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File No. O-7938
Planner: J. Adema

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	MINISTER'S MODIFICATIONS TO THE LONDON PLAN SECONDARY DWELLING UNITS MEETING ON FEBRUARY 6, 2017

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, the attached information report with respect to the modifications made by the Minister of Municipal Affairs on secondary dwelling units in *The London Plan* **BE RECEIVED.**

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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January 23, 2017 - Planning and Environment Committee, information report regarding the Minister of Municipal Affairs approval, with modifications, of *The London Plan*.

EXECUTIVE SUMMARY

On December 28, 2016, The Ministry of Municipal Affairs issued a Notice of Decision to approve, with modifications, the new Official Plan for the City of London (*The London Plan*).

The Minister made 29 modifications to the Plan as adopted by City Council on June 23, 2016. One of the modifications was to Policy 942, which relates to secondary dwelling units. This substantive change to *The London Plan* consists of several modifications to the secondary dwelling unit policies; as part of these modification, the province removed the requirement for the primary unit to be owner occupied. Furthermore, the province did not modify the Plan in order to remove the restriction that precludes secondary dwelling units in Near-Campus Neighbourhoods.

BACKGROUND

On January 23, 2017, Planning Staff submitted a report to the Planning and Environment Committee providing an overview of the approval of *The London Plan*. The report described the Minister's modifications to the Plan and noted that among the substantive modifications were changes to policy 942 regarding secondary dwelling units.

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At that meeting, the Planning and Environment Committee recommended:

That the following actions be taken with respect to the Minister of Municipal Affairs modifications to The London Plan:

- a) on the recommendation of the Managing Director, Planning and City Planner, the staff report dated January 23, 2017, entitled “The London Plan Minister’s Modifications, meeting on January 23, 2017”, **BE RECEIVED** for information; and,
- b) the Civic Administration **BE REQUESTED** to report back at a future meeting of the Planning and Environment Committee with respect to Policy 942 - Neighbourhoods Place Type. (2017-D09).

This report provides information on the development of the policies for secondary dwelling units in response to the Committee’s request.

SECONDARY DWELLING UNIT POLICIES TIMELINE
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December, 2015 – An Official Plan and Zoning By-law amendment was presented for consideration by City Council that would have permitted secondary dwelling units in the City of London. The proposed policies included restrictions that required the primary unit to be owner-occupied and limited secondary dwelling units to areas outside of Near-Campus Neighbourhoods.

Some members of City Council expressed concern regarding the geographic restriction on Near-Campus Neighbourhoods, and acknowledging that at the time there was an ongoing review of the Near-Campus Neighbourhoods Strategy, referred the policies back to staff to be considered as part of that review.

June, 2016 – *The London Plan* was adopted by City Council. It included policies for Secondary Dwelling Units that included the geographic restriction on Near-Campus Neighbourhoods and required the primary unit to be owner-occupied.

July, 2016 – The Near-Campus Neighbourhoods Strategy review was completed and a report was presented to the Planning and Environment Committee. The staff recommendation, which was based on extensive community consultation, included that secondary dwelling units should be permitted in Near-Campus Neighbourhoods. This conclusion was based in part on the understanding by residents of Near-Campus Neighbourhoods that the primary unit would be required to be owner-occupied. City Council directed Civic Administration to prepare revised policies that permit secondary dwelling units in Near-Campus Neighbourhoods.

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August, 2016 – revised Policies for secondary dwelling units were approved by City Council. These policies made several changes to the policies approved by Council within The London Plan in June of 2016. One of the changes made since *The London Plan* was that secondary dwelling units were permitted in Near-Campus Neighbourhoods. Because *The London Plan* had already been adopted and was under review by the Minister, Council sent these revised policies along to the Ministry, requesting that these revised policies be incorporated into the Plan.

December, 2016 – The Minister approved The London Plan with modifications, which included removing the requirement that the primary unit be owner-occupied as well as other changes. The minister did not remove the geographic exception in Near Campus Neighbourhoods that was adopted by City Council in June, 2016.

The various versions of policy 942 for secondary dwelling units described above are included in Appendix A.

MINISTER MODIFICATIONS TO SECONDARY DWELLING UNIT POLICIES

At its meeting on January 27, 2016 the Planning and Environment Committee expressed a desire to understand how the Minister came to its modification to the secondary dwelling units policy (Policy 942). City staff contacted the Ministry for clarification, and in conversation with them reference was made to a communication from the Minister of Housing that was sent in November, 2016. This letter encourages municipalities to update their Official Plans and zoning by-laws to permit secondary dwelling units and remove obstacles to their development. This letter is included in Appendix B.

Specifically, the Minister noted in his letter five items to advance the adoption of policies related to secondary dwelling units:

1. Education and outreach to highlight changes to the Building Code and *Development Charges Act* that would support secondary dwelling units
2. Review Official Plans and zoning by-laws adopted since the Province introduced the secondary dwelling unit legislation to review their policies and/or regulations to ensure that they were not overly restrictive.
3. Encourage municipalities that have not adopted changes to their Official Plans and/or zoning by-laws to do so by March 31, 2017.
4. In order to ensure that the standards or policies were not overly restrictive or onerous, consider regulations that would limit the number of additional parking spaces required for a second unit to 1 space, and that tandem parking would be permitted, secondary units would not be subject to any requirements that one of the units be occupied by the owner, and that secondary units would be permitted regardless of the date of construction of the primary or secondary unit.
5. Publish an information backgrounder outlining best practices.

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Through their December 2016 approval of the London Plan, with modifications, the Minister made several modifications to The London Plan’s policies relating to secondary dwelling units. Over the past week, Planning Staff have had conversations with Ministry Staff to understand the thinking behind these changes. At the core are the following:

- Ministry staff indicate they had two primary goals:
 1. Respect the decisions of London City Council in their consideration of secondary dwelling units.
 2. Consistent with the Minister’s direction noted above, ensure a permissive Official Plan policy that avoids onerous conditions and restrictions.

- The Ministry used the June, 2016 policies included in The London Plan as the basis for their approval.

- They also reviewed the revised policies sent by Council in August of 2016 and integrated some of these policies into their modification of the June, 2016 policies.

- In doing so, the Ministry made the following changes to the June 2016 policies that removed restrictions for secondary dwelling units:
 - Removed reference to the secondary dwelling unit being clearly ancillary and subordinate to the primary residential unit.
 - Removed policies that place bedroom limitations on the secondary dwelling unit and the total number of bedrooms for the secondary and primary dwelling unit (Ministry Staff have indicated that the regulations of the applicable zone can address the issue of total number of bedroom units).
 - Removed the requirement that the primary unit be owner occupied.
 - Removed the prohibition of exterior alterations in the front or exterior side yards and replaced it with language that ensures such alterations should maintain the character of the primary dwelling unit and protect neighbourhood character.
 - Removed the requirement for a parking space to accommodate a secondary dwelling unit.
 - Other minor changes of a more technical nature.

The June, 2016 secondary dwelling unit policies included a restriction that did not permit such units within the Near Campus Neighbourhood Area. The Ministry did not eliminate this restriction, despite the fact that Council had done so in their August, 2016 policy revisions forwarded to the province. Ministry Staff indicated that they believed that this

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was reasonable, recognizing the modifications they made to eliminate several other restrictions from the June, 2016 policies. Ministry Staff have made it clear that the Ministry would have no concerns with Council removing this restriction relating to the Near Campus Neighbourhood should they wish to do so.

NEXT STEPS

The Minister has the authority to modify the policies of a new Official Plan, through its provincial approval process for that Plan. In accordance with this authority, the Ministry modified Council's policies relating to secondary dwelling units. Primarily, these modifications served to eliminate a number of restrictions on secondary dwelling units that were included in Council's policy framework. The Ministry did not, however, remove the restriction on secondary dwelling units within the Near Campus Neighbourhood Area.

Planning Staff have spoken with Ministry Staff and have ascertained that the Ministry would have no concern if London City Council made an amendment to the secondary dwelling unit policies to remove the restriction within the Near Campus Neighbourhood Area. To do so, Council could instruct Staff to initiate an amendment to The London Plan secondary dwelling unit policies in order to eliminate the restriction within those policies that does not allow for secondary dwelling units within the Near Campus Neighbourhood. It is noteworthy that any such amendment would not be subject to provincial review and would also not be appealable as per Section of the Planning Act.

Should Council wish to eliminate the current restriction on secondary dwelling units being allowed within the Near Campus Neighbourhood, they should direct Municipal Staff to initiate an Official Plan amendment process to do so.

PREPARED BY:	SUBMITTED BY:
JUSTIN ADEMA, MCIP, RPP PLANNER II, CURRENT PLANNING	GREGG BARRETT, AICP MANAGER, LONG RANGE PLANNING AND RESEARCH
RECOMMENDED BY:	
JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

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Appendix A – Secondary Dwelling Unit Policies (Policy 942)

I. Policy as adopted by City Council (June 23, 2016)

942_ Secondary dwelling units are permitted as-of-right within single detached dwellings, semi-detached dwellings or a street townhouse dwelling where all of the following criteria are met:

1. The secondary dwelling unit must be clearly ancillary and subordinate to the primary residential use.
2. A maximum of one secondary dwelling unit per primary dwelling unit is permitted, and must be located on the same lot as the primary dwelling unit.
3. Secondary dwelling units will not be permitted within the Near-Campus Neighbourhood area as defined in the Specific Policies in this chapter.
4. A secondary dwelling unit will be limited to a maximum of one bedroom, and the total number of bedrooms in the primary dwelling unit and secondary dwelling unit combined will not be greater than five.
5. Secondary dwelling units will be required to be licensed pursuant to the *Residential Rental Unit Licensing By-law*.
6. The gross floor area of a secondary dwelling unit will not be greater than 40% of the combined total gross floor area of both the primary dwelling unit and the secondary dwelling unit.
7. A secondary dwelling unit will comply with all regulations of the associated zone.
8. Exterior alterations to the primary dwelling unit to provide for secondary dwelling units will not be permitted for front or exterior side yards. Access to secondary dwelling units may be through existing entrances or new entrances located in rear or side yards.
9. In addition to the parking requirement for the primary residential unit, one additional parking space will be required and maintained in accordance with the *Zoning By-law*. A second driveway is not permitted.
10. Secondary dwelling units may be permitted within a legally established accessory structure only where the primary dwelling unit does not contain a secondary dwelling unit and the secondary dwelling unit:
 - a. Is located on the same lot as the primary dwelling unit.
 - b. Is located in the rear yard.
 - c. Meets the requirements of the zone.
11. New or expanded accessory structures that are proposed to house secondary dwelling units shall require site plan approval.
12. A secondary dwelling unit will not be located within a basement within a dwelling located in a flood plain as regulated by the conservation authority having jurisdiction for that area.
13. A secondary dwelling unit shall be permitted only where the primary unit is owner occupied.

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II. Revised Policy as Approved by City Council (August 30, 2016)

942_ Secondary dwelling units may be permitted within a single detached dwelling, semi-detached dwelling or a street townhouse dwelling. The secondary dwelling unit must be clearly ancillary and subordinate to the primary residential use and may be permitted where all of the following criteria are met:

1. Secondary dwelling units shall be permitted where the primary unit is owner occupied;
2. A maximum of one (1) secondary dwelling unit per primary dwelling unit is permitted, and must be located on the same lot as the primary dwelling unit;
3. A Secondary dwelling unit shall be limited to a maximum of one (1) bedroom, and the total number of bedrooms of both the primary dwelling unit and secondary dwelling unit shall not be greater than five (5) for a single detached dwelling and not be greater than three (3) for a semi-detached or street townhouse dwelling.
4. Secondary dwelling units shall be required to be licensed pursuant to the Residential Rental Unit Licensing By-law;
5. The gross floor area of a secondary dwelling unit shall not be greater than 40% of the combined total gross floor area of both the primary residential dwelling unit and secondary dwelling unit;
6. Exterior alterations to the primary dwelling unit to provide for secondary dwelling units in the front or exterior side yards should maintain the character of the primary dwelling unit. To protect neighbourhood character, access to secondary dwelling units may be through existing entrances or new entrances located in rear or interior side yards;
7. Any zoning amendments or variances to provide for parking in excess of the minimum parking required for the primary dwelling unit, including any request for boulevard parking, front yard parking or changes to landscaped open space regulations to support parking for a secondary dwelling unit, shall be discouraged. A new additional driveway is not permitted to provide for the secondary dwelling unit;
8. Minor variances to permit front yard parking shall not be supported where the proposed new development, expanded development, or modification to an existing development eliminates existing parking that is in a location which conforms to the Zoning By-law;
9. A secondary dwelling shall comply with all regulations of the associated zone;
10. Secondary dwelling units may be permitted within a legally established accessory structure that:
 - a. is located on the same lot as the primary dwelling unit;
 - b. meets the requirements of the zone which apply to accessory structures;
 - c. is in association with a primary dwelling unit which does not contain a secondary dwelling unit; and,
 - d. is located in the rear yard;
11. Secondary dwelling units located within a primary dwelling unit shall not require Site Plan Approval. Secondary dwelling units within an accessory structure shall require Site Plan Approval.
12. A secondary dwelling unit shall not be located within a basement within a dwelling located in a flood plain as regulated by the Conservation Authority having jurisdiction for that area.

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III. Minister Modification (December 28, 2016)

942_ is modified by:

- i) deleting bullet 1, bullet 4, and bullet 13 in their entirety;
- ii) in bullet 5, delete the word “will” and replace with the word “shall”;
- iii) in bullet 6, delete the word “will” and replace with the word “shall”;
- iv) in bullet 7, delete the word “will” and replace with the word “shall”;
- v) in bullet 8, delete the phrase “will not be permitted for front or exterior side yards” and replace it with the phrase “in the front or exterior side yards should maintain the character of the primary dwelling unit”. Delete the word “Access” and replace it with the phrase “To protect neighborhood character, access”;
- vi) bullet 9 is deleted and replaced with the following, “Any zoning amendments or variances to provide for parking in excess of the minimum parking required for the primary dwelling unit, including any request for boulevard parking, front yard parking, or changes to landscaped open space regulations to support parking for a secondary unit, shall be discouraged. A new additional driveway is not permitted to provide for the secondary dwelling unit;”
- vii) in bullet 10, delete the first paragraph and replace it with the phrase “Secondary dwelling units may be permitted within a legally established accessory structure that:”. In sub-bullet “c”, add the phrase “which apply to accessory structures” after the word “zone”. Add a new sub-bullet “d” with the following phrase “is in association with a primary dwelling unit which does not contain a secondary dwelling unit”;
- viii) bullet 11 is deleted in its entirety and replaced with the following “Secondary dwelling units located within a primary dwelling unit shall not require Site Plan Approval. Secondary dwelling units within an accessory structure shall require Site Plan Approval.”
- ix) in bullet 12, delete the word “will” and replace it with the word “shall”.
- x) Add a new bullet with the following wording, “Minor variances to permit front yard parking shall not be supported where the proposed new development, expanded development, or modification to an existing development eliminates existing parking that is in a location which conforms to the Zoning By-law.”
- xi) Renumber the sub-bullets in policy 942 in sequential order

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IV. Approved Policy (Showing Minister Modification):

942_ Secondary dwelling units are permitted as-of-right within single detached dwellings, semi-detached dwellings or a street townhouse dwelling where all of the following criteria are met:

1. ~~The secondary dwelling unit must be clearly ancillary and subordinate to the primary residential use.~~
2. A maximum of one secondary dwelling unit per primary dwelling unit is permitted, and must be located on the same lot as the primary dwelling unit.
3. Secondary dwelling units will not be permitted within the Near-Campus Neighbourhood area as defined in the Specific Policies in this chapter.
4. ~~A secondary dwelling unit will be limited to a maximum of one bedroom, and the total number of bedrooms in the primary dwelling unit and secondary dwelling unit combined will not be greater than five.~~
5. Secondary dwelling units ~~will~~ shall be required to be licensed pursuant to the *Residential Rental Unit Licensing By-law*.
6. The gross floor area of a secondary dwelling unit ~~will~~ shall not be greater than 40% of the combined total gross floor area of both the primary dwelling unit and the secondary dwelling unit.
7. A secondary dwelling unit ~~will~~ shall comply with all regulations of the associated zone.
8. Exterior alterations to the primary dwelling unit to provide for secondary dwelling units ~~will not be permitted for front or exterior side yards~~ in the front or exterior side yards should maintain the character of the primary dwelling unit. ~~Access-To protect neighbourhood character, access~~ to secondary dwelling units may be through existing entrances or new entrances located in rear or side yards.
9. ~~In addition to the parking requirement for the primary residential unit, one additional parking space will be required and maintained in accordance with the Zoning By-law. A second driveway is not permitted. Any zoning amendments or variances to provide for parking in excess of the minimum parking required for the primary dwelling unit, including any request for boulevard parking, front yard parking or changes to landscaped open space regulations to support parking for a secondary dwelling unit, shall be discouraged. A new additional driveway is not permitted to provide for the secondary dwelling unit;~~
10. ~~Secondary dwelling units may be permitted within a legally established accessory structure only where the primary dwelling unit does not contain a secondary dwelling unit and the secondary dwelling unit.~~ Secondary dwelling units may be permitted within a legally established accessory structure that:
 - a. Is located on the same lot as the primary dwelling unit.
 - b. Is located in the rear yard.
 - c. Meets the requirements of the zone which apply to accessory structures.
 - d. Is in association with a primary dwelling unit which does not contain a secondary dwelling unit.

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~~11. New or expanded accessory structures that are proposed to house secondary dwelling units shall require site plan approval.~~ Secondary dwelling units located within a primary dwelling unit shall not require Site Plan Approval. Secondary dwelling units within an accessory structure shall require site plan approval.

12. A secondary dwelling unit ~~will~~ shall not be located within a basement within a dwelling located in a flood plain as regulated by the conservation authority having jurisdiction for that area.

xx. Minor variances to permit front yard parking shall not be supported where the proposed new development, expanded development, or modification to an existing development eliminates parking that is in a location that conforms to the Zoning By-law.

~~13. A secondary dwelling unit shall be permitted only where the primary unit is owner occupied.~~

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Appendix B – Letter from Minister of Housing to Municipalities

Ministry of Housing

**Minister Responsible for the
Poverty Reduction Strategy**

Office of the Minister

777 Bay Street, 17th Floor
Toronto ON M5G 2E5
Tel.: 416 585-8500
Fax: 416 585-4035

Ministère du Logement

**Ministre responsable de la Stratégie
de réduction de la pauvreté**

Bureau du ministre

777, rue Bay, 17^e étage
Toronto ON M5G 2E5
Tél. : 416 585-8500
Télééc. : 416 585-4035



Let me thank you and your council for the work you do every day on behalf of the citizens of Ontario. It can't be said enough that a strong partnership between your government and my Ministry is critical to addressing the affordable housing challenges we collectively face.

As you'll know, the province recently released an update to the Long-Term Affordable Housing Strategy (LTAHS) 2016 (the "Update"). The Update continues the transformation of Ontario's housing system which we began with the 2010 LTAHS. On September 14, 2016, we re-introduced the Promoting Affordable Housing Act, 2016 (Bill 7). If passed, Bill 7 would help ensure that the people of Ontario have better access to affordable and adequate housing. This includes an even stronger emphasis on the role that private sector housing can play in providing a mix and range of affordable housing choices for Ontarians.

More specifically, second units are an important tool in contributing to the supply of private sector affordable housing choices. They are widely recognized as one of the most affordable forms of rental housing. Second units help optimize the use of the existing housing stock and infrastructure, all the while providing an income stream for homeowners, particularly younger and older homeowners, who may respectively have a greater need for income to help finance and/or remain in their homes.

In support of second units, I am pleased to announce that Bill 7 proposes to amend the *Development Charges Act, 1997* which, if passed, give authority to amend the regulations and exempt second units in new homes from development charges. This should help spur the design of houses to accommodate second units at the outset, which is a more effective approach compared to retrofitting. In this way, we can plan ahead for houses to be used in a flexible way over time, depending on the life cycle stage of homeowners and whether they seek or need the income a second unit can provide.

Concurrently, we are proposing to publicly consult on potential changes to the Building Code (by way of an amendment to Regulation 332-12) to improve the affordability of second units in newly constructed houses while still meeting safety standards of both the Building Code and Fire Code. The proposed new requirements for construction of newly built houses with second units would allow for greater flexibility and decrease the construction costs.

You may recall that we began a renewed emphasis on second units as part of the 2010 LTAHS which saw us make amendments to the *Planning Act* to require municipalities to amend their official plans and zoning by-laws to authorize second units in single-detached, semi-detached and row dwellings, as well as in accessory structures (e.g. laneway garages). These provisions came into effect on January 1, 2012. The Act was

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also amended to give the Minister regulation making authority - to both directly permit second units and/or to prescribe standards for them (e.g. parking).

I am aware that an increasing number of municipalities have taken, or are engaged in taking, steps to amend their official plans and zoning by-laws to reflect these provisions. I appreciate those efforts. However, in some instances, analysis reveals that certain official plan policies and/or zoning provisions do not reflect the permissive spirit and intent of these legislative changes. It is noted that Bill 7 proposes to provide the minister with appeal rights related to municipal adoption of second unit official plan policies and zoning by-laws.

However, the majority of municipalities have not updated their official plans and zoning by-laws to reflect the second unit requirements of the *Planning Act* - even though we are well into the fourth year since this requirement came into effect. As such, and based on all of the above, I have instructed staff to engage in a five part plan as follows:

1. Engage in outreach to apprise municipalities of the proposed changes to the Building Code and *Development Charges Act* as a means of supporting the planning and establishment of second units.
2. Our Municipal Services Offices will approach those municipalities that have adopted official plans and/or zoning by-laws post 2012 to:
 - a. Discuss policies, by-laws, or standards that appear to be overly restrictive and not in keeping with the permissive spirit and intent of the legislation; and
 - b. Request these municipalities to review the policies or standards considered restrictive at the next opportunity (i.e., during an official plan review or zoning by-law update) to reflect the purpose and intent of the *Planning Act* provisions on second units.
3. Our Municipal Services Offices will also approach all of those municipalities that have yet to adopt changes to their official plans and/or zoning by-laws to reflect the *Planning Act* requirements, to seek an understanding of when the changes will be made and to provide guidance as needed. I have instructed them to seek commitments to complete this work by March 31, 2017.
4. Propose a regulation under the *Planning Act* setting out standards and/or limitations on official plan policies and/or zoning standards which would take precedence over existing policies/standards which are deemed to be not in keeping with the permissive spirit and intent of the legislation as follows:
 - o Only a maximum of up to one parking spot per second unit could be required and tandem parking would be permitted;
 - o Second units could not be subject to any provision which requires the primary or second unit be occupied by any person (e.g. a by-law could not require the primary unit to be inhabited by the owner in order for a second unit to be permitted); and
 - o Second units would be permitted in primary dwellings and accessory buildings regardless of date of construction of the primary or the second unit.

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5. Publish an information backgrounder setting out best practices on second units, along with promoting guidance material and web content developed by the Landlord Self Help Centre.

While some of the above steps may seem strong, these province-wide legislative requirements for second units have been in place for some time. Since their enactment, the need for affordable housing choices for all Ontarians has increased.

The benefits of second units are widely recognized and they form a substantial and increasing part of the province's affordable housing supply. Since becoming Minister in June, I have crossed the province listening to municipal leaders, housing experts and advocates. In the formal and informal discussions, the need for secondary suites to be part of a healthy municipal housing "mix" became more obvious. I have instructed ministry staff to provide as much information and advice as possible to assist municipalities in moving forward with this important work.

I look forward to all municipalities in Ontario embracing a permissive second unit policy and zoning framework to help house their residents.

Thank you in advance for your help as we work together in partnership to achieve our shared goal of creating more affordable housing in our communities.

Sincerely,



Chris Ballard
Minister