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August 19, 2016

Chair and Members  
Planning and Environment Committee  
City of London  
300 Dufferin Avenue, P.O. Box 5035  
London, ON N6A 4L9

Dear Chair and Members:

**Re: Notice of Public Participation Meeting – OZ-8053 || August 22, 2016**

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We are the lawyers for London Property Management Association (“LPMA”). LPMA 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 LPMA’s position with respect to the Recommendations of the Managing Director, Planning and City Planner with respect to Official Plan and Zoning By-law amendments regarding secondary dwelling units in the City of London (OZ-8053) (the “Recommendation”), coming before the Planning & Environment Committee on August 22, 2016.

LPMA supports and is encouraged by the recommendation to permit secondary dwelling units in all areas across the City, including in the Near-Campus Neighbourhood Areas, all subject to uniform conditions. There are several issues, however, that LPMA would like to address.

***Recommended Policy and Regulations: Official Plan and Zoning By-law***

***Definition of “Secondary Dwelling Unit”***

As outlined below, it is LPMA’s position that the requirement that the owners of dwellings containing secondary dwelling units occupy the primary dwelling units should be removed. Correspondingly, the definition of “secondary dwelling unit” proposed for the Zoning By-law in the Recommendation (pages 8 and 16 of the Recommendation) should be amended to remove the reference to owner-occupation.

### *“Grandfathering” Existing Units*

Page 5 of the Recommendation states that “secondary dwelling units will not be exempted from meeting the policies and regulations. These ‘existing’ secondary dwelling units must provide evidence that the units were built in accordance with the policies and regulations to be acknowledged as secondary dwelling units and able to apply for rental licenses”.

It is LPMA’s position that such a blanket policy is overly burdensome to the owners of existing secondary dwelling units. While LPMA agrees that these existing secondary dwelling units should be required to meet the requirements of the *Building Code* and the *Fire Code*, they should not be required to meet the other policies and regulations that are to be imposed on new secondary dwelling units, as proposed in the Recommendation. For example, it is recommended in the Recommendation that the floor area of a secondary dwelling unit may only account for up to 40% of the total area of the dwelling, and there are restrictions with respect to where entrances to secondary dwelling units are permitted. If an existing secondary dwelling unit makes up a slightly more than 40% of the total floor area of a dwelling, or if the entrance to a secondary dwelling unit does not comply with the new policy and regulations, that secondary dwelling unit would become illegal if the Recommendation is enacted as it now is.

To require that units such as these be brought into compliance with the newly enacted policies and regulations would put a significant burden on the owners of such units. Not only would they need to incur potentially significant expenses to renovate these units, but there would also be ramifications under the *Residential Tenancies Act, 2006* for these owners if the secondary dwelling unit is occupied by a renter. For example, if the owner is forced to reduce the size of the secondary dwelling unit to meet the recommended conditions, he or she would also be required to reduce the rent being charged to the tenant as a result of the reduction of a “facility” previously included in the rent. This would partially deprive the owner of one of the benefits of secondary dwelling units, being the financial assistance that they provide relative to home ownership. While the minor variance process could be utilized to address such issues, it is LPMA’s position that this would simply add additional time and expense for the homeowner, which is unnecessary if the definition of secondary dwelling unit; the *Building Code*; and the *Fire Code* are all complied with.

It is LPMA’s position that all existing secondary dwelling units in the City should be “grandfathered”, provided that they meet the Recommendation’s proposed definition of a “secondary dwelling unit” (subject to the amendment suggested above) and they meet the requirements of the *Building Code* and *Fire Code*. Accordingly, the recommended amendment to section 4 of the Zoning By-law, under the heading “Permitted Zones” (pages 16-17 of the Recommendation), should be amended to make it clear that all secondary dwelling units in existence as of the date that the Zoning By-law amendment is passed may continue to be used for that purpose, so long as they meet the Zoning By-law’s definition of “secondary dwelling unit”, and comply with the requirements of the *Building Code* and the *Fire Code*, regardless of whether such units comply with all of the other requirements listed in this section.

### *Owner Occupation*

Page 6 of the Recommendation discusses the reasons behind requiring secondary dwelling units to be permitted only in dwellings where the owner occupies the primary dwelling unit. While LPMA agrees that the secondary dwelling unit should be ancillary and secondary to the primary dwelling unit, the requirement that the primary dwelling unit be owner-occupied is not necessary. There is no reason why, if there is a secondary dwelling unit that meets the Recommendation's proposed definition and all of the policies and regulations laid out in the Recommendation's proposed amendments to the Official Plan and Zoning By-law, but both the primary and secondary dwelling units are rented out, the secondary dwelling unit should not be recognized.

In this situation, the existence of the secondary dwelling unit would still provide the same benefits to the owner of the dwelling and the City as a whole as if it were owner-occupied. There would still be a secondary dwelling unit, ancillary to the primary unit, which would increase the City's stock of affordable housing. The existence of the primary and secondary units on the rental market would allow a more economically and socially diverse segment of the population (who may not be able to afford, or may not desire, home-ownership) to live in more areas of the city. This would not increase intensification or land use impacts relative to a situation where the primary dwelling is owner-occupied.

It would also help the homeowner with the costs of owning the home, whether the dwelling generates rental revenue from one or two units. It is economically advantageous for both the homeowner and the City as a whole to allow residents of London to build wealth through equity in homes by permitting both primary and secondary dwelling units to be rented.

It is LPMA's position that the owner-occupation requirement be removed from the Recommendation. Accordingly, in addition to the amendment of the definition of secondary dwelling unit in the Zoning By-law, referenced above, LPMA submits that paragraph 1 of the policy recommended to be inserted into the Official Plan as section 3.2.3.9 (page 13 of the Recommendation), relating to owner-occupation, should be removed. Similarly, the proposed amendment to paragraph 1 of Policy 942 of the London Plan should be removed (page 20 of the Recommendation).

#### *Limited Number of Bedrooms*

One of the recommended policies/regulations in the Recommendation is that a secondary dwelling unit may contain only one bedroom, and the recommended maximum total number of bedrooms in the primary and secondary dwelling units is five for a detached dwelling, and three for a semi-detached or townhouse dwelling.

It is LPMA's position that the limit of one bedroom per secondary dwelling unit is not necessary. For example, there is no reason why a secondary dwelling unit with two bedrooms in a five-bedroom dwelling, that meets all other criteria set out in the Recommendation, should not be recognized. Such a secondary dwelling unit would still be clearly ancillary and secondary to the primary dwelling unit, but this additional affordable rental unit would be available to more people, such as those who would require two bedrooms. A single mother or father with a child may not be able to live comfortably in a one-bedroom secondary dwelling unit, but if there is a second bedroom, perhaps they could. Limiting the number of bedrooms to one when there is

already a policy/regulation with respect to the maximum relative area of the primary and secondary dwelling units, is unnecessary in LPMA's opinion.

Likewise, it is LPMA's position that the proposed policy/regulation limiting the total number of bedrooms in the primary and secondary dwelling units to five (or three for semi-detached or townhouse dwellings) is also unnecessary. Again, provided that all of the other requirements set forth in the Recommendation are met, there is no reason to prohibit the owner of a larger dwelling that contains six or more bedrooms from having a secondary dwelling unit, ancillary to a primary dwelling unit. The owner of such a dwelling would still benefit from the financial assistance of rental income from the secondary dwelling unit, and/or would benefit from the ability to have a family member or caregiver living in the secondary dwelling unit. It would also provide more affordable housing in more areas of the City, improving the City's diversity in more areas.

It is LPMA's position that the restriction on the number of bedrooms permitted in a secondary dwelling unit, as well as the restriction on the overall number of bedrooms in the dwelling as a whole, should be removed. Accordingly, LPMA submits that paragraph 3 of the policy recommended to be inserted into the Official Plan as section 3.2.3.9 (page 13-14 of the Recommendation), relating to the permitted number of bedrooms, should be removed. Similarly, paragraph 3 of the proposed amendment to Policy 942 of the London Plan should be removed (page 20 of the Recommendation). In addition, the recommended amendment to the Zoning By-law, Section 4(6), restricting the total number of bedrooms, should be removed (page 17 of the Recommendation).

We appreciate your attention to and consideration of this submission.

Yours very truly,

**COHEN HIGHLEY** LLP



signature electronically affixed

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