



October 27, 2023

The Honourable Paul Calandra  
Minister of Municipal Affairs and Housing  
777 Bay Street, 17th Floor  
Toronto, ON M7A 2J3

**The Regional  
Municipality of  
Durham**  
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**Elaine Baxter-Trahair**  
**B.M. Edu, MBA**  
Chief Administrative  
Officer

Dear Minister Calandra:

**RE: Affordable Homes and Good Jobs Act (Bill 134)**

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The Regional Municipality of Durham shares the province's goal of increasing housing supply, and we are committed to working together to find collaborative solutions to address housing affordability. We appreciate the opportunity to comment on the proposed legislation and have enclosed a comprehensive set of remarks prepared by Regional staff which will be presented for endorsement at the Regional Council meeting in November.

There are aspects related to the proposed changes in the Development Charges Act (DCA) that may have unintended consequences that hinder our shared efforts to expedite development and deliver housing sooner. Therefore, we request the following specific changes:

- That the Province refines the definition of "affordable residential unit" to consider affordability across various unit types (i.e., single-, semi-detached, townhomes, and apartments by number of bedrooms). This would facilitate a better range of affordable housing options to address missing middle housing options.
- That the Province updates the definition of "affordable residential unit" to ensure that affordable residential units are only available to households that meet and maintain certain income thresholds (i.e., at or below the 60th percentile of gross annual income in the ownership or rental categories).

- That the Province consider allowing municipalities to structure the affordable residential unit exemption in a way that addresses the timing issue related to when DCs are collected relative to the final purchase price or rental rate being known. For example, this may include a requirement that developers or owners provide proof that a housing unit meets the definition of affordability as provided in the DCA at closing and on an annual basis over a 25-year period. If proof is not provided, or the unit failed to meet the affordable DC criteria, then the DC would become payable. Durham Region would welcome the opportunity to further discuss the administrative challenges related to providing an exemption before purchase prices or rental prices are known, and the complexity of tracking these exemptions and real estate transactions over a period of 25 years.

The proposed changes to the DCA may incent affordable housing development, however, municipalities have limited options for revenue and reducing development charges will lead to a deficit in funding for growth-related infrastructure. These changes will result in a transfer of the costs of growth-related infrastructure to the existing property tax and user rate base, which is unsustainable over the long-term. Durham Region would welcome an opportunity to discuss modifications that would limit the impact of the Bill on existing property taxpayers, and water and sewer user ratepayers. For example, having the Province make municipalities whole by fully funding the shortfalls created by the affordable residential unit exemption would avoid transferring the cost of this exemption to the existing tax and user rate base, while ensuring that growth-pays-for-growth. Our analysis suggests that for every 5 per cent of residential units in Durham Region that qualify for the proposed affordable residential unit exemption, there will be \$204M in lost development charge revenue for the Region of Durham (i.e., does not include lost DC revenue at the local municipal level), over the 10-year period between 2024-2033. This lost revenue will need to be recovered from property taxes, and water and sewer user rates.

Housing forms the building blocks of our communities. The delivery of an ambitious supply of new housing demands processes that are properly aligned, with a commitment to cooperate and collaborate

with a vast array of players. Our communities must be properly planned, financed, and serviced, with impacts managed so that growth can flourish. We look forward to discussing the recommendations provided in this letter and the comments in the attachment as we work towards our collective goal of increasing housing supply across Ontario.

Sincerely,

A handwritten signature in black ink that reads "Nancy Taylor". The signature is written in a cursive, flowing style.

Nancy Taylor, Acting CAO  
On behalf of Elaine Baxter-Trahair, Chief Administrative Officer

Attachment 1: Comments on the ERO Postings Associated with Bill  
134

**Attachment 1 – Region of Durham Submission on Bill 134**

Summary and Comments in Support of Affordable Homes and Good Jobs Act, 2023 through Bill 134 (“An Act to amend the Development Charges Act, 1997 and the St. Thomas – Central Elgin Boundary Adjustment Act, 2023”).

ERO Posting and Comment Period	Regional Comment
<p><b>Schedule 1 of Bill 134</b></p> <ul style="list-style-type: none"> <li><b>Definition of Affordability</b></li> </ul> <p>019-7669 September 28, 2023 – October 28, 2023 (30 days)  <a href="https://ero.ontario.ca/notice/019-7669">https://ero.ontario.ca/notice/019-7669</a></p>	<p><b>(1) Definition of Affordability</b>  <u><b>Requires Further Review: Recommend income-based approach by unit type (e.g., single-, semi-detached, townhomes, and apartments by number of bedrooms) and a requirement that units with affordable development charge (DC) exemptions are available to lower income households.</b></u></p> <p>The proposed Development Charges Act definition for “Affordable Residential Units” is very similar to the Provincial Policy Statement (2020) definition for “Affordable Housing”. There are some differences with the proposed Development Charges Act definition, including that it no longer cross-references “Low and Moderate Income Households”. Instead, the proposed definition embeds this household income (60<sup>th</sup> percentile) measure within the definition. While this proposed revision creates a longer definition, it reduces the need to cross-reference a secondary defined term – generally considered a positive streamlining of the current definition.</p> <p>Centralizing the data collection and release of affordability to a singular source provided by the province would be a major improvement – most notably by providing consistency across municipalities. While the current PPS and Region of Durham Official Plan (ROP) definition provide sufficient direction for calculating affordability, the process is constrained by custom data cost and timing/availability. In some instances, these constraints can lead to differences between inputs (and results) among municipalities. The Province should develop a methodology for calculating affordability using a process that is consistent with how municipalities have done so.</p> <p>Durham has measured affordable housing for the purpose of developing the goals of “At Home In Durham, the Region’s Housing Plan for 2014 to 2024”, and assessing the ROP affordable housing target through the Housing Policy Planning Discussion Paper. Statistics Canada Census data for household incomes were used to calculate the income-based affordability thresholds. Some other key assumptions for this analysis included using conventional 5-year <a href="#">mortgage rates</a> reported by the Bank of Canada, 25-year amortization period, and a 5 percent downpayment. Shelter costs for homeowners also include property taxes and CMHC mortgage insurance. Durham’s affordable housing monitoring process is consistent with methodologies used by both <a href="#">Peel</a> and <a href="#">York Region</a>.</p> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Key assumptions that are necessary to determine affordability thresholds should be clearly identified by the Ministry of Municipal Affairs and Housing. It will be critical for the province to use consistent and reasonable assumptions for calculating the affordable housing in the Affordable Residential Units bulletin. The Province</li> </ul>

should clarify the assumptions that are being used to determine shelter costs such as mortgage rates, amortization period, downpayment, property tax, or mortgage loan insurance.

- It is recommended that the Province provides a process that allows municipalities to review the details supporting the calculation of the affordable purchase price and rental rate thresholds.
- The Province needs to provide clarification on the level and extent of geographies to be included and the frequency of publication.
- Another area that needs clarification by the Province are the references to “in the Minister’s opinion”. The definition appears to be largely based on transparent statistical inputs, and it is not clear where opinion-based decision making would be appropriate.
- One area for reconsideration is the use of “average market rent” as one of the measures of rental affordability. Depending on the data source, average may not equate to being affordable. It is recommended that the bulletin reference the CMHC Rental Market Survey where data is available to be consistent with affordable housing incentive programs.
- It is recommended that the Province provide further stratification by unit type (i.e., housing unit types should include single-, semi-detached, townhomes, and apartments by number of bedrooms) within the affordable residential unit definition to assist in addressing all housing needs including missing middle housing options. If the Province wishes to provide financial incentives such as DC exemptions, it is strongly recommended that the calculation of the price or rent of an affordable unit be done by housing type (including number of bedrooms for apartments) to ensure that development reflects the needs of all households, including singles, couples and families, and not merely smaller units such as bachelor and 1-bedroom apartments.
- Of key importance, the proposed legislation does not stipulate that affordable residential units will only be available to individuals or households that fall within the income distribution used to determine affordable residential unit purchase prices or rent (i.e., at or below the 60<sup>th</sup> percentile of gross annual income in the ownership or rental categories). The legislation should prioritize this income group that would benefit most from this proposed affordable housing DC exemption. Additionally, the Province may want to consider other assets such as savings accounts (including tax-free accounts such as TFSAs and FHSAs), GICs, bonds, stocks, term deposits, treasury bills, mutual funds, and trust funds as a qualifying factor for accessing affordable residential units.

## Administrative Implications

019-7669 September 28, 2023 – October 28, 2023 (30 days)

<https://ero.ontario.ca/notice/019-7669>

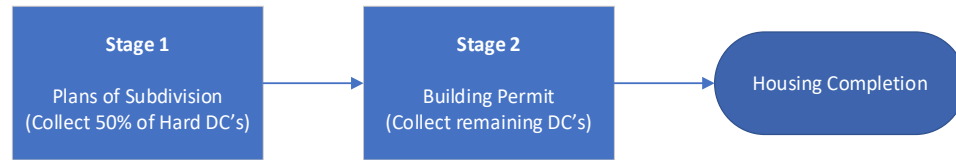
## (2) Administrative Implications for Municipalities

**Requires Further Review: Recommend the Affordable DC agreement include a mechanism that requires the developer / owner to provide proof on an annual basis that demonstrates that each respective unit meets the affordable residential unit criteria, to maintain the Affordable DC exemption status**

The proposed definition for affordable residential units does not consider the considerable administrative implications of administering this DC exemption.

### Current DC Collection Process

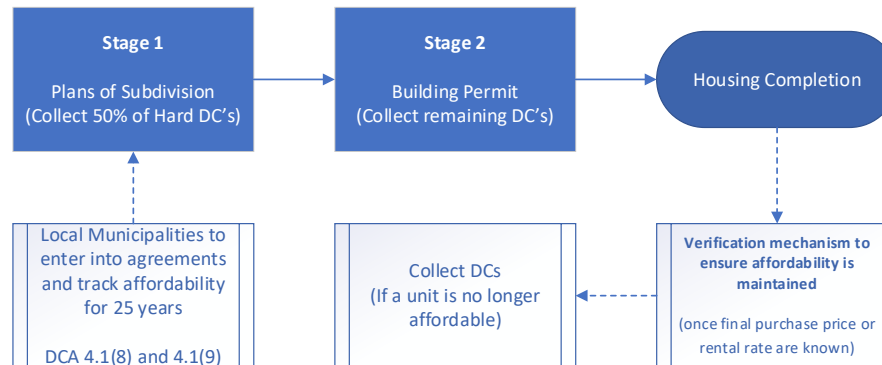
The figure below outlines the current process for collecting DCs at the Region of Durham:



At Stage 1 (Plans of Subdivision) 50 per cent of Hard-Service DCs (i.e. Regional Roads, Water and Sewer DCs) are payable at signing of a subdivision agreement with the remaining 50 per cent due at the first anniversary date of signing. At Stage 2 (Building Permit), any outstanding Hard-Service DCs and all Soft-Service DCs must be paid prior to issuance of the building permit.

### Potential New DC Collection Process (Under Bill 134)

The figure below outlines additional administrative steps which we anticipate would be required to satisfy the requirements of Bill 134:



It is requested that the Province provide clarity regarding the process to be followed (see Recommendations below). The changes in the process described above would require developers to identify which lots/units will meet the affordable residential unit criteria prior to signing a subdivision agreement or having a building permit

issued. The Region would need to add a verification mechanism to the DC collection process to confirm that the assumptions used at Stage 1 (Plans of Subdivision) and Stage 2 (Building Permit) are correct once the final purchase price or rent are known. Once this verification has taken place, the Region may need to undertake collection actions, which can be difficult post-development.

**Administrative Issues**

- The final price of a home, including all selected upgrades, etc., is not known until the sale is closed. Similarly for rentals, the rent is not known until a lease is signed. Therefore, the proposed structure of the exemption would require the municipality to rely on incomplete information since DCs are due before the sales are closed or the leases are signed. To administer this exemption, using the system outlined above, the municipality would need to grant the exemption without knowing if the information provided by a developer is correct or not. Consequently, the additional steps need to be taken to verify that the development meets the affordable residential unit exemption criteria once all information becomes available (i.e. sale price or rental price). These steps will also need to reoccur each time the unit is sold or rented over the 25-year period defined in DCA 4.1(8) and 4.1(9). Compared to similar applications without this exemption, it is expected that the time to process these applications could be more than doubled.

- Monitoring and enforcing the 25-year affordability agreements will be challenging and resource intensive. For example, it would be difficult to prevent situations where affordable ownership units are rented at market rates or where affordable rental units are subleased at market rates.

- Administrative issues can be compounded if a new bulletin is posted for development applications that are in progress. This will result in staff needing to review the new bulletin against existing applications to determine if the development still qualifies for a DC exemption. If the unit no longer qualifies then the municipality would need to collect the outstanding DCs.

- The proposed legislation defines the purchase price or rental price of a residential unit. It does not provide any requirements that guarantee that the units will be occupied by individuals that fall within the income distribution that is being used to define affordability and would benefit most from these housing options.

**Clarification questions:**

- How is the municipality able to ensure that it will be paid by the developer if units do not meet the affordability exemption requirements at occupancy?

- What happens if new bulletins are published between the time of the subdivision agreement and housing completion/occupancy?

	<ul style="list-style-type: none"> <li>• How often will the bulletins be updated?</li> <li>• What happens in terms of DC payments if the unit fails the affordability test over the 25 years of the agreement? Will DCs be pro-rated based on the number of years that a unit was considered affordable?</li> <li>• Will the Province include provisions in the template 25-year affordability agreements that ensure that affordable residential units are only available to households that meet certain income thresholds (i.e., at or below the 60<sup>th</sup> percentile of gross annual income in the ownership or rental categories)?</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• The proposed legislation does not define how savings from DC reductions will be passed on to homeowners or renters so that they receive 100 per cent of the benefit of the DC exemption. Nor does it address the situation where a unit becomes unaffordable over the 25 years of the agreement. Without this level of detail it is difficult to ensure that the DC exemption is passed onto homeowners and renters to preserve the integrity of the Province’s proposed definition of affordable residential unit.</li> <li>• Regional staff recommend that the Province considers including a mechanism in the affordable residential unit DC agreement that requires the developer / owner to supply the necessary information, at closing and on an annual basis, to confirm that the unit still meets the affordability criteria. If the information is not provided or the unit no longer satisfies the definition of affordability, then DCs become payable.</li> <li>• We support the Minister providing standard forms of agreement as noted in DCA 4.1(12) to alleviate some of the administrative burden. However, the Province should consider provisions to ensure the units are occupied by lower income households, and consider the unique collection processes of single-, upper- and lower-tier municipalities. Consultation with the municipal sector by the Province in developing these standard form agreements would be appreciated.</li> </ul>
<p><b>Financial Implications</b></p> <p>019-7669 September 28, 2023 – October 28, 2023 (30 days)  <a href="https://ero.ontario.ca/notice/019-7669">https://ero.ontario.ca/notice/019-7669</a></p>	<p><b>(3) Financial Implications</b>  <u><b>Requires Further Review: Recommend that the Province fully funds this exemption</b></u></p> <p>It is estimated that for every 5 per cent of units that qualify for the affordable residential unit DC exemption that the Region of Durham will lose approximately \$204M in development charge revenue, over the 10-year period between 2024-2033. That lost DC revenue would have been used to build the infrastructure required to support new development. Approximately 60 per cent of this lost revenue will have to be funded by water and sewer user rate payers, and the remaining 40 per cent will fall on property taxpayers.</p>



The proposed affordable residential unit DC exemptions do not guarantee that developers will pass along savings to new home buyers or renters. However, these exemptions will increase housing costs for all property owners, as taxpayers and user ratepayers will need to cover the DC funding shortfall.

**Staff Recommendation:**

- The Province should commit to making municipalities whole for any losses incurred to avoid passing along the costs to existing homeowners through property tax and user rate increases.