

Index of Submission Materials

May 24, 2024

The Council of the City of Guelph  
Guelph City Hall  
1 Carden Street  
Guelph, ON N1H 3A1

**File No. 19452**

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**Re:** Development Charges paid on January 8, 2024 for City of Guelph Building Permit #s 23 122495 000, 23 122499 000, 23 122502 000, 23 122504 000, 23 122505 000, and 23 122406 000 (the “Permits”) for the development of a residential rental townhouse development on 300 Water Street, Guelph, ON N1G 1B8 (the “Property”)

Owner/Complainant: 300 Water St Inc.

Address of Owner/Complainant: 70 Preston St, Guelph, ON N1H 3C1

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## 1A – Principal Biographies

The Owner (300 Water St Inc.) is a company within the Spruce Living group of companies



# OUR TEAM




### ANDREW ARKLIE

Andrew brings 15 years of real estate industry experience in a variety of roles including planning, construction, property / asset management and business development. As the Director of Operations for Skyline REIT from 2012-2019, he oversaw operations of portfolios worth over \$1B including a team of over 200 staff. In this role, Andrew specialized in the stabilization and increased profitability of distressed assets in Ontario, Quebec and Eastern Canada. In addition, has been involved in the development, design and new construction of over \$500 million worth of 'new construction' real estate in Canada and the US. In all roles, Andrew has partnered on projects with some of Canada's largest developers, REITs and industry professionals.

### ZACH FISCHER

Zach had a passion and a vision and in 2016 established Mezcon Construction Limited a company that specializes in building custom homes, large-scale renovations and various commercial projects. Prior to starting Mezcon, Zach was the Regional Construction Manager with a large owner/developer corporation, specializing in high-rise, multi-residential and commercial projects. With his accumulated fifteen years of experience, he fostered relationships with all the numerous sub-trades involved in various construction projects and this allowed him to show his strength and dedication for excellence within the construction industry becoming a Tarion licensed builder with 50 custom luxury home projects, in which total revenues since inception have exceeded \$100 million.

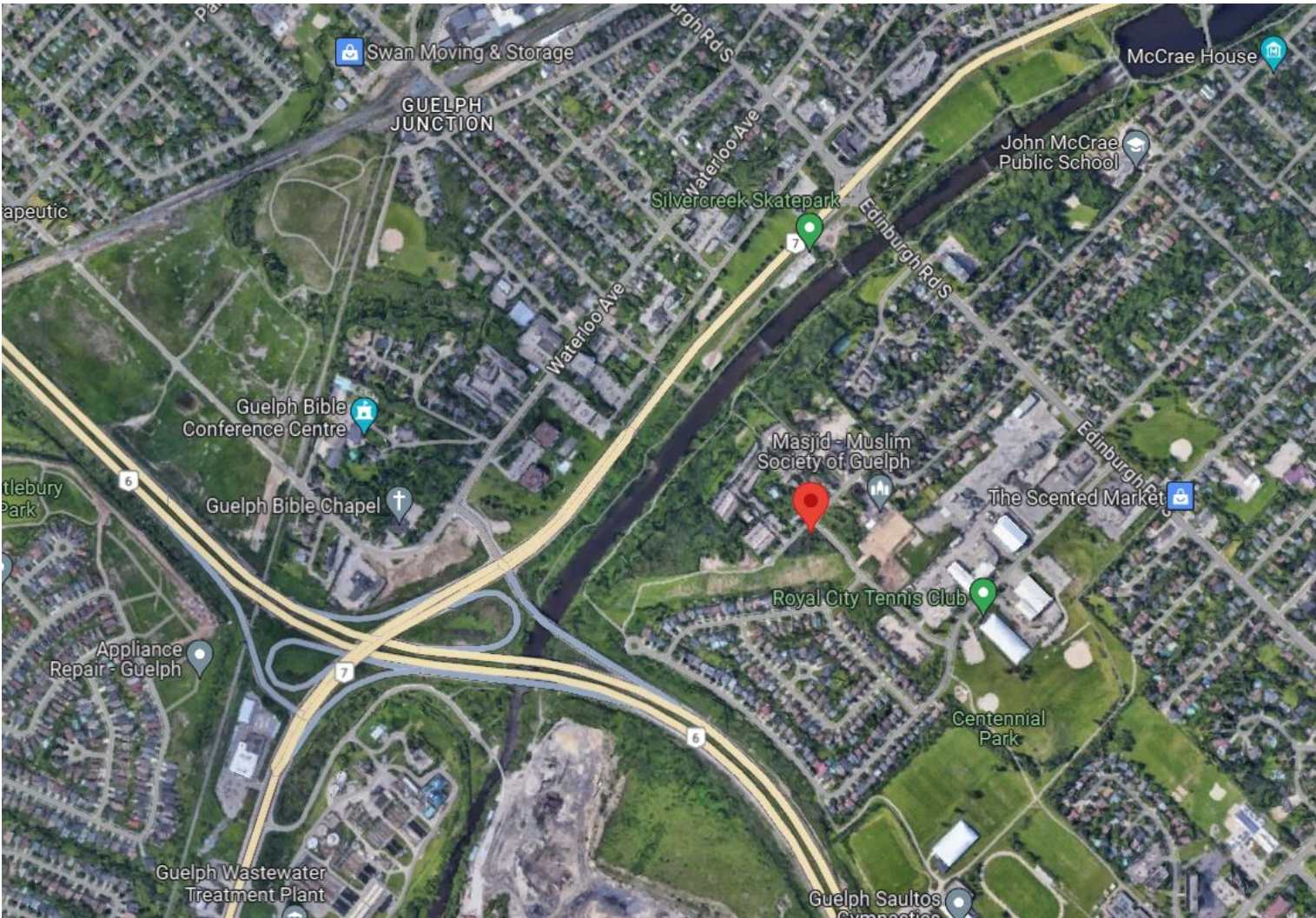




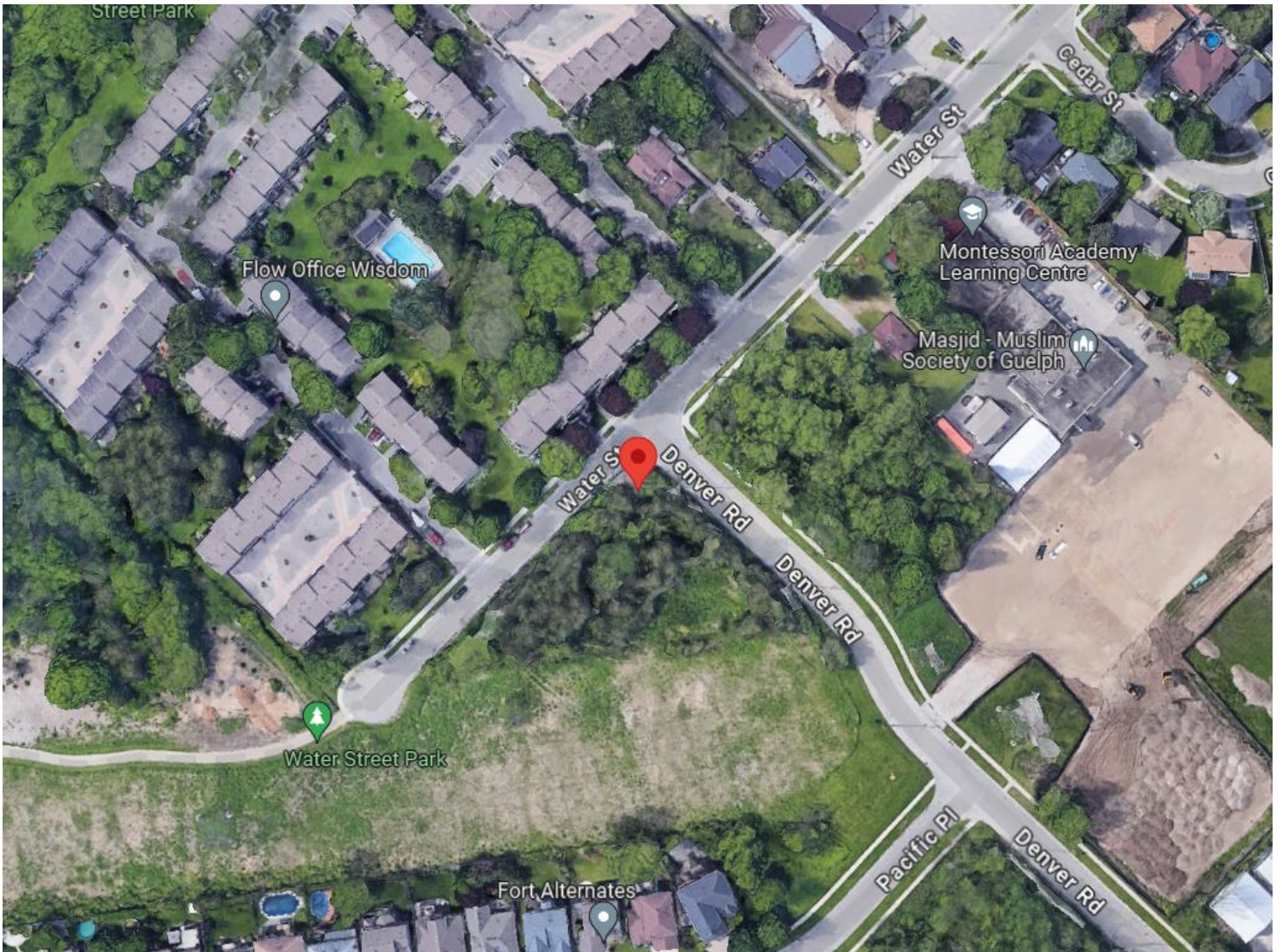
## 2 – Synopsis of the Complaint

1. The Owner received building permits for the construction of Six (6) townhomes and was required to pay \$228,552.00 in Development Charges to receive the building permits. The Owner paid the Development Charges on January 8, 2024 under protest as to the amount charged.
2. The Owner is asking for a return of \$57,138.00 which is twenty-five percent (25%) of the total Development Charges paid and the proper amount of Development Charges collected is \$171,414.00.
3. The Development Charges Act states that builders are to receive a 25% reduction in development charges payable for a development if:
  - a. The development is a building with four or more residential units;
  - b. Each residential unit contains three (3) or more bedrooms; and
  - c. The residential units are intended for use as rented residential units.
4. The Owner's development is a building that contains six (6) residential units and is defined as an "On-Street Townhouse" under the City of Guelph's Development Charges Bylaw (2019)-20372;
5. Five (5) of the units contain four (4) bedrooms and one (1) unit contains three (3) bedrooms.
6. The residential units are intended to be rented residential units because:
  - a. The Owner did not register the residential units under Tarion to permit sales. Without Tarion enrollment, residential units must be rented;
  - b. The Owner has obtained approval for CMHC rental-construction financing on the basis this is a purpose-built rental complex. This is a federally-funded program that is only available to rental properties; and
  - c. The Owner is willing to enter into an agreement with the City confirming the Owner's intention to rent the units. Robson Carpenter LLP has recently assisted in creating this type of agreement for the City of Waterloo under a similar situation.

3A – Map of the Property’s Location



3B – Historical Aerial View of the Property



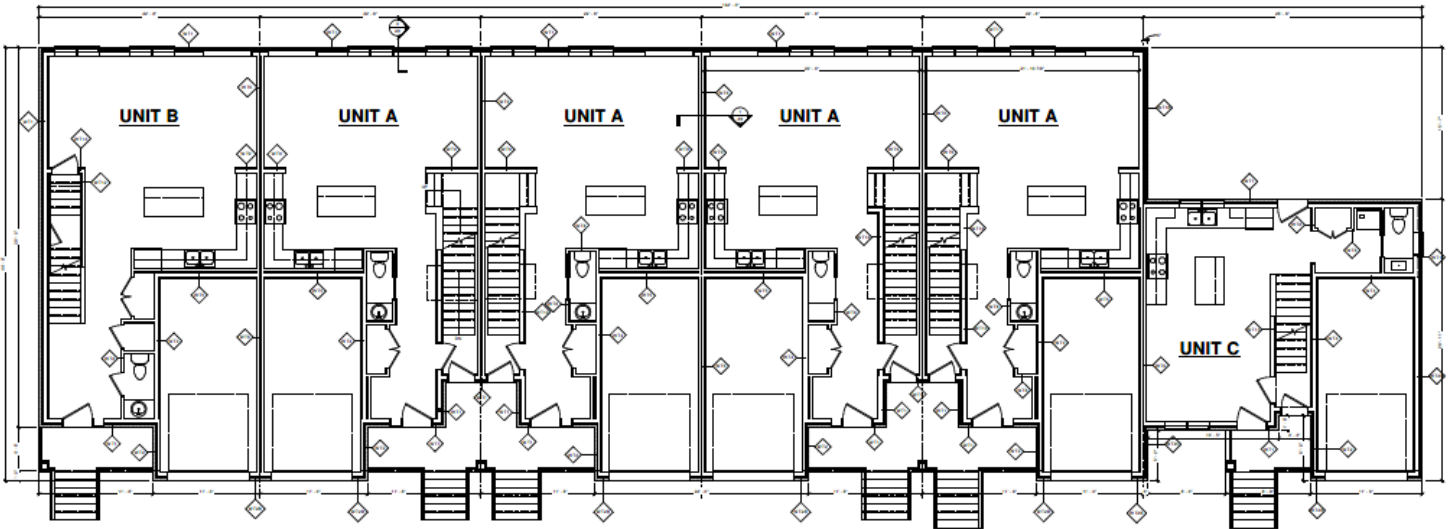




### 3E – Building Plans

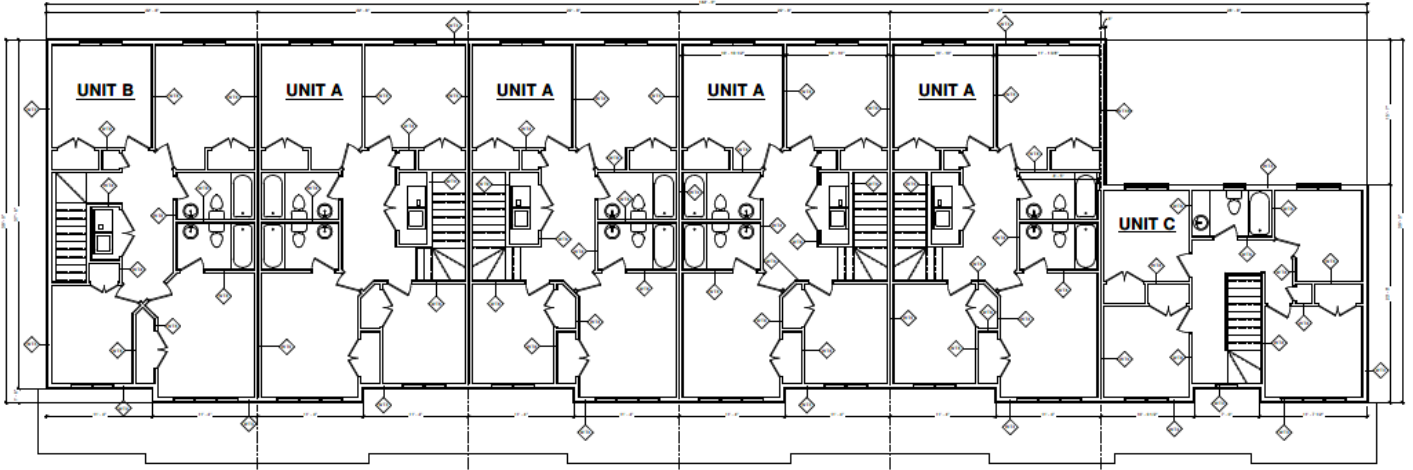


### Main Floor:





**Second Floor:**





## **4A – Development Charges Act Excerpts**

### **When amount of development charge is determined**

**26.2** (1) Subject to subsection (1.1), the total amount of a development charge is the amount of the development charge that would be determined under the by-law on,

- (a) the day an application for an approval of development in a site plan control area under subsection 41 (4) of the *Planning Act* or subsection 114 (5) of the *City of Toronto Act, 2006* was made in respect of the development that is the subject of the development charge;
- (b) if clause (a) does not apply, the day an application for an amendment to a by-law passed under section 34 of the *Planning Act* was made in respect of the development that is the subject of the development charge; or
- (c) if neither clause (a) nor clause (b) applies,
  - (i) in the case of a development charge in respect of a development to which section 26.1 applies, the day the development charge would be payable in accordance with section 26 if section 26.1 did not apply, or
  - (ii) in the case of a development charge in respect of a development to which section 26.1 does not apply, the day the development charge is payable in accordance with section 26. 2019, c. 9, Sched. 3, s. 8 (1); 2022, c. 21, Sched. 3, s. 8 (1).

### **Discount, rental housing development**

(1.1) In the case of rental housing development, the amount determined under subsection (1) shall be reduced in accordance with the following rules:

1. A development charge for a residential unit intended for use as a rented residential premises with three or more bedrooms shall be reduced by 25 per cent.
2. A development charge for a residential unit intended for use as a rented residential premises with two bedrooms shall be reduced by 20 per cent.
3. A development charge for a residential unit intended for use as a rented residential premises not referred to in paragraph 1 or 2 shall be reduced by 15 per cent. 2022, c. 21, Sched. 3, s. 8 (2).

### **Definition under Section 1 of the Development Charges Act:**

“rental housing development” means development of a building or structure with four or more residential units all of which are intended for use as rented residential premises; (“aménagement de logements locatifs”)



## 4B City of Guelph Development Charges Bylaw (2019) Excerpts

“Dwelling Unit” means a room or group of rooms occupied or designed to be occupied exclusively as an independent and separate self-contained housekeeping unit including a house;

- (g) “Townhouse” means a Building that is divided vertically into three (3) or more separate Dwelling Units and includes a row house;
- the outside accessed through the front yard, side yard or exterior side yard and does not have a rear yard;
  - b. “Cluster Townhouse” means a Townhouse situated on a Lot in such a way that at least one (1) Dwelling Unit does not have legal frontage on a public street;
  - c. “On-Street Townhouse” means a Townhouse where each Dwelling Unit is located on a separate lot and has legal frontage on a public street;

“Building” means any structure or building as defined in the *Building Code* (O. Reg. 332/12 made under the Building Code Act, as amended, or any successor thereto) but does not include a vehicle;

“Building Code Act” means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, or any successor thereto;



## 4C – Building Code Act Excerpt

“building” means,

- (a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,
- (b) a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,
- (c) plumbing not located in a structure,
- (c.1) a sewage system, or
- (d) structures designated in the building code; (“bâtiment”)



## 5A - Proposed Agreement Terms Between Owner and City

The Owner proposes an agreement between the Owner and the City of Guelph containing the following terms:

1. The Owner confirms the Property is a purpose built rental and agrees to keep the Property as a rental for a minimum of 10 years;
2. If the Owner intends to sell any unit in the Property before the 10 years is up, the Owner pays the 25% of Development Charges that was reduced plus interest accrued; and
3. The Agreement be registered on title to the Property so the Owner is prevented from selling any unit until the amount owed in #2 is paid.
  - a. The Agreement registered on title means the Land Registry Office will not permit a sale until the City agrees which means the City does not have to monitor the Property or the Agreement at all and just needs to wait for the Owner to request to pay the 25% in #2.

## 5B - New Home Warranties Plan Act Excerpt

Note: The Owner is not allowed to sell any of the townhomes without being enrolled in Tarion and the Owner is not enrolled in Tarion

### PROVISIONS

#### Requirements for vendors of homes

10.1 A vendor shall not sell or offer to sell a home unless the vendor,

- (a) is licensed as a vendor under the *New Home Construction Licensing Act, 2017*;
- (b) has provided the Registrar with the particulars that the Registrar requires and in the manner that the Registrar requires;
- (c) has paid the Registrar the fee that the Registrar requires;
- (d) has complied with the other requirements, if any, that are prescribed;
- (e) has received confirmation from the Registrar that the home,
  - (i) qualifies for enrolment in the Plan, if construction of the home has not commenced, or
  - (ii) has been enrolled in the Plan, if construction of the home has commenced; and
- (f) has provided the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* with a copy of the confirmation described in clause (e). 2020, c. 14, Sched. 5, s. 18.

#### Section Amendments with date in force (d/m/y) [+]

“vendor” means,

- (a) except in relation to a residential condominium conversion project, a person who, on the person’s own behalf, sells a home not previously occupied to an owner and includes a builder, as defined in clause (a) of the definition of “builder”, who acts as such under a contract with the owner, or
- (b) in relation to a residential condominium conversion project, a person who, on the person’s own behalf, sells a home in the project to an owner and includes a builder, as defined in clause (b) of the definition of “builder”, who acts as such under a contract with the owner; (“vendeur”)



**5C – CMHC MLI Select Program Details**



**MULTI-UNIT**  
**MLI**  
**SELECT**



## AT-A-GLANCE

CMHC's MLI Select product offers scaling flexibilities to encourage the preservation and creation of affordable, accessible and climate compatible units. Flexibilities include higher loan-to-value ratios, increased amortizations, lower debt coverage ratios, and reduced premiums.

### Property Type and Size

- New and existing affordable, energy efficient and/or accessible housing projects including: standard rental housing, single room occupancy (SRO), supportive housing and retirement homes. Student housing projects are only eligible to qualify under energy efficiency and accessibility.
- Minimum project size of 5 units except retirement homes where a minimum of 50 units/beds is required.

### Non-Residential Component

Not to exceed 30% of gross floor area nor 30% of total lending value. Loan relating to non-residential component must not exceed 75% of lending value of non-residential component.

### Criteria

**Borrowers can commit to any combination of the following social outcomes, though a minimum of 50 points is needed to qualify for MLI Select.**

#### Affordability

This outcome is assessed based on the percentage of units within the project with rents equal to or below the established threshold for the subject market.

#### New construction:

- Level 1 (50 points) – Min. 10% of units at max. 30% of median renter income
- Level 2 (70 points) – Min. 15% of units at max. 30% of median renter income
- Level 3 (100 points) – Min. 25% of units at max. 30% of median renter income

#### Existing properties:

- Level 1 (50 points) – Min. 40% of units at max. 30% of median renter income
- Level 2 (70 points) – Min. 60% of units at max. 30% of median renter income
- Level 3 (100 points) – Min. 80% of units at max. 30% of median renter income

In all cases, the borrower must commit to maintain affordability for a minimum of 10 years from the date of first occupancy of the project. Affordability commitments of 20 or more years will be awarded an additional 30 points.

#### Energy Efficiency

This outcome is assessed based on the improved performance over the baseline, which depends on if the building is new or existing.

#### New construction:

- Level 1 (30 points) – Min. 20% better than NECB/NBC
- Level 2 (50 points) – Min. 25% better than NECB/NBC
- Level 3 (100 points) – Min. 40% better than NECB/NBC

#### Existing properties:

- Level 1 (30 points) – Min. 15% decrease over current baseline levels
- Level 2 (50 points) – Min. 25% decrease over current baseline levels
- Level 3 (100 points) – Min. 40% decrease over current baseline levels



## Accessibility

This outcome is assessed based on the level of accessibility and adaptable building design.

### Level 1 (20 points):

- Min. 15% of the units are considered accessible in accordance with the CSA standard B651-18 or
- Min. 15% of units are universal design or
- The building receives Rick Hansen Foundation Accessibility Certification (60%-79% score)

### Level 2 (30 points):

- Min. 15% of units are considered accessible in accordance with the CSA standard B651-18 and Min. 85% of units are universal design or
- 100% of units are universal design or
- 100% of units are accessible in accordance with the CSA standard B651-18 or
- The building receives Rick Hansen Foundation Accessibility Certification "Gold" (score of 80% or better)

## Product Timelines

### Affordability criteria:

- Applies for the entire duration of the affordability period beginning at the date of first occupancy for new construction or major renovation, and the interest adjustment date for existing buildings. Documentation is required to support on-going compliance throughout the affordability period.

### Efficiency criteria and accessibility criteria:

- Where improvements or construction are undertaken prior to the request for loan insurance, documentation confirming achievement of the criteria is required as part of the loan insurance application. Work must have been completed within 12 months of the request.
- Where insured financing is used to undertake improvements or construction, documentation confirming achievement of the criteria is required within 60 days after the last advance.
- Where improvements are completed with the borrower's own resources or non-insured financing, documentation confirming achievement of the criteria is required within 24 months of the last advance.
- Unlike the affordability criteria, the energy efficiency criteria and/or the accessibility criteria does not need to be demonstrated on an annual basis. Once achieved, the borrower's commitment is considered fulfilled and there are no further requirements.

## Product Flexibilities

Based on total points awarded, the loan insurance application can benefit from the following flexibilities.

Total points	Max. LTC/LTV	Max. amortization*	Rental achievement holdback	Recourse	Replacement reserve
<b>New Construction</b>					
Min. 50 points	Up to 95%	Up to 40 years	Waived	Full	Discretionary
Min. 70 points	Up to 95%	Up to 45 years	Waived	Full	Discretionary
Min. 100 points	Up to 95%	Up to 50 years	Waived	Limited	Discretionary
<b>Existing Properties</b>					
Min. 50 points	Up to 85%	Up to 40 years	May apply	Full	Discretionary
Min. 70 points	Up to 95%	Up to 45 years		Full	Discretionary
Min. 100 points	Up to 95%	Up to 50 years		Limited	Discretionary

\*The maximum amortization period is the specified number of years or remaining economic life, whichever is less.

Please refer to the fees and premiums information sheet for more information.

## Maximum Loan-To-Value Ratio

- **New construction:** residential component up to 95% loan-to-cost; non-residential component up to 75% loan-to-cost.
- **Existing properties:** residential component up to 95% loan-to-value; non-residential component up to 75% loan-to-value.

## Loan Advancing

**New construction:** the loan may be advanced up to 95% of costs during construction.

**Existing properties:** the loan may be advanced up to 95% of value.

The full loan is available once construction/improvement is complete.

## Minimum Debt Coverage Ratio Requirements

		Minimum DCR
Residential space	Standard rental housing with 5+ units	1.10
	Other shelter models: <ul style="list-style-type: none"><li>• single room occupancy and supportive housing (5+ units)</li><li>• retirement homes (50+ units)</li></ul>	1.20
Non-residential space		1.40

## Interest Rate

Fixed interest rate or floating (with ceiling rate).

## Amortization

CMHC may consider amortization periods of up to 50 years. The amortization period must not exceed the remaining economic life of the property, as determined by CMHC.

## Security Type

First, second and pari passu mortgages are permitted. Second mortgages are permitted as an interim measure.

## Replacement Reserve Requirements

Replacement reserve requirements are discretionary under MLI Select and based on the strength of the borrower and application.

## General Guidelines For Borrower Eligibility

The borrower must demonstrate competence and experience commensurate with the size and type of property for which mortgage loan insurance is being sought. The borrower or a corporation affiliated with the borrower must have at least five years of demonstrated management experience in the operation and management of similar multi-unit residential properties. Alternatively, a formal property management contract must be in place with a professional third party property management firm.

## Borrower Net Worth

The borrower must have minimum net worth equal to at least 25% of the loan amount being requested, with a minimum of \$100,000. For insurance applications scoring a total of 100 points or more, CMHC may permit flexibility in net worth requirements.

## Guarantee Requirements

**Construction or completion take-out financing:** The borrower and guarantor must provide their covenant/guarantee for 100% of the outstanding amount owing under the housing loan from time to time until projected rents have been achieved and stabilized for 12 consecutive months, at which time the additional guarantee required may be reduced to 40% of the outstanding loan amount owing under the mortgage, from time to time.

**Purchase or refinance of existing properties:** For new loans on existing residential rental properties, the guarantee amount required by CMHC is 40% of the outstanding loan amount owing under the mortgage, from time to time.

**Limited recourse:** CMHC may consider limited-recourse lending for LTVs equal to or below 65% LTV, or in cases where the borrower is unable to provide a meaningful covenant or guarantee such as, non-profits, community-based organizations or social mandate driven borrowers, or in cases where a min. of 100 points are achieved under CMHC's MLI Select product offering. Notwithstanding, the borrower remains liable under a limited recourse loan for fraud and environmental liability in all cases. The recourse of the Approved Lender shall be limited to the property and the other assets taken as security and not personally against the borrower.

In all cases, CMHC may require additional risk mitigation measures as it deems appropriate (e.g. equity retention, replacement reserves, collateral security, personal guarantees).

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