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February 13, 2018

Sent via email

Regional Clerk's Office
17250 Yonge Street
Newmarket, ON L3Y 6Z1
regionalclerk@york.ca

Dear York Region Council,

Re: Upper York Sewage Solutions

The Chippewas of Georgina Island First Nation are in receipt of your letter dated January 26, 2018 enclosing a recent York Region staff report from the January 25, 2018 Regional Council meeting concerning the Upper York Sewage Solutions (UYSS).

I am counsel for the Chippewas of Georgina Island, and I am writing to advise that my clients are concerned about misleading information in that staff report. The misleading information is as follows:

Prior to any proposal for the UYSS, the First Nation participated in two key processes: (i) the preparation of the original Terms of Reference for the environmental assessment (EA) and (ii) the development of the Lake Simcoe Protection Plan. The First Nation supported the decisions, reflected in the original terms of reference and the Lake Simcoe Protection Plan, which were part of a long line of Regional decisions dating back to the 1990s, that further wastewater volume would not be imposed on Lake Simcoe's ecosystem. The First Nation supported the decision to ban further wastewater treatment in the Lake Simcoe Protection Plan. The First Nation supported the decision to expand the YDSS and to focus on the YDSS and other Lake Ontario options in the original Terms of Reference.

The process that followed was one that dramatically reversed direction of the project and the overall plans to protect Lake Simcoe. The amendments to the Terms of Reference made by the Minister in 2010 were not subject to public consultation or consultation with First Nations. The Lake Simcoe option was added by the Minister in secret.

As your staff report describes, the decision to add the Lake Simcoe as an option for consideration in the environmental assessment was a closed-doors process between the Region and the

Ministry that excluded First Nations and other residents. These same discussions apparently included crafting a Lake Simcoe option that would attempt to circumvent the very explicit sewage treatment ban implemented in the Lake Simcoe Protection Plan. This is described on page 7 of your staff report. It is the First Nations' position that the claim that the UYSS – which would process 40MLD “replaces” the tiny Holland landing sewage lagoons for the purposes of compliance with the Lake Simcoe Protection Plan is patently false. This argument is unsustainable on the face of the plans for the UYSS and the wording of the Lake Simcoe Protection Plan, which is legally binding on both the Province and the Region.

Following the change to the Terms of Reference, the Region could have chosen to support other options as it had in all past EA processes and wastewater planning processes. The Minister did not force the Region to support the Lake Simcoe option, only to evaluate it fairly in the EA. It is our position that a fair evaluation based on good science and First Nations consultation would not have concluded that the Lake Simcoe option was preferable.

Instead of taking this approach the Region proceeded to craft an EA that advocated for the Lake Simcoe option. The Environmental Assessment that followed from the Region included misleading information, in order to justify this dramatic departure from decades of environmental assessment conclusions and regional and provincial decision-making.

First, the EA contains a claim that the water processed in the facility would come from local wells and stay within the Lake Simcoe watershed. This claim is contradicted by the Region's own wastewater master planning document which demonstrates that the water will come from Lake Ontario. The Ministry and the Region relied on this misleading information about return flows as the key reason why the Lake Simcoe option was preferred. This remains the case and it is therefore still unclear why the Lake Simcoe option is preferred.

Second, the Environmental Assessment makes the claim that effluent from the sewage treatment plant will be beneficial to the watershed using phosphorus concentration numbers of 0.02 mg/L. However the Region later indicated it could not achieve these concentrations in permitting discussions with the Ministry, where it expected to double that concentration at best. Accordingly the predictions of the environmental impact of phosphorus in the EA are not useful or realistic. Additionally, the proposed offsets have not been shown to be effective in offsetting the large amount of additional phosphorus that would result.

As a result of this misleading EA, which rejects the past approach, agreements and consultations upon which the First Nation relied, and fails to provide relevant environmental information about potential impacts on First Nation rights, the First Nation's rights to hunt and fish in Lake Simcoe have not been respected.

The staff report also paints a misleading picture of the Region's efforts to engage with the First Nation. The Region initially made incorrect statements at public meetings stating that the First Nation supported the project. The Region engaged in evasive tactics related to the engagement of the First Nation in its archaeological work related to the environmental assessment, which made it difficult for the First Nation to participate. Throughout this process the Region has failed to provide adequate technical review funding for the First Nation to effectively evaluate the project.

Pages 8-9 of the staff report also insinuate that the Region is supporting the health impact assessment and traditional knowledge study in coordination with the First Nation. My clients

advise that the traditional knowledge study was unilaterally put on hold by the Region in January due to cost concerns. It is unclear why the staff report does not disclose this information.

The staff report also continues the tone of general disrespect towards the First Nation, for example putting the duty to consult in derogatory quotation marks on page 9 as if the Region does not accept that this is an established legal and constitutional duty. The First Nation finds this insulting.

As for the argument on page 10 of the staff report that the consultation with the First Nation causes delays in YDSS sewage forcemain twinning, we do not understand this argument. The YDSS was approved in a separate EA many years ago and does not depend on the approval of the UYSS EA to our knowledge. This included proposed work to the forcemain and upgrades to the Newmarket pumping station as well as several other pumping stations. There is nothing to our knowledge preventing the Region from proceeding with this work. The First Nation offered to write in support of the approval of this portion of the work but the Region declined this offer. This is yet another misleading argument regarding the urgency of the approval process. It appears that the Region is blaming past sewage spills on the First Nation. Maintaining sewage infrastructure to an appropriate standard and seeking related approvals is the Region's obligation.

Contrary to the assertions of the Region on page 14 of the Staff Report, the First Nation is unaware of any reason that the Region cannot proceed with its phosphorus offsetting plans prior to approval of the UYSS as these are not within the scope of the UYSS EA or approval.


Similarly, the claim on page 11 of the York Region staff report is misleading. On this page the staff report alleges that it is impossible to decommission the Holland Landing Lagoons until the UYSS is in place. This is false, and is shown to be false in the Region's own documentation wherein it was made clear that the lagoons could be decommissioned at any time and serviced by other infrastructure. Instead the Region is keeping the lagoons on-line purely to make its argument that the UYSS is compliant with the Lake Simcoe Protection Plan as a "replacement" facility for the lagoons. As stated above this argument is artificial and unsustainable.

The First Nation does not see any cause for alarm in the description of financial risks to the Region on pages 14-15 of the staff report. All of these issues are typical of any major project. It is the Region's choice to proceed with planning or spending on this project prior to approval. Notably this is an approach that is disrespectful to the larger regulatory process the Region is in and insulting to those the Region is purporting to consult with. The Region should be aware that projects that are not yet approved may need to be modified.

It is unbecoming of the Region to purport to consult with the First Nation on health impacts and traditional ecological knowledge, while at the same time demanding immediate approval from the Ministry. This is not in keeping with the spirit of reconciliation.

The First Nation is deeply disappointed with the Region's ongoing approach to this matter. The First Nation will continue to engage with the Region in good faith, as they have always done. The First Nation has been patient with the Region and this has not been reciprocated.

Sincerely,



Laura Bowman
Barrister & Solicitor

cc: Clerk, Town of Bradford West Gwillimbury;
John Daly, County Clerk, Simcoe County;
Clerk, Town of Georgina;
Building Industry and Land Development Association;
Chief Donna Big Canoe, Chippewas of Georgina Island First Nation;
Hon. Kathleen Wynne, Premier of Ontario;
Hon. Chris Ballard, Minister of the Environment and Climate Change;
Hon. Nathalie Des Rosiers, Minister of Natural Resources and Forestry;
Hon. Dr. Eric Hoskins, Minister of Health and Long-Term Care;
Hon. Bill Mauro, Minister of Municipal Affairs; and
Mike Walters, CAO, Lake Simcoe Region Conservation Authority