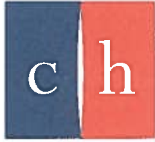

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December 4, 2015

His Worship Mayor Matt Brown, City of London;
Members of London City Council; and
Catharine Saunders, City Clerk
City of London
300 Dufferin Avenue
London, ON N6B 1Z2

Dear Mayor Brown and Members of London City Council:

**Re: Proposed Amendments to City of London Official Plan and Zoning By-law Z.-1
December 8, 2015 Meeting of City Council**

We are the lawyers for the London Property Management Association (the "LPMA"). LMPA, is committed to promoting education and professionalism among its more than 500 members, the vast majority of whom are owners and operators of multi-residential rental properties.

The purpose of this letter is to communicate to Council LPMA's position with respect to proposed amendments to the City of London's Official Plan and Zoning By-law Z.-1. In particular, this letter addresses issues surrounding the proposed amendments with respect to "secondary dwelling units", and specifically, the proposal to prohibit secondary dwelling units within the substantial urban core, the "Near Campus Neighbourhood", in the City of London (the "City").

Requirements of the Strong Communities through Affordable Housing Act, 2011 ("Bill 140")

In 2011, Bill 140 received Royal Assent. In addition to enacting the *Housing Services Act, 2011* and repealing the *Social Housing Reform Act, 2000,* Bill 140 makes several important amendments to the *Planning Act,* RSO, c P.13 (the "*Planning Act*"). On its website, the Ministry of Municipal Affairs and Housing (the "Ministry") explicitly states that these amendments to the *Planning Act* are part of Bill 140's "wide range of actions to improve the affordable housing system".[1] Among these amendments was the replacement of clause 2(j) of the *Planning Act*, which now reads as follows:

[1] Ministry of Municipal Affairs and Housing, "Land Use Planning – Strong Communities through Affordable Housing Act, 2011, online: <http://www.mah.gov.on.ca/Page9572.aspx>.

Provincial interest

2. The Minister, ***the council of a municipality***, a local board, a planning board and the Municipal Board, ***in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,***

(j) ***the adequate provision of a full range of housing, including affordable housing***; [emphasis added].

In addition to the requirement set out in clause 2(j), Bill 140 also added subsection 16(3) to the *Planning Act*:

Second unit policies

(3) Without limiting what an official plan is required to or may contain under subsection (1) or (2), ***an official plan shall contain policies that authorize the use of a second residential unit by authorizing,***

(a) ***the use of two residential units in a detached house, semi-detached house or rowhouse if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains a residential unit; and***

(b) ***the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse if the detached house, semi-detached house or rowhouse contains a single residential unit***. 2011, c. 6, Sched. 2, s. 2. [Emphasis added].

The City's Official Plan must, therefore, ***authorize*** secondary dwelling units as set out in clauses (a) and (b) of the *Planning Act*, and in enacting such policies, the City must have regard to the adequate provision of affordable housing. As is stated in Managing Director, Planning and City Planner's Recommendation to the Chair and Members of the Planning and Environment Committee (OZ-8053) (the "Recommendation"), the City's Official Plan currently permits secondary dwelling units in single and semi-detached dwellings, but they are not permitted in "rowhouses", as required by subsection 16(3). The proposal to ***prohibit*** secondary dwelling units in the Near Campus Neighbourhood is, on its face, contrary to the legislature's explicit direction to municipalities in subsection 16(3) to ***authorize*** these units.

Pursuant to section 35.1 of the *Planning Act,* which was also enacted under Bill 140, the City is also required to ensure that its zoning by-laws give effect to the policies described in subsection 16(3). The zoning by-law must therefore also ***authorize*** the use of secondary dwelling units, also having regard to the adequate provision of affordable housing. While the proposed amendments to the Official Plan and Zoning By-law do authorize secondary dwelling units in parts of the City, they also ***prohibit*** such units over a large area of the City, in which 27.1% of all occupied dwellings are situate.

To enact such a blanket prohibition does not conform to the requirements of subsection 16(3) or section 35.1, which do not contemplate such prohibition. The proposed amendments also do not have regard to the adequate provision of affordable housing, as clause 2(j) of the *Planning Act* requires. In addition, the prohibition extends to significant areas of the City for which a light speed rail corridor is under consideration. To limit higher densities and discourage affordable

housing in areas of the City which are proposed to be serviced by high speed public transit (whose occupants are most likely to use such transit) is, in our respectful submission, bad land use planning.

Although it is not explicitly stated in the *Planning Act* amendments, the Ministry's commentary on its website does suggest that municipalities may determine where in the municipality secondary dwelling units would be appropriate; however, the website also provides examples of areas where secondary dwelling units would not be appropriate, such as in areas prone to flooding or areas with inadequate servicing.[2] There is no suggestion in the Recommendation that there is inadequate servicing in the Near Campus Neighbourhood. In fact, to prohibit secondary dwelling units in the Near Campus Neighbourhood will cause increased stress on servicing elsewhere in the rest of the City, as more people in need of affordable housing will need to seek such accommodation in other areas. Further, the proposed amendments do include additional provisions restricting secondary dwelling units in dwellings located in flood plains as regulated by the relevant Conservation Authority. This latter restriction is reasonable, and is the type of restriction contemplated by the legislature, as opposed to a blanket restriction prohibiting secondary dwelling units in a substantial swath of the City.

The argument that this blanket prohibition is inappropriate is also supported by the Ministry's "Municipal Tools for Affordable Housing" document, which is intended, among other things, to assist municipal planners and council members in developing adequate affordable housing in their communities. This document addresses secondary dwelling units at pages 14-15. The document states that secondary dwelling units are one of the most inexpensive ways to increase a municipality's stock of affordable rental housing, and it also comes with the benefit of integrating affordable housing throughout a community while maintaining neighbourhood character. The document also states that such units are "an important source of affordable housing for low and moderate-income households at what are typically some of the most affordable rental rates".[3] In this document, the Ministry again uses the examples of "inadequate servicing or … flood-prone areas" as examples of where secondary dwelling units would not appropriate.[4]

The commentary provided in this document is in line with subsection 16(3), section 35.1, and clause 2(j) of the *Planning Act,* while the City's proposed amendments are not. The proposed prohibition of secondary dwelling units in the Near Campus Neighbourhood is simply contrary to the letter and the spirit of the *Planning Act* amendments under Bill 140.

Subsections 17(24.1) and 17(36.1) of the *Planning Act* were also amended by Bill 140, and now provide that there is no appeal to the Ontario Municipal Board (the "OMB") of a decision to adopt or approve "policies described in subsection 16(3), including, for greater certainty, any requirements or standards that are part of such policies".

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[2] Ministry of Municipal Affairs and Housing, "Land Use Planning – Secondary Units", online: <http://www.mah.gov.on.ca/Page9575.aspx>.

[3] Ministry of Municipal Affairs and Housing, "Municipal Tools for Affordable Housing", online: <http://www.mah.gov.on.ca/AssetFactory.aspx?did=9270>.

[4] *Ibid.*

The prohibition of secondary dwelling units in a large specified area of the City is not a "requirement or standard" regarding the policies set out in subsection 16(3), nor is such ***prohibition*** a "policy described in subsection 16(3)": the policies described in subsection 16(3) require ***authorization.*** These provisions, therefore, do not restrict such a prohibition from being appealed to the OMB. In fact, where an Official Plan contradicts the *Planning Act,* it is appropriate for such an appeal to be made.

Likewise, subsection 34(19.1) was amended to prohibit appeals in respect of a by-law that gives effect to the policies described in subsection 16(3), including appeals with respect to any requirement or standard in such a by-law. Again, ***prohibition*** of secondary dwelling units in a large portion of the City is not a "requirement or standard" in a by-law giving effect to the subsection 16(3) policies, and prohibition contradicts the policy under subsection 16(3). The restriction on such an appeal would not apply here.

The City's Official Plan currently permits secondary dwelling units in detached and semi-detached dwellings (but not rowhouses). The City should not use the Province's declaration that the Official Plan must include policies authorizing secondary dwelling units in detached dwellings, semi-detached dwelling, *and* rowhouses as an opportunity to prohibit secondary dwelling units in a large area of the City where they are presently permitted. This cannot have been the intention of the legislature: the purpose of Bill 140 was to ***improve*** municipalities' affordable housing systems. The proposed amendments will adversely affect the supply of affordable rental housing.

For the foregoing reasons, it is respectfully submitted that the proposed changes to the City's Official Plan and Zoning By-law do not conform to the *Planning Act* as amended by Bill 140, nor is it in line with the Province's intentions in making those *Planning Act* amendments, as expressed by the Ministry's commentary and the wording of Bill 140. Beyond this concern, the LPMA has additional legal and practical concerns with the proposed amendments to the Official Plan and the Zoning By-law.

Practical Issues with Proposed Amendments

The Recommendation of City Planners and the Ministry's commentary with respect to Bill 140, assert, correctly, that "...secondary dwelling units have been identified by the Province though these legislative changes to the *Planning Act* as a way to increase the supply of affordable housing".

The proposed amendments to the Official Plan and Zoning By-law that would prohibit secondary dwelling units in the Near-Campus Neighbourhood are problematic, even beyond their contradiction of the legislature's policy intentions.

Tens of Thousands of Homeowners and Renters Will Lose the Benefits Associated with Secondary dwelling units

As noted above, there should not be a blanket prohibition against secondary dwelling units in the Near Campus Neighbourhood, because such a prohibition is contrary to the letter and spirit of the *Planning Act* and Bill 140 and because there are practical reasons to refuse such a prohibition.

Given that the Near Campus Neighbourhood contains 27.1% (41,710) of the City's total occupied dwellings, and particularly that it contains 22.3% (21,530) of the City's owned dwellings, a policy whereby secondary dwelling units are prohibited in this entire area is at odds with the Province's intention to improve affordable housing systems. The Ministry specifically lists several benefits of secondary dwelling units:

(a) They provide homeowners with an opportunity to earn additional income to help meet the costs of home ownership;

(b) They support changing demographics by providing more housing options for extended families or elderly parents, or for a live-in caregiver;

(c) They maximize densities and help create income-integrated communities, which support and enhance public transit, local businesses and the local labour markets, as well as make more efficient use of infrastructure [*including accessibility to high speed transit*]; and

(d) They create jobs in the construction/renovation industry.[5]

The proposed amendments extend these benefits to 72.9% of the City's occupied dwellings, but deprive those in the Near Campus Neighbourhood of these benefits. The effect will be to decrease the ability of lower-income Londoners to live in the Near Campus Neighbourhood by permanently decreasing the stock of affordable housing in this area in the very short term. Further, homeowners in the Near Campus Neighbourhood who may rely on supplementary income from a secondary dwelling unit to meet the financial obligations of home ownership will lose that benefit. Additionally, elderly Londoners will be discouraged from living in the Near Campus Neighbourhood because they would be unable to house a live-in caregiver in a second unit and will be unable to live in a second unit in the home of a family member.

It is prejudicial to low-income Londoners, not only to unnecessarily decrease the stock of affordable housing in the City in general, but also to put barriers in the way of these individuals residing in certain areas of the City. It is also prejudicial to the elderly population of the City to put, what would be for some, prohibitive barriers in place that keep them from being able to reside in the Near Campus Neighbourhood, if that is where they would otherwise choose to live. Finally, it is also prejudicial to sterilize an entire area of the City which is slated for future efficient high speed transit from having occupancy by the very demographic most likely to require and use such transit.

"Grandfathering" is not Permitted

The proposed amendments also do not permit "grandfathering" of any existing secondary dwelling units within the Near Campus Neighbourhood, which compounds the problems caused by imposing this prohibition in the first place. The Recommendation states that "[n]o policy is proposed to exempt 'existing' secondary units. This will ensure those units built prior to the establishment of the attached policies and regulations are brought into compliance with applicable regulations".

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[5] *Supra*, note 2.

Of great concern to the LPMA is the fact that bringing all properties in the Near Campus Neighbourhood into compliance with the proposed Official Plan and Zoning By-law would mean the eviction of persons currently living in secondary dwelling units in this vast area of the City, unless the unit was developed prior to 1995. This is disproportionately burdensome to low-income Londoners who are currently living in these units, as they and the owners of the relevant properties have to decide between eviction and being in violation of the zoning by-law. To prohibit secondary dwelling units in such a large area of the City, causing evictions and forcing many who are in need of affordable housing out of their homes, directly contradicts the goal of Bill 140: that is, to improve the affordable housing system. Instead, not only will the affordable housing system be weakened by the loss of all secondary dwelling units in the Near Campus Neighbourhood, but the City's remaining affordable housing system will be burdened by all of these newly evicted residents searching for, and in need of, affordable housing which may not be readily available. The proposed amendments will weaken the City and place a significant amount of additional stress on an already over-burdened affordable housing system.

The point is made in the Recommendation that Bill 140 does not include provisions which "legalize" secondary dwelling units built between 1995 and the present, and the Ministry "has noted specifically that the Bill 140 '*changes do not 'grandfather' any existing second units that do not meet the applicable laws'*. This is ostensibly taken from the Ministry's website, where it is stated that "[s]econd units must comply with any applicable laws, ***which could include the Building Code, the Fire Code and property standards by-laws. The changes do not 'grandfather' any existing second units that do not meet applicable laws***".[6] With respect, it is submitted that this statement from the Ministry's website is intended to mean that current secondary dwelling units must meet lawful "requirements or standards" for secondary dwelling units, such as the requirement to comply with the *Fire Code.* It does not mean that the City is authorized to outlaw secondary dwelling units in certain parts of the City and refuse to "grandfather" newly outlawed existing units. In fact, there is likely no such "grandfathering" provision because the *Planning Act* requires that secondary units be a***uthorized*** and not ***prohibited***, so there is no need to "grandfather" the legality of a secondary dwelling unit *per se.*

The purpose of Bill 140 was to ***strengthen*** the affordable housing system, and it is contradictory to that intention for the City to prohibit secondary dwelling units in tens of thousands of dwellings, and to refuse to grandfather existing units, thus ***weakening*** the affordable housing system.

Summary

The proposed amendments to the City's Official Plan and Zoning By-law do not align with the legislature's stated intention in passing Bill 140; they do not conform to the relevant provisions of the *Planning Act*; and they diminish the stock of affordable housing in the City, instead of increasing it, as Bill 140 intended to do.

There are great benefits that come with secondary dwelling units which, if the proposed amendments are enacted, will be taken away from tens of thousands of homeowners and renters in the City. As all people currently occupying secondary dwelling units in the Near Campus

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[6] *Ibid.*

Neighbourhood would be forced out of their homes, there is a real risk of increased homelessness in the City, and there would surely be significantly increased (and unnecessary) stress on the City's remaining, and already over-burdened, affordable housing system.

The LPMA respectfully requests that Council decline to pass the Official Plan and Zoning By-law amendments as they are currently constituted. In particular, the prohibition against secondary dwelling units in the Near Campus Neighbourhood needs to be reconsidered in the context of the greater vision reflected in Bill 140 and in the City's own future transit plans.

Yours very truly,

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