“MZO”). There are at least two different sites that could fit well with the Rapid Housing Initiative deadlines – particularly if RSCs are in place or not needed – if the zoning was ready. Graham knows Jason talked with Terri Johns about this before and suggested the internal process could be accelerated to make MZO unnecessary, but with the extreme timelines CMHC has imposed, Mr. Cubitt is asking if this is now a better option. The related issue is that they are still running stuck with development planning at lower/management levels not understanding Council and SLT’s commitment to removing barriers to affordable housing. They are struggling to get site plan sign-off for Royal Oak Dairy, for instance, which could impact their ability to add the stables there in to the City’s RHI proposal. Mr. Cubitt is asking if Jason can help fix that delay too. He can take a call at Jason’s convenience. **Email 2:** Jason responds and indicates if Terri wants to call him, she can, but Jason thinks Graham may be mixing up site plan with zoning. MZOs can change zoning, but they do not eliminate the need for site plan. He also needs to say that he doesn’t agree with Graham’s comment about lower/management levels not understanding. They are working extremely hard to support housing projects, but they cannot and will not set aside good planning principles, or ignore site plan requirements to do so. If there is a specific ask being made of Graham by staff that he thinks is unreasonable, then Jason is asking him to please have Terri follow up with him with those details. **Email 3:** Graham then

responds and indicates they will connect with Terri on the MZO's. Graham was reading in the paper that this option was discussed at Council last week. He does acknowledge that they are just for zoning, but as the site plan process is where the City has latitude to define the process, it's where the normal application of good planning principles can be shifted to use different, but equally good principles that can take much less time. Graham appreciates Jason's defence of staff (he does the same when necessary) but they have continuing examples where the big picture is lost in the meaningless and stubborn adherence to standard practice. Graham will give it a final push this week to try and wrap up the site plan for Royal Oak with Terri's help, but if they can't, Graham will give Jason a call. It's going to impact the City's RHI potential, otherwise.

- This is lobbying as Mr. Cubitt is attempting to influence City planning policy generally.
- No applicable exemption.
- Same analysis as above

-December 10, 2023 Graham Cubitt email to Councillor Cameron Kroetsh, c.c. Justin Lewis, Jeff Wingard and others re: Development Application. The original e-mail in the chain is from Graham. He is following up on the GIC report approved last week regarding the sites for affordable housing development. Most of the sites have been assessed as viable by the Hamilton is Home coalition and various members are interested in pursuing specific properties. Their input on the potential for 171 Main St E was not requested and before Council accepts this report on Wednesday, Mr. Cubitt is requesting that Council delay this decision until February. During this time, Graham will assist them in determining an opportunity for affordable and rental housing development at this property. Councillor Kroetsch responds indicating he already asked staff to help him with an amendment to just earmark it for affordable housing without delay (not waiting until February). He expects there will be something coming forward at Council, no convincing needed. This email is then forwarded to Jason Thorne.

- This is lobbying as it relates to legislation.
- No applicable exemption.

GM Angela Burden

-2023/05/24 Meeting between Angie Burden and Graham Cubitt re: touch base (in person)

- This is lobbying because Mr. Cubitt is suggesting that the City should enter into a Memorandum of Understanding with Indwell, being a policy change (see below re description of subject matter of meeting)
- No applicable exemption.

-2023/05/31 and 2023/06/02 E-mail Chain between Angela Burden and Graham Cubitt. **Email 1:** Graham Cubitt email to Angela Burden. "Thanks again for connecting over coffee last week [May 24, 2023 per calendar entry]. Following up on our conversation, here are two MOUs from

St. Thomas and Chatham-Kent attached. These set the framework for how Indwell is working with the respective municipality. Maybe these hold inspiration for how Hamilton could work with allies? **Email 2:** Angela Burden replies, “Jeff and I will review and let’s connect.”

- This is lobbying because Mr. Cubitt is suggesting that the City should enter into a Memorandum of Understanding with Indwell, being a policy change.
- No applicable exemption.

-2023/06/26-27 and 2023/07/04 Graham Cubitt emails with Michelle Baird, Angela Burden, Jeff Wingard, c.c.: Jeff Neven and Jessica Brand of Indwell re: Connecting on strategic implementation strategies. **Email 1:** Graham Cubitt 2023/06/26 email to Michelle Baird, Angela Burden, Jeff Wingard, cc. others at Indwell. “Angie suggested we try to get together in early July to catch up and review the HiH supportive housing projects, etc.... The City’s key role as Service Manager will be crucial to this strategy as we know MMAH is open to updated investment plans that identify investment needed to create sustained solutions. **Email 2:** Graham Cubitt 2023/06/27 – Graham Cubitt email to Michelle Baird, cc others: “Thanks for your efforts hosting the meeting tonight... I'm concerned that our Hamilton is Home supportive housing solutions aren't being picked up by City Hall. We haven't heard back from the Mayor's Office yet...but all Councillors have now seen the card and are aware there are solutions available. I also had a very good discussion with MPP Skelly's office, and will be following up with an outline of what's needed from the Province... This is where we need your help as the Service Manager; as per the letter from Minister Clark, they don't find agencies directly, just through the SM. By presenting this joint strategy, we have the best chance of success. I know you're swamped, but we look forward to connecting as soon as possible to help stop the spiral of despair so many are now starting to express.” **Email 3:** Angela Burden 2023/07/04 reply: “Jeff is leading this work from the lens of the secretariat.” She indicates she is directing her staff regarding scheduling a meeting between Indwell, herself, Michelle Baird and Jeff Wingard.

- This is lobbying because it pertains to legislation and policy.
- Although Mr. Cubitt refers to stopping the “spiral of despair, the broad public benefit/detriment exemption does not apply because there is a financial benefit to Indwell and the other Hamilton is Home members with proposed projects.

-2023/07/19 E-mail from Graham Cubitt to Angie Burden, Michelle Baird and Jeff Wingard. “In terms of working on the municipal investment strategy for both the supportive and general affordable units, I’d like to connect with Mike Zergarac (GM, Finance & Corporate Services) on the best way to get a municipal commitment this fall so all the projects can apply for COI, acknowledging that the funds aren’t needed for possibly years. Probably best to raise this at this afternoon’s meeting?”

- This is lobbying because it refers to financial contribution from the City.
- No applicable exemption.