

**To:** Ruchi Parkash

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**RE:** ERO 019-7669 - Changes to the definition of an “Affordable Residential Unit” in the Development Charges Act, 1997 for the purpose of municipal development-related charge discounts and exemptions

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## **Introduction**

Build Urban represents several companies in the development space in Waterloo Region. Founded in 2023, the organization seeks to promote policies that will facilitate more, and smarter urban densification, while addressing the housing supply issues that are at the core of the housing crisis facing Ontario.

On September 28<sup>th</sup>, the Ministry of Municipal Affairs and Housing posted a new set of regulations to the ERO regarding the definition of affordable housing for both rental and purchase housing. Build Urban is providing comment on those proposed changes and the policy questions that arise from some of the implementation of the Ministry’s proposed changes.

## **Comments**

### *Definition of ‘municipality’*

The first issue with the definition as currently envisioned by the ERO posting is the issue of which municipality is being referred to as the “applicable local municipality.” While clarification has been provided that the phrase refers to whichever municipality is levying the development charge, greater clarity provided in the text would make this a stronger regulatory change.

There remain some issues with the approach of making it depend on the municipality levying the development charge in the event of a municipality where both the lower tier and the upper tier levy development charges. There are certain to be cases where the 60<sup>th</sup> percentile of gross annual income differs considerably between the upper tier and lower tier municipality meaning that some projects will be subject to development charges at one level of municipal government but not the other.

The expectation is that the dataset that would be used for this definition would be Statistics Canada data provided by the census. To minimize the likely differences between upper and lower tier municipalities at the 60<sup>th</sup> percentile, it's the position of Build Urban that this issue could be dealt with in one of two ways. Either by using only one municipality as the dataset for determining when a development charge it to be levied (e.g., the 60<sup>th</sup> percentile of the gross annual income for the City of Kitchener applies to both the development charge levied by the City of Kitchener, as well as development charge levied by the Region of Waterloo), or by raising the percentile at which the charge is levied.

As the percentile of gross annual income gets higher – as an example, increasing it to the 70<sup>th</sup> percentile – differences between the upper and lower tier municipalities at that level would be limited to a much smaller subset of cases.

#### *Disparity Between Provincial and Federal Definitions of Affordable Housing*

The Canada Mortgage Housing Corporation (CMHC) has a definition of affordable housing, and it is “housing is considered “affordable” if it costs less than 30% of a household’s before-tax income”. CMHC also provides reliable and up-to-date datasets on rental market data, housing market data and indicators, and mortgage and debt levels. All of these things lead to a definition of affordability that, while simple, is transparent both in terms of how it is applied and how it is defined.

While the changes proposed by the Ministry in the new definition do align in parts with CMHC’s definition, in both cases it is tied back to the dataset that relies on the gross annual incomes in each municipality. To a certain extent, this is understandable in its policy intent because it is clear that the Ministry is trying to compensate for differences in housing markets in Toronto and the GTA, versus the rest of the province. As we have noted above, these adjustments by municipality can present their own challenges. We suggest that a flat, income-based metric may be easier to evaluate and allow for better integration with federal housing initiatives.

#### *Issues with Definition Applied to Ownership Housing*

In the Ministry’s proposed definition of affordable housing as it pertains to ownership housing, there is one potential significant issue with the definition that could have the effect of contradicting the Ministry’s intended policy outcome. One metric in the definition states “90 per cent of the average purchase price identified for the residential unit set out in the Affordable Residential Units bulletin.” We are concerned that this could have the long-term impact of raising the floor on the average purchase price in the province. If any residential unit up to 89 percent of the average purchase price qualifies as an affordable unit, there’s no incentive for listing a residential unit below that 89<sup>th</sup> percentile of the average purchase price.

While the Ministry states that it intends to use the Affordable Residential Units Bulletin, it's a dataset that is likely to provide better guidance, owing to the transparency of the data inputs, for rental housing than for purchased/ownership housing. The lack of a transparent data set creates issues for determining the average purchase price as the Ministry has not made it clear how it intends to aggregate that data.

There's also a need for clarification as to whether the "purchase price" included in the definition proposed by these changes pertains only to the list price of the home, or whether it would include the closing costs associated with the transaction. As the price of housing has increased, so have many closing costs and those should be factored into determining the affordability of a particular residential unit.

#### *Integration with Provincial Policy Statement*

The current definition of 'affordable' in the Provincial Policy Statement (PPS) is as follows:

*a) in the case of ownership housing, the least expensive of:*

*1. housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income for low- and moderate-income households; or*

*2. housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the regional market area;*

*b) in the case of rental housing, the least expensive of:*

*1. a unit for which the rent does not exceed 30 percent of gross annual household income for low- and moderate-income households; or*

*2. a unit for which the rent is at or below the average market rent of a unit in the regional market area.*

The current changes proposed by the Ministry in this ERO are clearly attempting to fix some of the issues with the PPS definition, including providing a more concrete definition for "regional market area." Even if changing that language to "local municipality" isn't a complete fix it is still more precise than the definition in the PPS. It also puts greater definition around what the province considers a "low-and moderate-income household" with metrics around the percentiles of gross annual income.

In this way, the Ministry does provide greater clarity to the PPS with the proposed ERO changes. Those changes are welcomed. The proposed changes do complicate the PPS by having the Minister, in the case of purchased housing and rental housing, first assess the market conditions, and then assess affordability based on income.

The criterion in the PPS is simpler because it has a consistent income test, and the market conditions are only evaluated to account for markets for which the income test is insufficient. As we noted above, a simpler way to do this is to just raise the income threshold.

## **Recommendations**

1. Increase the income threshold from the 60<sup>th</sup> percentile envisioned by the PPS changes. An increase to at least the 70<sup>th</sup> percentile would allow for fewer disparities between the municipalities assessing development charges and would create an income test that better reflects the current market by including at least 2/3 of incomes in the definition of “affordable.”
2. Increase the annual household income threshold from 30 percent in the draft regulations, to 40 percent.
3. Clarify whether the “purchase price” included in the new definition includes closing costs for ownership housing.
4. Phrase the definition of affordable so that it prefers income-based testing and only accounts for market factors where the local market deviates from what could be considered affordable based on income.
5. Ensure that datasets that are used to determine annual household income are kept current, and that the data being drawn from the Affordable Housing Bulletin is updated semi-annually