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VIA EMAIL

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Rod Regier
Commissioner of Planning, Development, and Legislative Services
Regional Municipality of Waterloo
150 Frederick Street
Kitchener, Ontario N2G 4J3

Attention: Rob Regier, via e-mail to rregier@regionofwaterloo.ca

Dear Mr. Regier:

Re: Waterloo Region's Proposed High-Performance Development Standards

We represent the Waterloo Region Home Builders' Association ("**WRHBA**"), and we are writing to express our client's grave concerns regarding Waterloo Region's proposed High-Performance Development Standards ("**HPDS**").

Since 1946, the WRHBA has been the recognized leader and the voice of the new residential home construction, land development, and professional renovation industries in Waterloo Region. WRHBA member companies construct over 90% of all new residential units in the Region. The WRHBA is invested in bringing insight to public policy decision-makers on matters that affect the residential development and construction industry and its customers.

The WRHBA and its members are committed to environmentally responsible and sustainable development, built upon decades of experience, compliance with the requirements of the *Ontario Building Code* ("**OBC**"), and recognition of industry best practices. As set out below, our client is concerned that the Region, and the local municipalities, do not have the legal authority to impose the HPDS. Even if they did, the process by which the Region and WR Community Energy ("**WRCE**") are developing the HPDS is non-transparent, raising questions about neutrality and objectivity. Finally, our client is concerned that the HPDS will add an additional layer of unnecessary complexity to the development approval process, without a corresponding sustainability benefit, thereby leading to increased costs and delays to homebuilders and homeowners alike.

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No Legal Authority to Impose GDS

There is no Provincial legislation or policy – whether the 2024 *Provincial Planning Statement* (“**2024 PPS**”), the *Planning Act*, or the *Municipal Act* – which gives municipalities jurisdiction to impose sustainability or efficiency standards that exceed those already mandated by the *OBC Act*, the OBC, or the Ministry of the Environment, Conservation, and Parks.

The 2024 PPS guides municipalities to reduce greenhouse gas emissions and prepare for the impacts of a changing climate through approaches that, for example, support energy conservation and efficiency; promote green infrastructure, low impact development and active transportation; and protect the environment and improve air quality (2024 PPS, s. 2.9). However, the 2024 PPS does **not** require, or authorize, municipalities to impose or enforce specific construction standards in achieving those goals.

While municipalities are permitted to regulate various aspects of development under the Site Plan Control process, the manner of construction and standards of construction are explicitly excluded from that authority under Section 41(4.1)(3) of the *Planning Act*.

Municipalities have a broader authority to regulate development through conditions to the approval of a plan of subdivision under s. 51 of the *Planning Act*. However, again, such conditions must not surpass the requirements of the *OBC Act* or the OBC.

The OBC governs the manner of construction and types and quality of materials used therein (*OBC Act*, ss. 34(1)(3)) and the design of buildings and the use to which they may be put (ss. 34(1)(5)). This includes environmental sustainability measures and energy efficient construction of buildings.

Section 35 of the *OBC Act* specifically provides that the Act and the OBC supersede **all** municipal by-laws respecting the construction and demolition of buildings. In the event of a conflict between a municipal by-law and the Act or the OBC, the Act and the OBC prevails and the by-law is inoperative to the extent that it differs from the Act or the OBC. As the OBC regulates energy efficient construction and green building standards, municipal by-laws cannot impose standards which exceed those already mandated by the OBC.

Similarly, the HPDS cannot be properly implemented by the Chief Building Official. As the HPDS, and any other municipal by-law that seeks to impose construction standards beyond the requirements of the OBC, are beyond the authority of the municipality, the HPDS will not be “applicable law” upon which a CBO can base a refusal to issue a permit under Section 8(2) of the *OBC Act*.

Also, while Section 97.1 of the *Municipal Act* clarifies that a municipality may pass by-laws respecting environmental standards, that section specifically states that such by-laws must be in accordance with the provisions of the OBC and the *OBC Act*, and confirms that if there is a conflict between such a by-law and the OBC and the *OBC Act*, the OBC and the Act prevails.

Furthermore, the new Building Code recently released by the Province, set to come into effect on January 1, 2025, does not fully align with the National Building Code’s four-tiered energy format. The Province’s choice not to entirely adopt the tiered energy efficiency format set out in the National Code represents a

clear policy decision. It is our view that attempts by municipalities to impose green development standards, such as the HPDS, which the Province expressly refused to impose in the new OBC, fly in the face of this Provincial policy decision.

The HPDS will be redundant and duplicative of existing regulation imposed by the OBC and the Ministry of Environment, and of industry best practices, which already regulate matters of energy efficiency and environmental sustainability in the building industry. The WRCE website states that “the current vision is to align the HPDS with the OBC **where possible and applicable**” – acknowledging that it will not be possible or applicable to align the entirety of the HPDS with the OBC.

The HPDS are a clear overreach by the Region, and are outside the Region’s jurisdiction insofar as they attempt to regulate matters already addressed by the OBC.

Improper, Non-Transparent Process

Our client also has serious concerns about the process by which the Region and WRCE are developing the HPDS. WRHBA members have raised questions about the neutrality, objectivity, and transparency of the HPDS process. Little specific information about the process, such as details about public engagement and timelines, has been shared publicly by WRCE. Information publicly available on the Engage Region of Waterloo website is scant.

The composition of the WRCE and the HPDS Municipal Working Group has not been made public. Our client has requested names and contact information for members of the HPDS Municipal Working Group, and was told that WRCE “will not be sharing the names of the working group publicly”. WRCE’s refusal to identify the individuals and stakeholders involved in developing the HPDS is extremely concerning from a transparency perspective.

WRHBA members also have concerns about the stakeholder engagement which has occurred to date. The focus of recent engagement meetings appears to be focused on placating specific special interest groups, rather than on fostering a collaborative discussion. Polling questions presented were leading and did not allow for a genuine diversity of input; questions appeared structured to generate specific responses rather than providing the community an open forum to offer meaningful feedback.

It is entirely improper for legislative powers to be delegated to a non-government committee, behind closed doors, particularly with the involvement of special interest groups and consultants (see, for example, Section 23.2 of the *Municipal Act*). These critical municipal policies must be developed through formal channels which adhere to Provincial law and ensure public accountability.

Added Costs, Delays, and Unintended Consequences

Our client is concerned that the HPDS will add additional, unnecessary costs to homebuilders and homebuyers alike, during an unprecedented housing crisis in Ontario. Considering the Province’s recent focus on “cutting red tape” for homebuilders and getting “more homes built faster”, adding an additional

layer of complexity and expense to development applications seems to be a step backwards.

Environmental sustainability and efficiency must be balanced against economic viability for both homebuilders and homeowners. The non-transparent process being undertaken by WRCE provides no indication as to whether a thorough, detailed costs assessment is being carried out in the development of the HPDS. Without such an assessment, our client is extremely concerned about the unintended consequences which may result from the imposition of the HPDS, including driving up housing costs, reducing the future potential housing stock, and delaying project timelines.

Ontario's homebuilding industry is highly competitive, as is the housing market for homebuyers. Imposition of the HPDS in Waterloo Region will also have the unintended consequence of both builders and buyers to look to other municipalities where green standards have not been imposed, as a costs-saving measure.

Lack of Publicly-Available Research

As noted above, our client has concerns that the HPDS process has not included a thorough costs assessment. Beyond this, though, our client is also concerned that the HPDS standards themselves are unsupported by adequate research. As a result of the non-transparent process, though, the research upon which the HPDS are based has not been disclosed.

Our client points to the development and evolution of Canada's National Energy Code for Buildings ("NECB") as an example of the tremendous amount of research which must go in to energy efficiency and environmental sustainability regulations. The NECB was first developed in 1997, and has been updated several times since then to ensure a greater level of energy efficiency in new Canadian buildings. Similarly, the forthcoming amendments to the OBC are based on years of research, as well as incorporating portions of the NECB's well-researched and well-developed standards.

Conversely, the WRCE is developing the HCDS through a non-governmental, closed-door process, without making public the research supporting the imposition of the HCDS standards. WRCE's failure to be transparent about the scientific and economic bases for this regulation is concerning, particularly given the involvement of special interest groups and financially-motivated stakeholders, including utility companies, in the development of these standards.

Potential Municipal Liability

As noted above, the NECB and OBC are the result of decades of research, testing, and building industry standards. By imposing and enforcing unresearched, untested, aggressive green development standards such as the HPDS, over and above the requirements of the OBC, municipalities may open themselves up to liability issues if those green development standards lead to long-term building failures or performance problems. It is crucial that the Region avoids overreach and ensures that any building standards set out in the HPDS align with the tested, reliable practices established by the OBC.

Conclusion

For the foregoing reasons, our client urges the Region to reconsider the development of the HPDS, either by dispensing with the program altogether, or taking steps to ensure that the ongoing development of the program be made transparent, publicly accountable, research-based, and wholly voluntary on the part of the development proponent.

Yours truly,



Jennifer Meader
JM/mdj

- c. Marie Schroeder, Executive Officer, Waterloo Region Home Builders' Association
Fiona McCrea, Solicitor, Region of Waterloo
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Harold Okrafka, Director of Planning and Development Services, Township of Wilmot
Terry Gerber, Chief Building Officer, Township of Wilmot
Shannon Black, Chief Building Officer and Director of Planning and Development Services, Township of North Dumfries
Hon. Paul Calandra, Minister of Municipal Affairs and Housing