

# Builder Bulletin 51

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Residential Condominium Conversion Projects



## Background

### Introduction

The *Ontario New Home Warranties Plan Act* (the “*ONHWP Act*”) provides statutory warranties for *new* homes and, effective January 1, 2018, coverage is extended to units and common elements in residential condominium conversion projects (RCCPs).

Briefly, some important things to note about residential condominium conversion projects are:

- before any sales or before breaking ground, builders of residential condominium conversion projects (RCCPs) and vendors selling units in these projects must be registered with Tarion;
- additional documents and materials must be submitted to Tarion;
- only non-residential conversion to residential qualify for warranty protection; and
- all warranties apply to RCCPs except for the first-year warranty relating to work and materials of pre-existing elements.

### Changes to Definition of “Vendor” and “Builder”

The definitions of both “builder” and “vendor” in the *ONHWP Act* have been amended to include builders and vendors of RCCPs.

### Non-Residential to Residential

The warranties will extend only to conversions from non-residential uses (e.g., office, commercial, institutional). Eligible uses include hotel, boarding house, dormitory, group home, retirement home, rooming house, correctional institution, medical institution or place of worship or religious institution such as a church, mosque, synagogue or temple. Rental residential building conversions (e.g. a rental apartment building being converted to condo units) are not eligible for warranty coverage, as there is little construction of new elements when these buildings are converted.

### Application – Transition Rules

The extended coverage for condominium conversion projects will be in force on January 1, 2018. The warranty protections will then apply to projects where the **first** arm’s length Agreement of Purchase and Sale for the project is signed on or after that date.

### Condominium Conversion Projects vetted by Tarion

To ensure RCCPs are vetted by Tarion, other pieces of legislation have been updated.<sup>1</sup>

First, the *Building Code Act* was amended to include the new definitions of “vendor” and “builder” so that a building permit will not be issued for an RCCP unless the vendor and builder are registered with Tarion.

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<sup>1</sup> See section 17.4. of the *ONHWP Act*.

Secondly, the *Condominium Act* now states that an RCCP will not be accepted for registration as a condominium corporation unless Tarion has confirmed that:

- the project and units have been enrolled under the *ONHWP Act*;
- the vendor has been registered by Tarion; and
- the builder has been registered by Tarion.<sup>2</sup>

### **Coverage for Residential Condominium Conversion Projects – Pre-Existing Elements**

RCCPs involve a mix of pre-existing and new elements. As a result, the warranty coverage covers new elements similar to newly constructed condominiums. However, given that pre-existing elements will not have the same look, feel and perform as new elements, the first-year warranty coverage related to work and materials does not apply to pre-existing elements (although Ontario Building Code and fit for habitation warranties do apply).

“Pre-existing element” is part of the property that:

- will be incorporated into an RCCP or a phase of an RCCP;
- existed before the “**commencement date**” of the project or phase; and
- Was not used for residential purposes (such as an apartment building).

The commencement date for construction (the “**commencement date**”) is the earlier of:

- the date when excavation for the RCCP or phase of an RCCP begins (not including exploratory testing or demolition of existing structures); and
- unless the foundation is partly or wholly a pre-existing element, the date when other physical preparatory or related work for the foundation begins (not including exploratory testing or demolition of existing structures).

### **Registration of Vendors and Builders**

As with newly constructed condos, a proposed vendor and/or builder must register with Tarion. In addition to the usual requirements for registration, applicants who wish to sell units and/or build an RCCP must also include the following materials **before** the sale of any units and at least 90 days **before** the commencement date.

- Property assessment report
- Capital replacement plan
- Pre-existing elements fund study

### **Disclosure**

Additional disclosure for purchasers of units in RCCPs is now required, and includes:

- A statement that the project is a “residential condominium conversion project”;
- Information about the pre-existing elements;

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<sup>2</sup> S.2(2.1) of the *Condominium Act*.

- A copy of the pre-existing elements fund study; and
- A statement that the work and materials first year warranty does not apply to the pre-existing elements.<sup>3</sup>

## What the Balance of this Bulletin is About

This bulletin sets out the reporting requirements related to an RCCP, as well as:

- Describes the approval process that Tarion will use to determine if an RCCP is eligible for enrolment and the vendor and builder are eligible for registration.
- Defines the scope of work for the property assessment report, capital replacement plan and pre-existing elements fund study which must all be submitted to Tarion for approval of the RCCP.
- Describes the use of the pre-existing elements fund and how it relates to warranty coverage.
- Outlines updating processes in the event of changes to the pre-existing elements or the anticipated **registration date**<sup>4</sup> (of the condominium corporation) during the development process.

## Approval Process

A residential condominium conversion project will not be enrolled, and the proposed vendor or builder will not be registered with Tarion unless:

- a) The **applicant**<sup>5</sup> has submitted the following reports to Tarion and Tarion has approved them in writing:
  - (i) Property assessment report
  - (ii) Capital replacement plan
  - (iii) Pre-existing elements fund study
- b) The applicant has provided evidence satisfactory to Tarion that:
  - (i) The applicant has complied with regulatory requirements, as well as those imposed by Tarion;
  - (ii) The pre-existing elements fund has been established; and
  - (iii) The applicant has deposited the required amount into the pre-existing elements fund.

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<sup>3</sup> See section 72(1) of the *Condominium Act*.

<sup>4</sup> **Registration date** is the date of registration of the Declaration and Description of the Residential Condominium Conversion Project and is the warranty start date for the common elements.

<sup>5</sup> In this document, the word “applicant” means the proponent of the RCCP who seeks registration of a vendor and builder for the RCCP and enrolment of the RCCP. Where the term “builder” is used, it refers to both “vendor” and “builder” as these terms are defined in the *ONHWP Act*.

Tarion will review the submissions and provide approval of the RCCP, come back to the applicant with conditions that must be met for the RCCP to be approved or come back with reasons for refusal of the RCCP for enrolment. Tarion will use reasonable efforts to respond within 90 days of all documents the complete submission. If requested, the applicant must provide Tarion with access to the property during the 90-day period.

If the reports provided by the applicant are inadequate, Tarion may engage a qualified consultant to review the reports, at the applicant's cost.

### **Enrolment Fee**

The enrolment fee for an RCCP is double the standard enrolment fee as displayed in Builder Bulletin 27.

### **Security Requirements**

Any security requirements for a vendor or a builder of a RCCP will be assessed in accordance with Builder Bulletin 28. However, if Tarion determines that the particular project is of a higher risk than that contemplated by Builder Bulletin 28, security may be assessed at a higher amount and/or be held for a longer period.

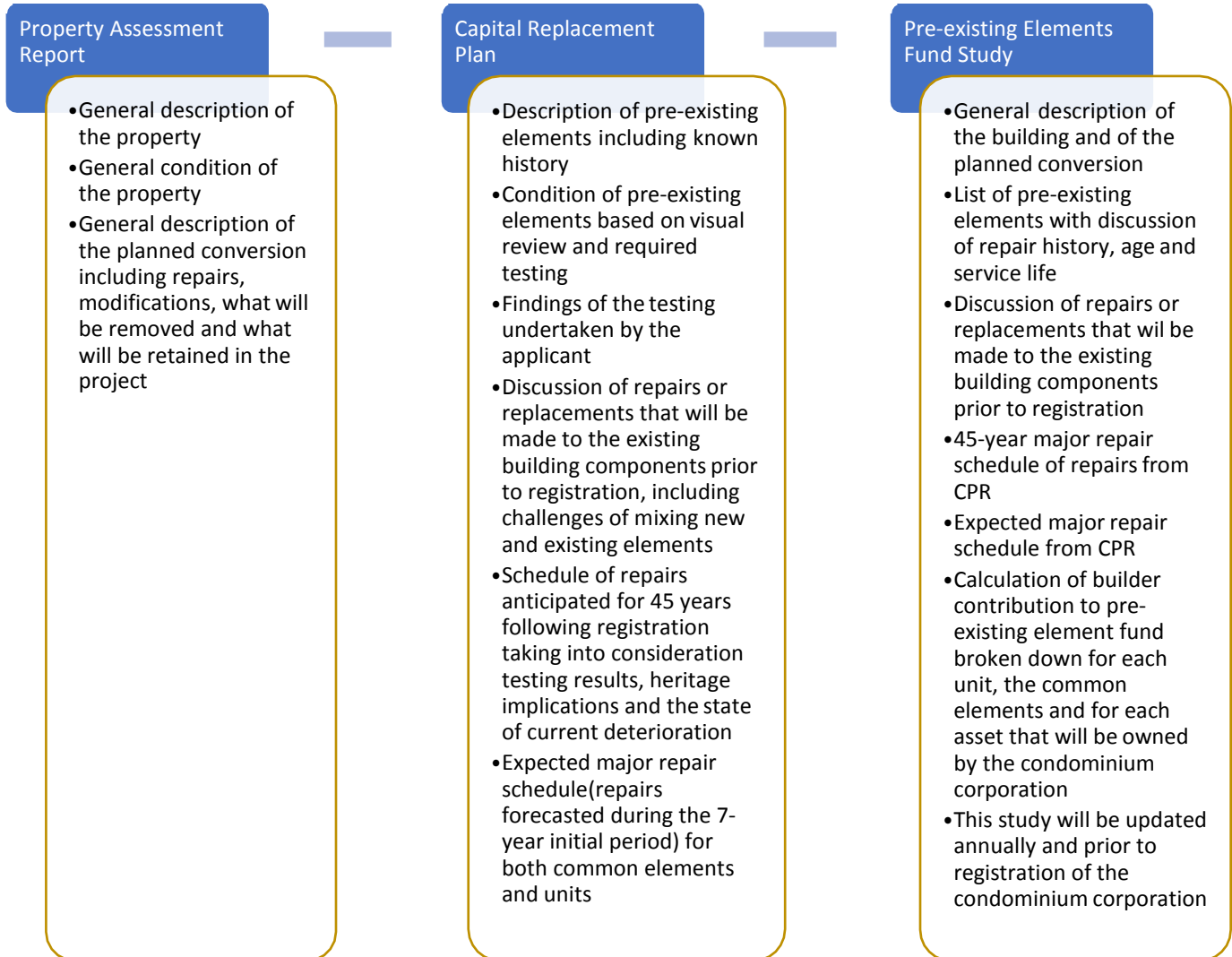
### **Proof of Submission and Delivery**

Tarion's Licencing and Underwriting group will be the point of contact for the RCCP approval process. If there is a dispute concerning delivery of a submission, it is the applicant's responsibility to establish when delivery occurred. To avoid confusion, applicants are encouraged to use methods of delivery (such as registered mail or courier) that will easily provide proof of delivery. Any non-electronic notices or communications with Tarion's Licensing and Underwriting group can be addressed to:

Tarion Warranty Corporation: Licensing and Underwriting group  
5160 Yonge Street, 12th Floor  
Toronto, Ontario M2N 6L9  
Reports can also be submitted electronically a L&U@tarion.com or on BuilderLink.

## Overview of the Three Reports

The following graphic provides an overview of the three reports that must be submitted for an RCCP.



Although three reports are required for the submission, an applicant may combine the property assessment report and capital replacement plan as a single integrated report; however, the pre-existing elements fund study shall be a standalone report as it is part of the required disclosure package to purchasers of units in an RCCP.

## Property Assessment Report

The property assessment report is a high-level report that focuses on the property and assesses the general nature and condition of the property. This report is based on document review, personnel interviews and visual review (of representative samples of all aspects of the property) and shall include the following content:

- General description of the property
- General description of the planned conversion
- General description of planned additions and/or alterations, scope of work and methodology, including a copy of the consultant's certificate of authorization or certificate of practice

The report is to be submitted to Tarion prior to any sales of units and at least 90 days prior to the commencement date.

### General Description of the Property

The report shall include the following information about the existing building(s) to be retained and converted:

- Year the building was originally constructed and years when additions were constructed, or major renovations completed
- Prior usage/occupancies
- Number of floors above and below grade
- Gross floor area above and below grade, area of a typical floor (if applicable)
- Description of any unique aspects of the building related to its history

This section of the report must include photographs showing the main building elevations and an overview of the site to give the reader general context.

### General Description of the Planned Conversion

The report shall include an overview of the conversion, describing in general or "overview" terms which elements will be removed, which will be retained and what other additions, alterations or extensions will be made.

The report shall describe any circumstances where the use of a pre-existing element will change. For example, if a concrete slab was previously used for office space and in the converted building will be used as a parking level, this must be identified. Similarly, if a portion of a previously enclosed office slab will be exposed on a balcony, this must be identified.

### General Description of Additions and/or Alterations

The report shall include a general description of the additions, alterations or extensions that are proposed to be made to the property before the project registration date, or if applicable, a statement that no such repairs, additions, alterations or extensions will be taking place.

## Scope of Work and Methodology

The scope of work and methodology section of the report should include a copy of the certificate of authorization within the meaning of the *Professional Engineers Act*, a copy of the certificate of practice within the meaning of the *Architect's Act*, or other written attestation as to the qualifications of the person who prepared the report. In addition, this section should include information about the consultant's engagement including the applicant's name; the consultant team names, including the field observers; the testing agents; any sub-consultants; the primary consultant responsible for the report and the report reviewer; the dates of the site visits; the purpose of the report; and any constraints that limited the consultant's ability to fulfill the mandate required by this bulletin.

The report must include a statement giving reliance on the report to Tarion, the project Field Review Consultant (FRC) (see Builder Bulletin 19R – Condominium Projects Design and Field Review Reporting as well as the Builder Bulletin 19R section of this bulletin), the vendor and the builder.

The report must also include the following statement:

“The opinions in this report are those of the consultant team. These opinions were not influenced in form or content by pressure from the applicant or anyone representing the applicant. The consultant team acknowledges that their duty in preparing the report is to Tarion, and ultimately to provide consumer protection to the purchasers of homes in the condominium project.”

## Capital Replacement Plan

The capital replacement plan expands on the content in the property assessment report. Where the property assessment report focuses on the property and building(s) overall, the capital replacement plan focusses on the condition of the pre-existing elements, the challenges of mixing new and existing physical elements and systems and anticipated repairs, modifications and/or replacements related to the pre-existing elements. The capital replacement plan shall contain the following content:

- Description and details of the pre-existing elements
- Findings of required and optional testing
- Discussion of the condition of the pre-existing elements
- Identification of key risks including challenges of mixing new and existing physical elements and systems
- Heritage impacts
- Description of repairs, modifications and/or replacement projects related to the existing building that will be undertaken by the applicant prior to registration of the condominium corporation
- A preliminary confirmation that the project, including the pre-existing elements, is structurally adequate or will be structurally adequate before any units will be occupied
- A schedule outlining the repairs (as defined in the *regulation*, modifications and/or replacements that can reasonably be expected for the pre-existing elements of the project over the 45 years following registration of the condominium corporation (the “45-year major repair schedule)
- An expected major repair schedule (repairs to the pre-existing elements that are forecasted during the 7-year initial period in respect of both common elements and units
- A copy of the author's certificate of authorization or certificate of practice



The capital replacement plan must be provided to Tarion prior to any sales of units in the RCCP taking place and at least 90 days prior to the commencement date.

### **Description of Pre-existing Elements**

For each anticipated pre-existing element, the report must include a clear description of the element based on a visual review using photographs of a representative sample of the element to provide a clear understanding of the nature and extent of the pre-existing elements. Appendix A includes a table listing the type of descriptive information that is needed for standard elements. However, this list is not exhaustive, and a similar level of detail is expected for pre-existing elements not listed.

**Note: These detailed descriptions are NOT required for elements that will not be retained in the new condominium project.**

### **Identification of Key Risks**

The report must identify any key risks for the project, such as those listed in Appendix B. Particularly, the report must include details of the challenges of mixing the new and existing physical elements and systems and how those challenges will be overcome. If applicable, the report must contain a statement that there are no such risks.

### **Findings of Required and Optional Testing**

In addition to a visual review of the pre-existing elements, destructive testing to allow for the review and evaluation of concealed elements must also be completed. The findings of this review will assist Tarion in deciding if the proposed pre-existing element is appropriate for retention given the risk of related warranty claims, and will also help the consultant predict future repair, modification and/or replacement needs. Due to the requirement for destructive testing to take place, and the review of concealed components, the capital replacement plan goes beyond what is required in a traditional walk-through survey level of review (such as the ASTM E 2018 – “Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process”).

In addition to listing potential risks, Appendix B also identifies testing requirements for several risk areas and sets out the required sample size for the visual review for certain pre-existing elements. Where no indication is provided for sample size for the visual review, the consultant shall review a reasonable sample size such that the consultant is reasonably confident that the conditions seen are representative of the whole. Tarion may require additional testing of components not listed in the table in Appendix B.

If the consultant or a specialty sub-consultant<sup>6</sup> requires additional testing to determine the cost of forecasted repairs, modifications and/or replacements related to the pre-existing elements, then this testing must be reported at the same level of detail as the required testing.

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<sup>6</sup> **Specialty sub-consultants** are individuals or entities who have acquired detailed, specialized knowledge and experience in the design, evaluation, operation, repair or operation of the components involved in their field of expertise. Examples are environmental specialists and heritage specialists.

The applicant may elect to complete additional optional testing to determine the risk related to purchasing and converting the property. This elective testing should also be described in the report.

The report must include photographs to illustrate key findings of the required and optional testing where possible.

The report must include a statement confirming that the findings of the testing and the state of deterioration of the pre-existing elements have been considered in developing the forecasted expenditures.

***Note: This testing is NOT required for elements that will not be retained in the new condominium project.***

### **Heritage Impacts**

The report shall include a description of any heritage status or attributes applicable to the building. As applicable, the report shall provide attachments (or links) to publications which define the heritage obligations of the property owner. The report can append letters or reports from a subcontractor for this portion of the report.

The report shall provide a detailed discussion of how this designation impacts the pre-existing elements, confirmation that a heritage consultant is on the project team and acknowledgement that the heritage designation has been considered in preparing the schedule of anticipated repairs, modifications and/or replacements.

### **Repair of Existing Building Prior to Registration**

The report shall describe the repairs, modifications, additions or replacements to the RCCP that will be undertaken before the condominium corporation is registered. The scopes of work that the applicant intends to complete must be laid out so that Tarion can understand the work that is to be completed. Confirmation of the completion of the work will form part of the Builder Bulletin 19R reporting.

This section should also discuss any challenges that will be faced when interfacing the new building components with the pre-existing elements. This might include a discussion, for example, of the measures that will be undertaken to protect old stone masonry if thermal, vapour and air tightness improvements are completed, subjecting the stone to different conditions than it has faced in the past. No budgets for repairs undertaken prior to registration are required to be included in the reports but these can optionally be provided by the applicant to Tarion, or must be provided if Tarion requests the information.

All conditions that represent a health and/or safety risk, or a risk of imminent structural failure must be repaired as soon as possible by the applicant and in all cases prior to registration of the RCCP.

A registered RCCP should not incorporate any pre-existing elements that are obsolete (for example, equipment that is no longer supported by the manufacturer and/or suitable technicians are no longer available) unless replacement of the elements is planned in the expected major repair schedule and/or 45-year major repair schedule.

The applicant is encouraged, and may be required, to bring the building into compliance with applicable laws prior to registration, even if they are not a condition of the municipal permit process.

### **45-year Major Repair Schedule**

In tabular form, the report shall set out the forecasted major repairs<sup>7</sup> to the pre-existing elements of the units and common elements of an RCCP and, if any, to the assets of the condominium corporation that are expected to occur within 45 years after the registration of the condominium corporation.

The scheduled major repairs must be developed taking into consideration:

- The visual condition of the pre-existing elements;
- How obsolete a pre-existing element is;
- State of fitness of habitation;
- Findings of the required and optional testing so that any known deterioration, that is not corrected before registration of the condominium, is included in the repair budgets in the expected work schedule;
- Increased costs of repairs related to obligations to apply appropriate heritage repair methodologies to the repairs. For example, if a façade is designated and the windows are anticipated to be replaced, replacement windows will need to match existing materials and configuration, or may need to be repaired rather than replaced;
- Increased costs or repairs related to the presence of hazardous materials (such as lead, asbestos); and
- Requirements of the Ontario Building Code and other relevant applicable laws.

Rather than itemize the future expenditures in each individual future year (which would be challenging to print), it is acceptable to include columns indicating the present cost, year of first occurrence, years between occurrences and any limiting conditions on the number of occurrences and then roll up the total expenditures in 5 or 10-year bands in all but the first ten years. For example, you might plan to reline a concrete hot water storage tank twice more and then budget for the tank's replacement. If the relining is needed in 2023 and then every ten years thereafter, the project would have a Year of First Occurrence of 2023, a Years between Occurrences of 10 years and a limiting condition that it only happens twice and then stops (see example in Appendix C).

For a project like reroofing, the Years between Occurrences would be equal to the service life of the roof. However, for some other projects, like caulking window perimeters, the caulking may only have a 20-year service life, but the Time between Occurrences might be 40 years because window replacement is scheduled 20 years after recaulking (see Appendix C).

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<sup>7</sup> **Major Repairs** means, any repair or replacement to the pre-existing elements that (a) is not ordinary maintenance; (b) for which the cost exceeds \$2,000; and (c) that is expected to occur after registration of the condominium corporation because the remaining service life of the pre-existing elements or a subsequent service life of them has come to an end.

**Service Life** means, in relation to the pre-existing elements, (a) the length of time, as accepted in the industry, between full replacements of an element or system of the pre-existing elements, and (b) the length of time until a major repair that includes less than full replacement is typically needed to an element or system of the pre-existing elements.

**Remaining Service Life** means, in relation to pre-existing elements, the time period between their current age and the time when major repairs to them are next expected to become necessary.

## **Expected Major Repair Schedule**

The report must include an expected major repair schedule. This schedule shows the major repairs which are expected to occur within the initial period.<sup>8</sup>

The expected major repair schedule must be developed, taking into consideration the visual condition, the state of obsolescence, the findings of the required testing, the state of fitness for habitation, and a comparison against the requirements of the Ontario Building Code (per the OBC compliance section of the capital replacement plan) and requirements of applicable laws (per the applicable laws section of the capital replacement plan).

## **Forecasted Budgets and Timing**

For both the 45-year major repair schedule and the expected major repair schedule, all expenditure forecasts must be “all-in” costs. This means that they must include all construction costs, including mobilization, demobilization, permit, bonding, access and “all-other-items” costs related to the project, as well as a reasonable construction contingency, allowance for engineering or other costs related to oversight of the project and applicable taxes.

Expenditure forecasts must take into consideration the fact that the work will be done in an occupied building with related requirements to manage phasing and related challenges (i.e. relocating vehicles to permit garage repairs). Pricing should be representative of what a typical condominium corporation could be expected to obtain when tendering work.

The cost information used by the consultant should be based on the consultant’s own cost database from similar projects, historical costs provided by the building owner, commercially available third-party cost data, third-party data such as from contractors or suppliers, and/or other qualified sources that the consultant deems appropriate.

Expenditure forecasts must be estimated and can be reported in current day dollars.

Repair budgets should be sufficient to replace pre-existing elements with equivalent elements. Where there are not equivalent elements for comparison, the budget should reflect the current construction standard for the element.

The service life of the pre-existing elements should be based on the consultant’s own database from similar projects, commercially available third-party service life data, CSA S478 – Guideline on Durability in Buildings and/or other qualified sources that the consultant deems appropriate.

## **Statement of Structural Adequacy**

Since RCCPs are eligible for the major structural defect warranty, one of the purposes of the capital replacement plan is to have the condition of the structural components reviewed so that the deteriorated conditions are either addressed by the building prior to registration of the condominium, or are clearly identified in the expected major repair schedule.

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<sup>8</sup> **Initial period** is the seven-year period following registration of the condominium corporation.

The report must include a statement from a qualified professional (i.e. a structural engineer) confirming that the design, as contemplated at the time of providing the documentation to Tarion, is capable of providing adequate structural support. Further detail on the structural adequacy of the building must be provided during the Builder Bulletin 19R reporting process

### **Building Code Compliance**

If practical, the report may set out reasonable details of the path to Ontario Building Code compliance for the converted building(s) and for the pre-existing elements individually.

If Part 10 of the OBC applies, the report should indicate where compliance with other parts of the OBC is required, and indicate which parts impact the pre-existing elements. The report must show how the building performance level will not be reduced. Any compliance alternatives being applied must be identified.

If Part 11 applies, the report is to indicate where compliance with other parts of the OBC is required (per subsection 11.3 of the OBC), where the performance level is reduced and being compensated for via compensating construction (per subsection 11.4 of the OBC), where a compliance alternative is being used (per subsection 11.5 of the OBC) and where a compliance alternative is being used (to conform with any part of the OBC in lieu of the prescriptive requirements). Details of the methods of compliance must be provided. The report must also indicate which pre-existing elements will not be required to be brought into compliance with the current OBC (for example, if they are not being modified or otherwise not requiring modification under Part 11 of the OBC).

However, Tarion recognizes that information required above may not be available to an applicant at the time of preparing the capital replacement plan. If this information is not available during the application process, then it must be provided during the Builder Bulletin 19R process. The builder will be required to provide a report from a code consultant indicating how code compliance was achieved. This report will form part of the milestone 5 report, which will be required for all RCCPs.

Clarity around OBC compliance is critical to interpreting warranty coverage during the claims and resolution period, so this portion of the report must be sufficiently detailed to permit Tarion to understand how the builder intends to achieve OBC compliance.

### **Applicable Law Compliance**

If practical, the report may set out reasonable details of the path to compliance for the property, converted building(s) and for the pre-existing elements individually for any applicable laws including zoning, development regulations, property standards and maintenance, mandatory Canadian Standards Association requirements, Technical Standards and Safety Authority requirements, and Ministry of Labour requirements.

### **Scope of Work and Methodology**

The scope of work and methodology section of the report should include a copy of the certificate of authorization within the meaning of the *Professional Engineers Act*, a copy of the certificate of practice within the meaning of the *Architect's Act*, or other written attestation as to the qualifications of the person who prepared the report. In addition, this section should include information including the applicant's name; the consultant team names including the field observers, the testing agents, any sub-consultants,

the primary consultant responsible for the report and the report reviewer; the dates of the site visits; the purpose of the report; and any constraints that limited the consultant's ability to fulfill the mandate required by this bulletin.

The capital replacement plan shall include a statement giving reliance on the report to Tarion, the project FRC (see Builder Bulletin 19R – condominium projects design and field review reporting), the vendor and the builder, and the condominium corporation's performance auditor.

The report shall also include the following statement:

"The opinions in this report are those of the consultant team. These opinions were not influenced in form or content by pressure from the applicant or its representatives. The consultant team acknowledges that their duty in preparing the report is to Tarion, and ultimately to provide consumer protection to the purchasers of homes in the Condominium Project."

## Pre-existing Elements Fund Study

The pre-existing elements fund study is a report that uses the expenditures predicted in the capital replacement plan to determine the required builder contribution to the pre-existing elements fund. It is also used to disclose information about the pre-existing elements to the condominium unit purchasers. As this study is disclosed to purchasers and potential purchasers of units in the RCCP, it is also a critical communication document, describing the pre-existing elements in the RCCP in a manner that lay-people can understand. This report must be provided to Tarion before any sale of units in the RCCP take place, and at least 90 days prior to the commencement date.

The report shall contain the following information:

- A plain English overview of the conversion project. This content can be copied from the summary provided in the property assessment report.
- A list of all the pre-existing elements including their history
- A description of repairs, modifications and/or replacement projects related to the pre-existing elements that will be undertaken by the applicant prior to registration of the condominium corporation
- The 45-year major repair schedule for the project. This should align with the same schedule in the capital replacement plan unless it is revised during an annual update.
- The expected major repair schedule
- A description of each expenditure item in the expected major repair schedule to clarify what is intended to be covered by the budget provided.
- A determination of the amount to be contributed to the pre-existing elements fund by the applicant showing the amounts as applicable, required for any affected unit and the common elements in the project and for each asset, if any, of the condominium corporation in relation to the project.
- A copy of the consultant's certificate of authorization or certificate of practice

The pre-existing elements fund study contains duplication of some content already covered in the property assessment report and the capital replacement plan. The reason for the repetition is that the

pre-existing elements fund study forms part of the disclosure statement per subsection 72(3) of the *Condominium Act*, so it will be issued to purchasers and potential purchasers while the property assessment report and the capital replacement plan will not. It is also issued to the condominium corporation as part of the turn-over documentation per subsection 43(5)(l) of the *Condominium Act*.

### **Planned Conversion**

The report shall contain a general description of the building(s).

The report shall contain a plain English overview description of the RCCP, giving high level information about which elements will be retained and which will be removed as part of the condominium development project. Significant alterations, additions and extensions must be described in reasonable detail using plain language. This is intended to give a lay-person a general understanding of what makes this RCCP different from buying into a new condominium development.

This content may be copied directly from the property assessment report.

### **Pre-existing Element List**

The report shall set out known information about when each pre-existing element was originally installed and what repairs, modifications and/or replacements have been undertaken in the pre-existing element; and have been completed to date. A solid attempt must be made to determine the age of the pre-existing elements including contacting manufacturers with serial numbers. Where this history cannot be determined via date stamps, reports or other conclusive evidence, the report author must use his/her best judgement to determine the likely age of the element and any prior repairs, modifications and/or replacements that are visually evident.

If there are limitations imposed by the heritage listing or designation that require deteriorated components to be incorporated into the building, these should be identified. For example, the historic cladding might incorporate necessary features such as cracked elements, which the heritage designation does not permit you to remove.

If heritage pre-existing elements will have a performance level that is different from what a purchaser might expect from a new building, these differences should be described along with any compensating measures. For example, if an uninsulated, exposed masonry wall is being retained, then the report might describe how these walls might be colder than the modern insulated walls, but that the heating system will be designed to provide adequate heat to compensate.

### **Repair of Existing Building Prior to Registration**

The report shall describe the repairs, modifications and/or replacements to the pre-existing elements that will be undertaken before the condominium corporation is registered. This description has several purposes:

- Provides information to prospective purchasers about what repairs, modifications and/or replacements will be done.
- Provides information to the field review consultant regarding the scope of repair projects prior to registration.

Provides information to the builder's reserve fund study provider so they can reflect work related to the pre-existing elements when advising the applicant on appropriate annual reserve fund contributions for the RCCP.

- Provides information to the condominium corporation's reserve fund study provider so they know what work was done and when. For example, if a repair to a parking slab is completed by the applicant, including installation of a new waterproofing membrane, this information will also be important to the development of the condominium corporation's reserve fund study.

No budgets for repairs, modifications and/or replacements undertaken prior to registration are required to be included in the pre-existing elements fund study, but these can optionally be provided by the vendor, if desired, to help communicate such information to prospective purchasers, the condominium corporation, the FRC and the reserve fund study provider.

### **The 45-year Major Repair Schedule**

The 45-year major repair schedule, developed for the capital replacement plan must be replicated in the first pre-existing elements fund study.

### **Expected Major Repair Schedule**

The expected major repair schedule developed for the capital replacement plan must be replicated in the first pre-existing elements fund study.

### **Expected Major Repairs during Initial Period**

The report shall describe the nature of each anticipated major repair within the initial period in sufficient detail so that readers of the report can understand what is covered and what is not. It will differentiate between common elements and work needed for residential units. For example, the discussion must differentiate if the planned expected major repair relates to complete replacement of an element (e.g. full replacement of a roof), or a localized repair (e.g. replacement of the roof flashings along the north elevation of the building). Separate line items should be used for different types of repairs. With each expected major repair line item, an estimate of the cost of the work must be listed.

The report should also discuss assumptions made that might have a significant impact on the budget in the expected major repair schedule (e.g. is the budget based on the project being completed in one phase or multiple phases, is the budget based on mid-efficiency or high-efficiency equipment, etc.). This clarity is important to helping evaluate if related funds in the pre-existing elements fund is to be used within the warranty period or not, so it is to the applicant's benefit to ensure that expenditures are well defined.

For clarity, the initial period is 7 years following registration of the condominium corporation. For phased corporations, there is a distinct 7-year period for each phase.

### **Applicant's Contribution to the Pre-existing Elements Fund**

The applicant shall contribute an amount to the pre-existing elements fund equal to the value of "expected major repairs" shown in the expected major repair schedule within the initial period.



## Scope of Work and Methodology

The scope of work and methodology section of the report should include a copy of the certificate of authorization within the meaning of the *Professional Engineers Act*, a copy of the certificate of practice within the meaning of the *Architect's Act*, or other written attestation as to the qualifications of the person who prepared the report. In addition, this section should include information including the applicant's name; the consultant team names including the field observers, the testing agents, any sub-consultants, the primary consultant responsible for the report and the report reviewer; the dates of the site visits; the purpose of the report; and any constraints that limited the consultant's ability to fulfill the mandate required by this bulletin.

All reports shall indicate the names and qualifications of the field observers, the testing agents, and the report reviewer.

The pre-existing elements fund study shall include a statement giving reliance on the report to Tarion, the project FRC (see Builder Bulletin 19R – Condominium Projects Design and Field Review Reporting), the vendor, the builder, the future condominium corporation, the future condominium corporation's future reserve fund study provider and the purchasers of homes in the RCCP.

The report must also include the following statement:

“The opinions in this report are those of the consultant team. These opinions were not influenced in form or content by pressure from the builder or vendor. The consultant team acknowledges that their duty in preparing the report is to Tarion, and ultimately to provide consumer protection to the purchasers of the Condominium.”

## Updates to the Pre-existing Elements Fund Study

The applicant shall provide updates to Tarion on or before the first anniversary of the enrolment of the first unit in the RCCP, and on or before every anniversary after that until the registration date of the condominium, and shall submit a final update of the study no earlier than 90 days or later than 60 days before the registration of the condominium corporation. The updates shall consist of the following:

- (a) a written confirmation certified by a senior officer or principal of the applicant that there have been no changes to the RCCP that would affect the pre-existing elements fund study since the initial study was submitted or since the last update; or
- (b) an updated pre-existing elements fund study outlining:
  - (i) any changes to any aspect of the pre-existing elements fund study;
  - (ii) how and why the changes came about;
  - (iii) a revised expected major repair schedule and the 45-year major repair schedule to the extent they are impacted by changes; and
  - (iv) whether there has been an increase or decrease in the amount of money that should be included in the pre-existing elements fund.

If an update is the final update, then it shall include all of the above information, and a brief description of all of the changes made to the pre-existing elements fund study since the initial study, as well as a consolidated revised expected major repair schedule.

Examples of changes include:

- Construction delays that shift the date of registration by more than 6 months.
- The decisions about the pre-existing elements change materially (for example, a material element that was going to be retained is removed, or if a material element that was going to be removed is retained).
- The repair, modification and/or replacement of one or more pre-existing elements being completed prior to registration will affect the matters or cost estimates on the expected major repair schedule.

These updates may result in changes to the expected major repair schedule, and may impact the amount of money required to be contributed to the pre-existing elements fund. Updates to the pre-existing elements fund study may also constitute material changes to the disclosure statement under the *Condominium Act*.

Tarion shall use reasonable efforts to review the updated report within thirty (30) days after receipt. If the report is satisfactory to Tarion and if the report(s):

- (a) indicate the amount of the pre-existing elements fund should be in the aggregate, increased by 25% or more then the vendor shall within thirty (30) days of the written request from Tarion increase the amount of the pre-existing elements fund by the amount specified in the updated report(s); or
- (b) if the **final** update indicates that the amount of the pre-existing elements fund should be increased, the vendor shall, within 30 days of receiving a written request from Tarion, increase the amount of the pre-existing fund by the amount specified in the update.

If changes to the work done during the construction of the RCCP will affect the major repair schedule, then the date for establishing the pre-existing elements fund is an important milestone. The expected major repair schedule as updated will be used to determine the amount to be placed in trust. After the fund is established the vendor may seek release of applicable funds from the pre-existing elements fund only in accordance with the regulations, which mechanisms are described in Schedule F under the heading "Circumstances in which monies can be released from the PEF – Release to Vendor." In particular, it will be important that the vendor keep detailed records in connection with the impact on major repairs to pre-existing elements that were included in the expected major repair schedule. To the extent changes to the original workplan changes the expected major repair schedule by remediating or removing major repairs from the schedule, then the vendor will need to document the costs of doing so in order to have the invoices and proofs of payment required to support a certificate to the trustee requesting release of funds relating to the major repairs which were done or are no longer needed.

## Who May Complete the Reports?

The following classes may conduct a property assessment report, capital replacement plan or pre-existing elements fund study:

- Persons who hold a certificate of practice within the meaning of the *Architects Act*.
- Persons who hold a certificate of authorization within the meaning of the *Professional Engineers*

*Act.*

The primary consultant can engage and oversee specialty sub-consultants such as a design structural engineer, a code consultant, an architect, a cost consultant, or others as needed to fulfill the scope of the three reports required for the RCCP. The primary consultant is responsible for assembling a team that is knowledgeable of the statutes, regulations, codes, and technical standards applicable to the scope. The consultants are required to perform the required assessments and prepare the required reports without any bias to a party. In all cases, the specialty sub-consultants must be engaged by the primary consultant so that a single integrated report is provided for each of the property assessment report, the

capital replacement plan and the pre-existing elements fund study. Continuity of the team between the three reports is required, except in exceptional circumstances, which must be approved in advance by Tarion.

All involved consultants must be at arm's length from the applicant, vendor and builder as well as the prior owner of the building (where the applicant or vendor is acquiring the site) and must not have a financial interest in the RCCP except related to their engagement as a consultant. The consultant who prepares these reports may also prepare the Builder Bulletin 19R reporting for the project if they are a qualified FRC.

The consultant team shall be insured under a policy of liability insurance that includes coverage for liability for errors, omissions arising out of conducting the reports subject to the exclusions, conditions and terms that are consistent with normal insurance industry practice with a single claim limit of not less than \$1 million per occurrence and an aggregate policy limit in the amount of not less than \$2 million for all claims in a year or an automatic policy reinstatement feature. Liability coverage should extend to sub-consultants. Alternatively, it will be acceptable to show that sub-consultants carry the same level of liability coverage.

## Limitations

Tarion acknowledges that reports described in this bulletin are prepared based on reasonable sampling and extrapolation of findings and that the expenditures forecasted in the capital replacement plan and pre-existing elements fund study are the consultants' best attempt to develop an opinion of the work likely to be required. Like all forecasting exercises, the reports and processes described in this Bulletin have been designed to reduce, but not necessarily eliminate uncertainty regarding the potential for a pre-existing element to require repair, modification and/or replacement not reflected in the capital replacement plan and pre-existing elements fund study. This Bulletin also recognizes the inherent subjective nature of a consultant's opinions with regards to the means of repair, opinions of repair cost and remaining useful life determination. The intent of the process is to make the future condominium corporation reasonably whole with respect to the pre-existing elements but there should be no expectation that the future costs will align perfectly with the predications in the capital replacement plan or the pre-existing elements fund study.

## Pre-existing Elements Fund

A vendor of an RCCP shall establish and fund a separate trust escrow account with an arm's length trustee (approved by Tarion), to hold the pre-existing elements fund. This requirement is described in greater detail in Appendix F.

## Pre-existing Elements Fund and Warranty Claims

To address instances where there could be overlap between an expected major repair and a warranted condition, see Appendix F.

## Disclosure

The *Condominium Act* requires the builder to disclose certain information about an RCCP to prospective purchasers. Section 74 of the *Condominium Act*, includes:

- A statement that the project is a residential condominium conversion project;
- A list of the pre-existing elements as identified in the pre-existing elements fund study;
- A copy of the pre-existing elements fund study;
- A statement reminding purchasers that the pre-existing elements are not covered by subsection 13 (1)(a)(i) of the *ONHWP Act*, meaning that they do not carry the warranty related to being constructed in a workmanlike manner and free from defects in material
- A copy of subsection 13 (1)(a)(i) and subsection 17.2 (1) of the *ONHWP Act* (see below); and A statement that the Registrar, as defined in the *ONHWP Act*, has confirmed that the conditions set out in subsection 17.2 (1) of the *ONHWP Act* have been satisfied.

## Builder Bulletin 19R Process for RCCP

In addition to the standard Builder Bulletin 19R process, **all** RCCPs (regardless of Type) are also subject to the following additional requirements.

The field review consultant must review the property assessment report, the capital replacement plan and the pre-existing elements fund study to understand the pre-existing elements, the repairs, modifications and/or replacements related to the pre-existing elements that are to be completed prior to registration as well as understand the expected major repair schedule.

For the repairs, modifications and/or replacements to the existing building being completed prior to registration (per the pre-existing elements fund study), the field review consultant's Builder Bulletin 19R scope of work proposal should include an additional table of risk areas related to the planned repairs, modifications and/or replacements. For each planned repair, modification and/or replacement, the field review consultant shall propose the related document review, field review and proposed number of visits that will be completed to provide technical oversight of the work. The level of detail shall be comparable to the level of review of similar work in the base Builder Bulletin 19R and should be sufficient to permit the field review consultant to sign-off on the work identified in the capital replacement plan and updated pre-existing elements fund study. If the applicant has engaged a separate consultant to design and oversee one or more of the works, then the number of visits by the field review consultant can be fewer than if no consultant has been engaged to oversee the works, but they should still be included in the field review consultant's scope. Additional design review certificates and field review declarations may be needed related to these other consultant roles if the works are not being overseen by the main design team. The scope of work should directly address the structural adequacy of the building and, if necessary, Tarion may request a report from a structural engineer to address any concerns.

Specifically, a design review certificate of a code consultant will be required. A report from the code consultant must be filed with Tarion (Milestone 5) indicating how code compliance was achieved. This report should include a description of which portions of the building have been brought up to meet the same requirements of current code that would apply to new components, which portions are brought into compliance per Part 10 or Part 11 of the Code and how, which portions are brought into compliance by

virtue of heritage listing or designation. For further details of this report, please refer to pages 18 and 19 of this Builder Bulletin.

An example of a custom scope of work table related to the repairs, modifications and/or replacements being completed by the applicant prior to registration is included below.

Deficiencies related to these works prior to registration shall be tracked in the milestone and final reports in a similar manner to deficiencies in a new construction.

EXAMPLE Table 12: Projects being Completed Prior to Registration of the RCCP				
ITEM	RISK AREAS	RISK FACTORS		
		Documentation Review	Field Review	Proposed number of visits
12.1	Structural repair and waterproofing of garage parking levels.	Concrete mix/admixtures; reinforcing steel-coatings; patch details; shoring	Structural repair of the concrete slab including removals, cleaning and placing reinforcing steel and concrete placement.  Protection from corrosion problems related to de-icing salts; protection against leakage: Traffic deck waterproofing system; upturns at terminations; seals at penetrations; joint sealing details; exterior ramp waterproofing/de-icing system; trench drain waterproofing; column/wall base protection at slab-on-grade	12
12.2	Repointing, brick replacement and shelf angle repairs at historic façade	Shelf angles; corrosion protection	Shelf angles; corrosion protection; securement; masonry units; connectors; control joints; locations; clear widths	6
12.3	Installation of elevator machine guarding and car top rails		Confirm installation	1
	Additional as per the PEFS...			
				Total proposed number of visits: 19

signed  
 “Howard Bogach”  
 Registrar

# Appendix A

## Descriptions of Pre-existing Elements for the Capital Replacement Plan

The following table lists the type of descriptive information that is needed for the pre-existing elements identified below. A similar level of detail is expected for pre-existing elements not listed in the table.

<b>DESCRIPTION REQUIREMENTS FOR PRE-EXISTING ELEMENTS</b>	
<b>Pre-Existing Element</b>	<b>Description</b>
<b>Below Grade and Structure</b>	
Below grade / foundation / structure	Identify basic type of structures present for each building. Describe substructure (foundations, perimeter walls, the presence of basements or crawl spaces) and superstructure (floor framing system, roof framing system, penthouse framing system).
Balconies	Describe the nature of the balcony structural design (cantilevered, spanning side to side, nature of reinforcing steel in concrete slabs, soffit finishes where soffits are enclosed). See Life Safety Systems for discussion of balcony guards.
Buried roof decks	Describe the structural framing system. Describe extent of buried roof decks. Describe type of membrane installed and the approximate depth of overburden. Indicate if there are mature trees located over the garage roof deck.
Suspended parking slabs	Describe the structural framing system. Describe waterproofing system installed.
Lowest slab(s)	Describe the construction of the slab(s). Identify if structurally reinforced (raft, suspended slab) or if constructed as a slab on grade.
Exterior vehicle ramps	Identify the structural framing system. Indicate if ramp slabs are suspended or on grade. Describe topping and snow-melt system.
Vehicle Bridges	Identify the type of structure and the waterproofing system installed.
<b>Exterior Closure</b>	
Exterior wall cladding	Identify cladding systems installed including describing the extent of each. Describe cladding vertical and lateral support systems.
Windows	Describe the window frames (materials, thermally-broken or not), glass (single/double/triple glazed, sealed units or removable double-glazing), type of operable units installed, and general configuration.
Doors	Describe the types of doors installed, noting any power operation features.
Skylights	Describe the type of skylight installed. Indicate if guarding is present around the skylights.
<b>Roofing</b>	
Roofing	Describe the type of installation (conventional, protected membrane), membrane type, insulation type and thickness, and ballast. Describe drainage. Describe counter-flashings.
Attic	For roofs with attics, describe the framing, insulation, vapour barrier, access, and ventilation. Describe the sheathing materials. Describe joist bracing.
Suspended access equipment	Describe the systems installed (anchors, davit bases, davit arms, cranes, rope stops, rope guides, tie-backs, horizontal life lines, etc.). Describe where these facilities are installed and if the system permits access to windows only or the entire façade.

<b>Life Safety Systems</b>	
Fire detection and alarm	Describe main panel and annunciator panels (location, number of panels, manufacture, model, number of alarm and supervisory zones, and age). Describe voice communication and paging systems. Describe any CACF controls for ventilation equipment.
Fire suppression	Describe the incoming service and whether backflow prevention is provided. For sprinkler systems, describe main valves, distributed valves, alarm supervision, piping type. Describe which system are wet and dry and describe coverage of same. Describe water storage facilities. For standpipes, describe the number of risers and locations of fire hose cabinets, types of valves installed. Describe fire department connections and private hydrants.
Passive fire safety	Fire separation: Describe the construction and fire rating of fire separations. Egress: Describe the exit facilities.
Emergency power	Describe battery-pack, battery-inverter type or generator-based emergency power systems. For generators, indicate make, model, capacity, age. Describe automatic transfer switch locations, capacities, and systems served.
Smoke control	Describe any pressurization fans, smoke shafts or smoke vents used for smoke control.
CO detection	Describe CO detection and alarm equipment installed in and adjacent to rooms containing gas-fired appliances
Guards at stairs, balconies and other edges	Describe guards including height, gap sizes, presence of climbable elements, type of glass installed and position relative to the protected edge.
<b>Interior Finishes</b>	
Interior finishes, equipment, and furnishings	Describe any interior finishes, equipment or furnishing that will be retained as part of the RCCP.
<b>Conveyance</b>	
Conveyance (elevators, escalators, and other lifts)	Describe the type and number of installed equipment, manufacturer, age, date of last major modernization. Describe fire-fighter service provisions. Indicate if elevator recall is linked to on-floor smoke detectors or if it is a ground-floor recall only. Indicate if machine guarding and car top rails are installed if needed.
<b>Mechanical</b>	
Heating and air conditioning	Describe the equipment used to generate and distribute heat and cooling (including terminal units) in terms of manufacturer, model, age, capacity, and method of distribution. For air conditioning, note the type of refrigerant used (R11 shall not be re-used in an RCCP). For terminal units, description of typical units is adequate (rather than describing each individual unit). Describe any supplemental heating and cooling systems, solar systems, geo-thermal, etc. Describe any unusual systems installed such as refrigeration for ice-rinks, cold-storage, special computer cooling systems, etc. Describe chimneys and fireplaces including chimney linings.
Ventilation	Describe major air supply and exhaust systems in terms of manufacturer, model, age, capacity, and method of distribution. For small exhaust fans, only a general description is needed (make, model, capacity not required).
Plumbing	Describe the type of piping used on incoming main, describe installation features (size of service, presence of metering, by-pass and backflow prevention). Describe type of piping used in distribution systems in the building, zoning/layout, recirculation systems. Describe how hot water is generated and stored, describing the equipment in terms of make, model, age, capacity. Identify if a mixing valve is installed to control water temperature. Describe the drainage system, piping, and any retention or detention systems or surface water features. Describe sump pits and pumps.



<b>Electrical</b>	
Electrical service and distribution	Describe incoming power service in terms of manufacturer, capacity, age. Identify type of wiring used in main risers and branch wiring. Describe transformers. Describe distribution panels. Describe any supplemental power generation systems such as solar or wind-power, full-time onsite generation capacity, etc. Describe metering. Describe lightening protection systems. Describe metering systems.
Lighting	Describe types of lights installed. Describe any motion-sensing systems including determining if the models installed operate properly in smoke-filled spaces.
<b>Sitework</b>	
Topography	General topography and proximity to flood plains. Describe anti-flooding provisions.
Paving, walkways, and patios	Identify the materials installed; describe locations of installations including noting if they are on grade vs. over a structure
Drainage	See Plumbing.
Site features	Describe fencing, retaining walls, irrigation systems, water features, signage, playground equipment, gazebos, etc.
Special utility systems	Describe any water supply or wastewater treatment systems.
<b>Acoustics</b>	
Acoustics	Describe the construction of acoustic separations.
<b>Barrier-free</b>	
Barrier-free	Describe universal washrooms, power door operators and other barrier-free provisions.
<b>Security Systems</b>	
Security systems	Describe access control, intercom, and entry-control systems in terms of number of stations, manufacturer, and age.
<b>Other Systems</b>	
Other systems	Describe any pre-existing elements not mentioned above in terms of materials and extent.

# Appendix B

## Testing and Evaluation Requirements for Capital Replacement Plan

The following testing and investigation is required for pre-existing elements and the findings of the testing must be included in the capital replacement plan. If a component is not listed, the consultant should refer to a similar item to understand reasonable testing and evaluation.

NOTE: No testing is required for pre-existing elements that will be removed as part of the development of the RCCP.

<b>TESTING AND EVALUATION REQUIREMENTS FOR PRE-EXISTING ELEMENTS</b>	
<b>Below Grade/Foundations</b>	
Foundations including footings, piers, and load-bearing foundation walls	Steel columns that extend below grade and have been exposed to salt-laden water should be excavated to evaluate the condition of the buried portions. The bases of columns at slabs-on-grade that have been subjected to salt-laden water must be hammer tapped to identify column base delamination. For other foundations, testing to be defined by the project structural engineer.
Slab-on-Grade	No special investigation or testing is expected as part of the capital replacement plan for normal unreinforced slabs-on-grade except in the case of unusual cracking (which must be investigated with the scope defined by the project structural engineer). For structurally reinforced slabs see “Conventionally reinforced concrete slabs” or “Post-tensioned reinforced concrete” sections of this table, as applicable. Tie down anchors that require period stress testing should have the stress levels measured.
Load-bearing basement walls	Testing to be defined by the project structural engineer. Visual review of the full perimeter of the foundation walls should be completed to identify areas with leakage or other deterioration.
<b>Structure</b>	
<b>Note: The consultant must confirm that the removal and/or disassembly of building components, or other testing can be undertaken safely before commencing such work.</b>	
<b>General structural integrity</b>	The intent of the structural evaluation is to provide sufficient understanding of the structure, including its current state of deterioration, to permit the consultant to provide an informed opinion on likely future repairs. Consultant can refer to PEO Professional Practice Bulletin “Structural Engineering Assessments of Existing Buildings” for guidance. The following is a list of common structures and Tarion testing requirements (in addition to any required by the design team):
<b>Slab-on-grade</b>	<ul style="list-style-type: none"> <li>• Visual review for cracking or evidence of settlement or heaving. Test openings for voids if suspected.</li> </ul>

<p><b>Conventionally reinforced concrete slabs</b> - previously exposed to parking</p>	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Sounding of 100% of the exposed topside of the slab (chain drag).</li> <li>• Sounding of 100% of the exposed ledge beams and column bases (hammer tap).</li> <li>• Sounding of a 25% representative sample of the underside of the slabs (hammer tap).</li> <li>• Corrosion-potential (half-cell) testing at each concrete pour.</li> <li>• Chloride testing at 10 mm to 20 mm, 30mm to 40 mm and 60 mm to 70 mm depths at two samples locations in each concrete pour.</li> <li>• Concrete strength testing as required by the structural engineer taking responsibility for the structure.</li> <li>• Carbonation testing at two locations on the soffit of each concrete pour.</li> <li>• Visual review of the underside of the slab for evidence of leakage or other deterioration.</li> </ul>
<p><b>Conventionally reinforced concrete slabs</b> - to be exposed to parking (but were not previously)</p>	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Chloride testing at 30 mm to 40 mm depth at one sample in each concrete pour to determine if admixed chlorides are present.</li> <li>• Concrete strength testing as required by the structural engineer taking responsibility for the structure.</li> <li>• Sufficient visual review and measurements to determine work required to provide positive drainage.</li> <li>• Testing defined by the project structural engineer to permit confirmation of load capacity for the intended use.</li> </ul>
<p><b>Conventionally reinforced concrete slabs</b> - to be exposed as balconies (but previously within the building envelope)</p>	<p>If the new balconies will be waterproofed, the component evaluation should include:</p> <ul style="list-style-type: none"> <li>• Concrete strength testing as required by the structural engineer taking responsibility for the structure.</li> <li>• Sufficient visual review to determine work required to ensure drainage away from the building.</li> </ul> <p>If the new balconies will <b>not</b> be waterproofed, a detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Chloride testing at 30 mm to 40 mm depth at one sample in each concrete pour. The presence of admixed chlorides will necessitate the installation of a waterproofing membrane on balconies.</li> <li>• Concrete strength testing as required by the structural engineer taking responsibility for the structure.</li> <li>• Testing to confirm the presence of sufficient admixed air to ensure durability when exposed to the exterior.</li> <li>• Sufficient visual review to determine work required to ensure drainage away from the building.</li> </ul>
<p><b>Balcony slabs</b> - to remain as balcony slabs</p>	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• At 25% of representative balconies: visual review, sounding of the slab edges, top-side and soffits to permit detection of structural deterioration (for all concrete balconies including conventionally reinforced, joist chord reinforced and precast, etc.).</li> <li>• Remove soffit cladding (if present) at a minimum of 5% of balconies to permit review of concealed structural conditions. Extend this sample size if inconsistent results are detected such that a reasonable prediction of overall condition can be made. Review sufficient connections in structural steel buildings have been reviewed to permit the structural engineer an understanding of any damage that might have been caused by historic or ongoing leakage.</li> </ul>

<p><b>Unbonded post-tensioned concrete slabs</b> - previously exposed to parking</p>	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Visual review and screwdriver penetration testing at a minimum of 25% of tendons on each floor or major structural component to be reused. As part of this testing, tightly sealed access panels shall be installed to permit review of these tendons again in the future by the condominium corporation (except in locations where these would visibly detract from the design, as defined by the design team).</li> <li>• In cases where the penetration testing detects under-stressed cables, testing to determine the extent of under-stressing and the implications on structural capacity. This testing scope shall be defined and overseen by the structural engineer for the project.</li> </ul>
<p><b>Bonded post-tensioned concrete slabs</b> - previously exposed to parking</p>	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Visual review and screwdriver penetration testing at a minimum of 10% of tendons on each floor or major structural component to be reused. As part of this testing, tightly sealed access panels shall be installed to permit review of these tendons again in the future by the condominium corporation.</li> <li>• In cases where the penetration testing detects under-stressed cables, testing to determine the extent of under-stressing and the implications on structural capacity. This testing scope shall be defined and overseen by the structural engineer for the project.</li> </ul>
<p><b>Post-tensioned concrete slabs</b> - not previously exposed to parking</p>	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Visual review and screwdriver penetration testing at a minimum of 5% of tendons on each floor or major structural component to be reused. As part of this testing, access panels shall be installed to permit review of these tendons again in the future by the condominium corporation.</li> <li>• In cases where the penetration testing detects under-stressed cables, testing to determine the extent of under-stressing and the implications on structural capacity. This testing scope shall be defined and overseen by the structural engineer for the project.</li> </ul>
<p><b>Autoclaved aerated concrete</b></p>	<ul style="list-style-type: none"> <li>• See discussion under Roofing for autoclaved concrete roof decks.</li> <li>• For autoclaved concrete interior floor slabs, complete 100% visual survey for deterioration or excessive deflection. If concealed by finishes, make openings to evaluate representative conditions.</li> <li>• Concrete strength testing as required by the structural engineer taking responsibility for the structure.</li> <li>• For autoclaved concrete block back-up walls, make exterior wall openings, 1 per 500 sq. m of wall area type to evaluate the state of deterioration and condition of wall ties.</li> </ul>
<p><b>Heavy timber structures</b></p>	<p>No testing above that required by the project structural engineer (who will define the testing required to determine structural adequacy). See Environmental Concerns” for discussion of wood damaging organisms such as termites.</p>

<b>Steel Structures</b>	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Inspection of a representative sample of steel members and connections. This may require removal of finishes and fire-stopping. Steel members that extend below grade should be included in this sampling.</li> <li>• If parking levels are located above occupied spaces, or other conditions exist that could have resulted in long-term leakage onto concealed steel connections, ensure that sufficient connections in structural steel buildings have been reviewed to permit the structural engineer an understanding of any damage that might have been caused by historic or ongoing leakage to define required repairs.</li> <li>• For OWSJ with cold-form top steel chords that are a closed shape, evaluate the condition of the top chords where water might collect and cause corrosion.</li> <li>• For brick clad steel columns at the building exterior, brick must be removed at representative locations to evaluate the state of corrosion of the embedded columns if any cracking is present.</li> </ul>
<b>Exterior Closure</b>  <b>Note: The consultant must confirm that the removal and/or disassembly of building components, or other testing can be undertaken safely before commencing such work.</b>	
Wall cladding at exterior walls, and parapets, including exterior sealants – general requirements	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• For high buildings, minimum 50% direct review of a representative of the total wall area by bosun’s chair or suspended stage, unless direct access is otherwise provided (example: balconies or terraces).</li> <li>• For low buildings, minimum 25% direct review of a representative of the total wall area.</li> <li>• Where the wall assembly is to remain in place, wall openings (interior and/or exterior) are to be completed at a sample of the wall types to confirm the assembly (anchorage of cladding to back-up, anchorage of back-up to structure, vertical support, water control flashings, insulation, air/vapour barrier, firestopping, etc.) and evaluate the condition of the concealed components. A minimum of 1 opening per 500 sq. m. of wall area type should be completed. Masonry parapets should be treated as a separate wall type. For masonry and EIFS and similar, openings will be from the exterior. For precast and cast-in-place, openings can be from the interior.</li> <li>• Sealant test cuts should be completed, where sealants form an integral part of the cladding assembly.</li> </ul>
Stacked header brick masonry	<p>In addition to the general cladding requirements, where header brick masonry is stacked for many storeys without horizontal joints on a concrete-framed building, and the masonry was not originally designed to be load bearing, the wall investigation should take note of the condition of the header bricks to identify if any shearing has occurred that would disconnect the brick from the backup. The investigation should also consider if excessive loads have been transferred onto the brick from the structural frame due to shrinkage of the frame.</p>
Windows	<p>A detailed component evaluation should be completed and include:</p> <ul style="list-style-type: none"> <li>• Air and water leakage testing for compliance with CSA Standard A440.</li> <li>• Structural testing of a mock-up of each different window system to confirm the adequacy of the anchorage per CSA Standard A440.</li> <li>• Confirmation of compliance with OBC requirements for windows located within 1 m of the floor (glass type, ability to withstand guard loads)</li> </ul>
Balcony guards	See Life Safety.
Soffits	<p>Sufficient openings should be made to clearly understand the heating and insulating of soffits so that repairs needed to prevent cold floors can be developed.</p>

<b>Roofing (including Suspended Access Equipment)</b>	
Roofing	<p>Complete the following in addition to the visual review. If the roof is snow covered at the time of review, then this must be identified in the key risk area list and conservative assumptions regarding remaining service life should be made.</p> <ul style="list-style-type: none"> <li>• For flat roofs with the membrane installed above the insulation and exposed, complete an infrared survey for evidence of moisture below or within the membrane including test cuts to confirm the findings.</li> <li>• For flat roofs with ballasted single ply membranes, no test cuts are required, but seams should be sampled for integrity and the roof should be reviewed for signs of tenting or other shifting of the membrane.</li> <li>• If the roof consists of an overlay over an older roof, this must be identified in the description section of the report and the service life should be shortened accordingly.</li> <li>• For flat roofs with asphaltic membranes (exposed membranes as discussed above and protected membranes, where the membrane is installed under the insulation) complete test cuts at a minimum of 1 location per 500 sq. m. of roof area, to confirm the roof assembly, the condition of the roof components and the deck conditions. Test cuts are not needed at minor inconsequential roofs (such as small projections, small canopies) although the condition of these roofs shall be reviewed visually and via inspection of the underside for evidence of leakage.</li> <li>• If test cuts reveal phenolic foam insulation on a steel deck roof (which can form acid in the presence of leakage, causing structural damage to the roof deck below), make test openings 10'x10' to permit review of the condition of the steel deck at enough locations to be able confident that the conditions seen are representative of the overall deck.</li> <li>• For moisture susceptible roof deck (such as "Siporex" – autoclaved aerated lightweight concrete), make test openings 10'x10' to permit review of the condition of the deck at enough locations to be confident that the conditions seen are representative of the overall deck. Complete any strength testing required by the structural designer.</li> <li>• For flat roofs, evaluate risk of overloading in the event a drain is blocked. Evaluate the detailing of penetrations.</li> <li>• For sloped roofs or flat roofs with an attic space below, the assessment should include a representative review of attic spaces and intrusive review of any concealed attic spaces to permit visual review for evidence of leakage and related deterioration, evidence of adequate support of roof sheathing, and evaluation of the adequacy of the ventilation. It should also include confirmation of ice-damming protection and flashing of valleys and interfaces with walls.</li> </ul>
Suspended access systems	An inspection by a qualified contractor or consultant should be completed for compliance with the current Ontario Ministry of Labour requirements and CSA Z91 requirements if an existing, valid report, certifying the system for use (with all identified deficiencies corrected), is not available.
Fall hazards	Review the location of skylights and roof edges relative to the location of existing rooftop equipment that will be retained to be able to define where guards must be installed to prevent workers on the rooftop from falling through the skylights or off roof edges.
<b>Life Safety</b>	
Fire alarm system	Review latest annual fire alarm inspection report and certificate, confirming that all deficiencies identified during the review have been rectified.
Sprinkler and standpipe systems	Review latest annual suppression system inspection report and certificate, confirming that all deficiencies identified during the review have been rectified. Test the flow capacity of the fire pump against required flow.

Emergency power	Generator: Review latest annual generator inspection report and load test reports confirming that all deficiencies identified during the review have been rectified. Submit generator and fuel system compliance report per TSSA and CSA requirements. If full load test has not been completed as part of routine testing, this test must be completed as part of the capital replacement plan preparation. Battery based systems: Test operation of equipment for required duration of operation.
Fire separations	Complete test cuts as required to determine the construction to allow confirmation of code compliance.
Egress	Handled as part of the building permit process. No testing required here.
CO detection	Review latest annual inspection report and certificate confirming that all deficiencies identified during the review have been rectified.
Smoke control	Provide a copy of the latest annual fire test indicating that the smoke control/pressurization equipment is functional. If one is not available, complete an annual inspection.
Balcony guards (and similar – on retaining walls, etc.)	A detailed component evaluation should be completed and include: <ul style="list-style-type: none"> <li>• Load testing</li> <li>• Measurements at a representative sample of guards for compliance with the applicable dimensional requirements.</li> <li>• Verification that the glass meets the applicable requirements.</li> </ul>
Stairwell guards	A detailed component evaluation should be completed and include load testing measurements at a representative number of guards for compliance with the applicable dimensional requirements.
Low windows	For low windows that represent a risk to children falling, describe if guards are installed. If not, complete load testing to confirm that the windows can withstand guard loading (or indicate that guards will be installed as part of the conversion) so that the building is fit for habitation.
Pinching/entrapment	Confirm that equipment guarding is installed at all pre-existing element equipment where there is a risk of pinching or entrapment.
<b>Interiors</b>	
Wall and Floor Assemblies	Intrusive investigation of a representative sample of the interior wall and floor assemblies should be completed to confirm the existing construction and assembly (materials and fire resistance rating), including concealed fire stopping. Sound all floor and wall tiling to detect areas that are deboned.
Equipment and Furnishings	Complete reasonable testing to evaluate that the equipment or furnishing can fulfill its intended purpose. Confirm flame spread and smoke developed ratings.
<b>Conveyance (Elevators, Escalators and Lifts)</b>	
Ropes, machine, controls	Confirm that inspections and testing required by TSSA are up to date. Complete any outstanding. Confirm date of last control modernization.
Hoist way and pit	Visual review of hoist way and pit for corrosion of elevator equipment or evidence of leakage.
Hydraulic elevators	Confirm if buried cylinders are single-bulkhead and if they have a PVC lining on the cylinders. Review maintenance logs for evidence of unexplained oil loss.
<b>Mechanical (HVAC and Plumbing)</b>	
Domestic water service	Main service: If lead or galvanized, provide details of replacement. Backflow prevention: Confirm that annual testing is up to date and registered with the municipality if that is a local requirement.
Domestic water generation and storage	Confirmation of the date of last relining for concrete lined tanks. If unknown, inspection by a qualified contractor. For glass storage and heater tanks, confirm age and history of leakage. Domestic water boilers: See Boilers.

Water distribution piping	Confirm age of piping and history of leakage. For galvanized cold-water piping that might be retained, complete test cuts to evaluate the extent of corrosion. Complete a visual review of check for Kitec piping (also known as PlumbBetter, AQUA, Warmrite, AmbioComfort, XPA, Kerr Controls: Typically installed between 1995 and 2008).
Sanitary and storm water drainage piping	Hydrostatic, pneumatic or smoke testing for cracks and leaks in sanitary piping; camera survey of storm water piping. Visual review of storm water retention or detection tanks. Confirm operation of sump pumps. Onsite sewage disposal systems – inspection of tank for excessive sludge and scum and piping and connections for cracking. Test operation of pumps (if applicable). For foundation wall and footing drainage systems, evaluate whether perimeter drainage piping is intact and able to drain water to sump pits or storm water system by excavation or camera inspection.
Irrigation	See Sitework.
Chillers	Confirm age. Confirm refrigerant in use. Confirm operational status. Confirm that the room and equipment comply with CSA B-52
Cooling Towers	Confirm age. Confirm operational status. Visual review of interior of tower.
Boilers	Confirm age and operational status.
Make-up air units	Confirm age and operational status. Measure air flow if unlabelled.
HVAC piping and valves	Confirm age of piping and history of leakage. For systems over 50 years old, complete a pipe condition survey of a representative sample including cut tests and microscopic and metallographic examination as well as hydrostatic, pneumatic or smoke testing for cracks and leaks.
HVAC ductwork	Camera survey of any ductwork to be reused to evaluate corrosion, gaps, missing insulation (if installed on interior of ductwork), ponding, presence of required fire dampers.
Pumps	Confirm age and operational status.
Chimneys	Confirm the lining of all masonry chimneys and budget to line where currently unlined (including boiler venting). Camera survey of all B vent chimneys.
Fireplaces	Obtain proof of WETT certification of installation for all solid-fuel burning fireplaces. If not available, have the system inspected by a WETT certified inspector.
<b>Electrical</b>	
Electrical service and distribution	Confirm age and operational status.
Lighting	Measure light levels for comparison against applicable requirements
Snow melting systems and heat tracing	Thermographic survey (or visual review in snowy conditions) to confirm operation.
<b>Sitework</b>	
Retaining walls	100% visual survey for deterioration.
Pavements	100% visual survey for deterioration.
Buried services	See “Sanitary and storm water drainage piping” in “Mechanical (HVAC and Plumbing)”. For water piping, conduct pressure testing to evaluate the integrity of the piping. For buried electrical wiring, test for ground faults.
Sub-surface conditions	Testing as required by the design structural engineer and design geotechnical engineer. Visual review of the site for evidence of unusual settlement or heaving. Evaluation of the impact of the new construction on the water table impacting in the pre-existing elements
Irrigation	Pressure test system for leakage. Confirm back-flow preventer is installed.
<b>Acoustics</b>	
Interior separations	Field testing of acoustic separations to confirm that they provide the STC rating required by applicable requirements. Representative samples can be tested in the event of repetitive installations i.e. floors and walls.



Equipment isolation	Visual review of existing isolation equipment installed at mechanical pre-existing elements.
<b>Barrier-free</b>	
Power door operators	Test operation. Confirm height of controls complies with applicable requirements.
Barrier-free stalls and universal washrooms	Measurements to confirm installation conforms with applicable requirements.
Doors	Measurements to confirm that installation meets latch side clearances, glass light placement, glass protection and identification, door opening force, graspable requirements, etc. per applicable code requirements.
<b>Waste Disposal</b>	
Garbage chute	Camera survey of chute for full height to identify any gaps, corrosion, loose fasteners, etc. that might require repair. Test operation of wash-down system.
Compactor	Determine age and operational status.
Sorter	Determine age and operational status including controls at each floor level.
<b>Security</b>	
General	Determine age and operational status.
<b>Environmental Concerns</b>	
Site assessment	Complete a phase 1 environmental report per CSA Z768-01 – Phase I Environmental Site Assessment and any follow-up phase 2 testing recommended by the phase 1 report.
Hazardous materials	The existing designated substance and hazardous materials survey should be reviewed to identify which hazards relate to the pre-existing elements. These must be described in the description of the pre-existing element and factored into the expenditure budget. If no hazardous materials survey has been completed, one is required to be completed to cover the pre-existing elements.
Pests	Describe existing pest management protocols in place. For wood framed, note any observed evidence of termite infestation.
Mould	To be considered as part of the phase 1 evaluation. Complete any phase 2 testing identified as necessary.
Radon	If the building is in one of the designated areas listed in section 3.1.1.2 of the Ontario Building Code and if this section of the code applies to the pre-existing element, test the radon 222 levels to permit design of required gas mitigation systems. Optionally test for radon in other geographies.

# Appendix C

## Sample Capital Replacement Plan 45-year Major Repair Schedule

In this sample, the pre-existing elements include the building frame, a single-story garage with a buried roof deck, a section of historic façade with windows, two elevators and a concrete-lined hot water storage tank. In the garage, the slab-on-grade was replaced, along with all new sprinklers, lighting, fans, etc.

### Uninflated Forecasted Expenditures

Anticipated Repairs and Replacements	Present Cost	Year of First Occurrence	Years between Occurrences	Limits on Future Occurrences	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032-2041	2042-2051	2052-2061	2062-2067	
<b>1 Structure</b>																				
1.1 Injection waterproofing at foundation walls	\$10,00	2022	5			\$10,000					\$10,000					\$20,000	\$20,000	\$20,000	\$10,000	
1.2 Repair garage roof deck waterproofing	\$50,000	2026	35							\$50,000										\$50,000
1.3 Replace garage roof deck waterproofing including repair to concrete slab	\$600,000	2031	35												\$600,000					\$600,000
<b>2 Exterior Closure</b>																				
2.1 Replace window perimeter sealants	\$30,000	2024	40	Alternate with window replacement																
2.2 Replace windows	\$100,000	2040	40													\$1,000,000				
2.3 Masonry refurbishment including repointing and local brick replacement	\$75,000	2027	20								\$100,000						\$100,000			\$100,000
<b>3 Conveyance</b>																				
3.1 Replace door operators	\$60,000	2025	20						\$60,000									\$60,000		\$60,000
3.2 Modernize elevator controls	\$400,000	2030	25											\$400,000			\$400,000			
<b>4 Mechanical</b>																				
4.1 Reline hot water tank	\$7,500	2023	10	2 prior to replacement			\$7,500									\$7,500				
4.2 Replace hot water tank with smaller tanks	\$40,000	2040	15													\$40,000				
<b>Total Anticipated Uninflated Expenditure</b>						\$10,000	\$7,500		\$60,000	\$50,000	\$110,000			\$400,000	\$600,000	\$1,067,500	\$580,000	\$20,000	\$820,000	

# Appendix D

## Sample Capital Replacement Plan Expected Major Repair Schedule

In this sample, the pre-existing elements include the building frame, a single-story garage with a buried roof deck, a section of historic façade with windows, two elevators and a concrete-lined hot water storage tank. In the garage, the slab-on-grade was replaced, along with all new sprinklers, lighting, fans, etc.

### Uninflated Forecasted Expenditures

Expected Work	Present Cost	Year of First Occurrence	Years between Occurrences	Limits on Future Occurrences	2021	2022	2023	2024	2025
<b>1 Structure</b>									
1.1 Injection waterproofing at foundation walls	\$10,00	2022	5			\$10,000			
<b>3 Conveyance</b>									
2.1 Replace door operators	\$60,000	2025	20						\$60,000
<b>4 Mechanical</b>									
4.1 Reline hot water tank	\$7,500	2023	10	2 prior to replacement			\$7,500		
<b>Total Anticipated Uninflated Expenditure</b>						\$10,000	\$7,500		\$60,000

Based on this schedule of expected work, the applicant’s contribution to the pre-existing elements fund would be \$77,500 (covering all work planned for the initial period of 2021 to 2025).

# Appendix E

## References

ASTM E2018-15: Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process.

PEO: Structural Condition Assessments of Existing Buildings and Designated Structures, November 2016.

BSTAP: Report of the Building Safety Technical Advisory Panel, January 27, 2016.

# Appendix F

## **PRE-EXISTING ELEMENTS FUND – AN INFORMATIONAL GUIDE<sup>9</sup>**

### **Residential Condominium Conversion Projects**

#### **Introduction**

As of January 1, 2018, the *Ontario New Home Warranties Plan Act (ONHWP Act)* was amended to extend statutory warranties to residential condominium conversion projects (**RCCPs**). All warranties apply to RCCPs except for the first-year warranty relating to workmanship and materials of pre-existing elements. As part of the registration and enrolment process for RCCPs, builders and vendors are required to arrange for additional investigative work and reports on the pre-existing elements that are to be retained in the new project.

In addition, vendors are required to prepare a **pre-existing elements fund study** to help determine whether they are required to create a fund held in trust to make major repairs relating to certain pre-existing elements. For further information on this policy, please see Builder Bulletin 51 – Residential Condominium Conversion Projects.

This document is intended to provide helpful information about the pre-existing elements fund from the point of view of condo unit buyers, the condominium corporation and trustees holding trust funds for the purposes of making major repairs to pre-existing elements.

#### **Additional Investigative Work and Reports for RCCP**

In addition to the usual requirements for registration with Tarion, a proponent vendor of an RCCP must provide the following:

- Property assessment report (PAR)
- Capital replacement plan (CPR)
- Pre-existing elements fund study (PEF study)

The PEF study is a very important document to both buyers of condominium units and the condominium corporation. This study builds upon the information contained in the PAR and CPR and is the document which is required to be provided to prospective purchasers as part of the disclosure required under the *Condominium Act*.

The PEF study is a valuable source of information for both new condo unit buyers and the condominium corporation. The PEF study provides disclosure about the proposed RCCP and the nature, extent and possible additional costs associated with any pre-existing elements that will be retained in the proposed residential structure.

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<sup>9</sup>[Caution – Qualifier – not legal advice; make sure you have a recent version.]

The PEF study must contain the following information:

- (a) Plain language overview of the project.
- (b) List of the pre-existing elements of the project and a description of their history.
- (c) General description of the additions, alterations or extensions to the pre-existing elements of the project that the vendor will undertake before the project registration date or, if applicable, a statement there are no such repairs, modifications, additions, alterations or extensions.
- (d) 45-year major repair schedule for the project
- (e) Expected major repair schedule for the project, if any.
- (f) Determination of the amount that the vendor is required to contribute to the pre-existing elements fund in relation to the project, showing the amounts required for every affected unit and common element in the project and for each asset, if any, of the condominium corporation in relation to the project.
- (g) Certificate as to qualification of the author of the report.
- (h) Information about the engagement of the person who prepared the study and details of the persons who provided observations, test results and opinions to that person.
- (i) Other information that is relevant to the study and that Tarion reasonably requires be included.

The two components of the PEF study that are of great importance to both condo unit buyers and condominium corporations are the expected major repair schedule and disclosure of the amount of money that has been placed in the pre-existing elements fund ("PEF") for a condo owner's unit (if any) or for the RCCP (if any) (as outlined in the expected major repair schedule).

The expected major repair schedule outlines the pre-existing elements which may require major repair or replacement within the first 7 years following the project registration date (due to their age or condition). The estimated cost for these repairs and replacements must be set out in the schedule and the aggregate amount of such costs must be set aside in a trust account by the vendor to pay for those major repairs.

### **Escrow Trust Arrangement**

The vendor of the RCCP is required to fund the PEF as determined by the PEF study.

The vendor shall establish and fund this separate trust escrow account with an arm's length trustee (approved by Tarion), to hold the PEF. The trust agreement must conform to a standard form prepared by Tarion (see RCCP Form 1 on Tarion's website). The amount to be contributed to the fund by the vendor is the total amount set out in the expected major repair schedule.

The vendor is also required to pay the cost of establishing and maintaining the trust account including fees of the trustee. This must all be funded from the vendor's own resources. The costs of maintaining the PEF cannot be passed onto the purchasers of units in the RCCP.

The PEF must be funded by,

- (a) The date that the first unit in the RCCP is enrolled in the warranty program; or
- (b) In the case of a phased RCCP project, (if such phase requires funding) by the date of the first unit in that phase is enrolled in the warranty program.

## **Increases or Decreases to PEF During Construction**

The vendor of the RCCP is required to update the PEF study every year after the first PEF study is submitted. Also, the vendor of the RCCP must provide the final update of the PEF study received by Tarion no earlier than 90 days and no later than 60 days before the project registration date.

If the updates, individually or collectively, indicate that the amount of the PEF should in the aggregate be increased by 25% or more, the vendor shall, within 30 days of receiving a written request from Tarion, increase the amount of the PEF by the amount specified in the update or updates collectively.

In all events, if the final update indicates that the amount of the PEF should be increased, having regard to updates previously submitted, the vendor shall, within 30 days of receiving written request from Tarion, increase the amount of the PE Fund by the amount specified in the update.

If the final update indicates the amount of the PEF should be reduced, the vendor may send a written notice and certificate to that effect to the trustee, authorizing that the PEF be reduced by the applicable amount and that the trustee shall pay that amount to the vendor out of the PEF. Please see the section below for further information on the circumstances in which monies can be released from the PEF to the vendor.

## **When Monies can be Released from PEF**

There are very specific rules for how and when funds are released from the PEF which differ depending on when the funds are requested. In general terms, these are:

### **Funds may be released to the vendor:**

- Before the project registration date for common element matters
- Up until the title transfer date, for unit matters

### **Funds may be released to the condominium corporation:**

- After the project registration date but before turnover meeting
- After the turnover meeting

### **Funds may be released to the unit owner:**

- After the transfer of title (less than \$10,000)
- After the transfer of title (\$10,000 or greater)
- Seven years after the project registration date

## **Circumstances in which Monies can be Released from the PEF**

### **Release to Vendor**

*Before Project Registration Date – Common Elements [s.3(2) of O.Reg. 520/17; ss.9(1)(3) of O.Reg. 522/17]*

Where one or more major repairs are needed to pre-existing elements, the vendor is permitted to call for the release of relevant funds by the trustee subject to the following conditions:

1. The vendor has determined on a reasonable basis that a major repair set out in the expected major repair schedule relating to the common elements of the RCCP or assets of the condominium corporation requires remediation.
2. The vendor may only use this money for the specific items as outlined in the expected major repair schedule and not for other items on the schedule or for any other purpose.
3. The vendor must complete the expected major repairs as described in the expected major repair schedule for which it is seeking reimbursement; and
4. The vendor shall provide, a certificate of the vendor via RCCP Form 2 (available on Tarion.com) to the trustee that:
  - identifies the major repairs and confirms that they have been made,
  - specifies the cost of the repairs, and
  - attaches invoices for the cost of the repairs and provides proof of payment of the invoices.

*Before Project Registration Date – Unit Repairs [s.3(2) of O.Reg. 520/17; ss.9(1)(2) of O.Reg. 522/17]*

Where one or more expected major repairs are needed to pre-existing elements, the vendor is permitted to call for the release by the trustee of relevant funds subject to the following conditions:

1. The vendor has determined on a reasonable basis that a major repair set out in the expected major repair schedule relating to a unit of the RCCP requires remediation.
2. The vendor may only use the money for the specific items as outlined in the expected major repair schedule and not for other items on the schedule or for any other purpose.
3. The vendor must complete the expected major repairs as described in the expected major repair schedule for which it is seeking reimbursement; and
4. The vendor shall provide a certificate of the vendor via RCCP Form 3 (available on Tarion.com) to the trustee that:
  - identifies the major repairs and confirms that they have been made,
  - specifies the cost of the repairs, and
  - attaches invoices for the cost of the repairs and provides proof of payment of the invoices.

## **Release to Condominium Corporation**

*After the Project Registration Date but before Turnover Meeting [s. 3(2) of O.Reg. 520/17; ss.9(1)(4) of O.Reg. 522/17]*

Where one or more major repairs are needed to pre-existing elements, the condominium corporation is permitted to call for the release by the trustee of relevant funds subject to the following conditions:



1. The condominium corporation has determined on a reasonable basis that a major repair set out in the expected major repair schedule relating to the common elements of the RCCP or assets of the condominium corporation requires remediation.
2. The condominium corporation may only use the money for the specific items as outlined in the expected major repair schedule and not for other items on the schedule or for any other purpose.
3. The condominium corporation must complete the expected major repairs as described in the expected major repair schedule for which it is seeking reimbursement; and
4. The condominium corporation shall provide a certificate of the condominium corporation via RCCP Form 4 (available on Tarion.com) to the trustee that:
  - identifies the major repairs and confirms that they have been made,
  - specifies the cost of the repairs, and
  - attaches invoices for the cost of the repairs and provides proof of payment of the invoices.

*After Project Registration Date and after Turnover Meeting [s.3(3) of O.Reg. 520/17]*

The trustee shall release to the condominium corporation any amount remaining in the PEF in relation to common elements of the RCCP or the condominium corporation's assets on or after the project registration date and the turnover date if the condominium corporation has submitted a written certificate to the trustee via RCCP Form 5 (available on Tarion.com) in which:

- the condominium corporation requests the release of such funds; and
- the condominium corporation confirms that a new board of directors of the corporation has been elected in accordance with section 43 of the *Condominium Act, 1998*.

The trustee shall release money from the PEF within 30 days of receiving the certificate described above.

The condominium corporation is not specifically required to use the funds for expected major repairs, but such amount shall be considered a benefit under ss.14(6) of the ONHWP Act as described later in this guide.

### **Release to Unit Purchaser**

Every purchaser of a RCCP unit should review the expected major repair schedule to see if there is any money set aside for major repairs to their unit. If so, the following provisions are relevant.

*After Transfer of Title to Unit (less than \$10,000) [s.3(6) of O.Reg. 520/17]*

If there is money set aside in the expected major repair schedule, a unit owner should request those funds from the trustee as soon as possible after they receive a transfer of title to the unit.

On or after the transfer of title, the trustee shall release any amount remaining in the PEF in relation to that unit to the unit owner. To receive the funds, the owner of the unit shall submit a written certificate to the trustee via RCCP Form 6 (on Tarion's website), in which,

- The unit owner confirms that they are the owner of the unit and is the first purchaser;
- That the owner has title to the unit;

The trustee shall release such money from the PEF within 30 days of receiving the certificate described above.

The unit owner is not specifically required to use the funds received for expected major repairs, but such amount shall be considered a benefit under ss.14(6) of the ONHWP Act as described later in this guide.

*After Transfer of Title to Unit (Greater Than \$10,000) [s.3(2) of O.Reg. 520/17; ss. 9(1) 9(7) of O.Reg. 522/17]*

These rules apply to unit owners whose units have more than \$10,000 set aside in the PEF.

Where one or more major repairs are needed to pre-existing elements affecting an owner's unit, the unit owner is permitted to call for the release of relevant funds by the trustee subject to the following conditions:

1. The unit owner has determined on a reasonable basis that a major repair set out in the expected major repair schedule relating to the unit in the RCCP requires remediation.
2. The unit owner may only use the money for the specific items as outlined in the expected major repair schedule and not for other items on the schedule or for any other purpose.
3. The unit owner must complete the expected major repairs as described in the expected major repair schedule for which it is seeking reimbursement; and
4. The unit owner shall provide a certificate of the unit owner via RCCP Form 7 (available on Tarion.com) to the trustee that:
  - identifies the major repairs and confirms that they have been made,
  - specifies the cost of the repairs, and
  - attaches invoices for the cost of the repairs and provides proof of payment of the invoices

*7 Years after Project Registration Date [ss.3(7) of O.Reg. 520/17]*

If after seven years following the project registration date, there are any monies left in the PEF in relation to a particular unit, the trustee shall release the monies to the respective unit owner(s). To receive the funds, a unit owner shall submit a written certificate to the trustee owner via RCCP Form 8 (available on Tarion.com) in which,

- The unit owner confirms that they are the owner of the unit.

- That the owner is the first person to request such remainder PEFs in relation to the unit.
- That the owner is entitled to receive such funds.

The trustee shall release money from the PEF within 30 days of receiving the certificate described above.

The unit owner is not specifically required to use the funds received for expected major repairs, but such amount shall be considered a benefit under ss. 14(6) of the ONHWP Act as described in this guide.

### **How the Pre-Existing Elements Fund Relates to Warranty Claims**

Funds earmarked in the expected major repair schedule for common elements, corporation assets or units, are intended to be used to address any major repair relating to the items noted in the schedule. The statutory warranties are a backup to remediation undertaken with these funds and only if the item in question is also a warranted claim.

It is important to note that any money that a condominium corporation or unit owner in the project receives or is permitted to receive from the PEF will be considered a benefit to the recipient and offset. The benefit will be taken into consideration in the resolution of a warranty claim of applicable items.

Owners of condominium units and the condominium corporation of the RCCP will make warranty claims in the normal course as would the owners of any new residential condominium project. A claim must be made to the vendor and Tarion within the prescribed time period on a recognized warranty form including a performance audit. The condition referred to in the warranty claim shall be reviewed against the descriptions of major repairs in the expected major repair schedule.

If a condominium corporation or unit owner makes a repair of a condition without involving Tarion or the vendor using the PEF monies earmarked for such work, then a further claim related to the concern **cannot** be made to Tarion or the vendor.

If the condominium corporation or unit owner is concerned that the funds allocated in the PEF may not be sufficient to cover the cost of a major repair, the condominium corporation or unit owner must make a timely warranty claim to Tarion and the vendor prior to making any decisions about what remedy to pursue and prior to spending applicable PEFs. In these circumstances, the condominium corporation or unit owner shall obtain a recommendation from a professional regarding the appropriate repair and the proposed work plan shall be shared with Tarion and the vendor prior to proceeding. If the vendor agrees with the proposed scope, then the condominium corporation or unit owner can proceed to resolve the condition.

If an item on a warranty claim form is also an item in the expected major repair schedule, the condominium corporation shall utilize the funds in the PEF earmarked in the expected major repair schedule to resolve the unacceptable condition of the item. If the funds in the category for that particular expected major repair schedule are insufficient to resolve the warranted condition, and the item is determined to be warranted, the residual work or funds necessary to resolve the claim will be addressed as a normal warranty claim.

If the work required to address any warranted claim does not align directly with the work described for a project in the expected major repair schedule and the condominium corporation or a unit owner wishes to engage the statutory warranties, it must make a timely warranty claim to the vendor and Tarion. The parties will then discuss how best to address the unacceptable condition.

If a performance issue related to a relevant pre-existing element arises after expiry of the related warranty period, the condominium corporation or unit owner may use the monies earmarked in the expected major repair schedule, to address the issue without involving Tarion or the vendor.

Examples of possible scenarios are as follows:

- If the expected major repair schedule included a work item for replacement of a roof in year five, and leakage occurs in year two, then an evaluation is needed to determine if replacement is merited or if repair is sufficient. If replacement is needed, then any funds contributed by the vendor in the PEF towards that roof replacement can be used by the condominium corporation to cover the cost of roof replacement.

If the condominium corporation expects that the cost to replace will be more than the amount of available funds in the PEF, a warranty claim can be made to the vendor and Tarion for the excess. Note that this warranty claim must be made in the usual course and prior to proceeding with the work, otherwise, the warranty claim will not be eligible. If repair is found to be sufficient to address the current leakage, then the condominium corporation can pursue the claim under warranty. The PEFs put aside for the replacement do not need to be used to cover the cost of the repair because the work is not the same as that described in the PEF study.

- If the work identified in the expected major repair schedule is to replace the heating coil in the make-up air unit in year five, and the heating coil fails in year one, then the condominium corporation must apply the applicable PEFs related to the heating coil to the repair (and make a warranty claim if the amount is not going to be sufficient to cover the repair). Heating coil replacement would not be anticipated again in the first five years because the Service Life is greater than five years.
- If the project identified in the expected major repair schedule was to replace the heating coil in the make-up air unit in year five, and during the warranty period, the fan in the same make-up air unit required replacement, the condominium corporation would not be required to use the pre-existing elements funds and would instead make a warranty claim to the vendor and Tarion because the work is not the same as that described in the PEF study.
- If the project identified in the expected major repair schedule was an annual allowance to replace sealed insulating glazing units and some sealed insulating glazing units required replacement during the first-year warranty period, then the condominium corporation must apply the applicable PEFs related to the first occurrence of this condition to the work (and make a warranty claim if the amount is not going to be sufficient to cover the repair). PEFs set aside for the other years do not have to be brought forward, because further replacements in those years would still be expected.
- If the expected major repair schedule included a project in year five to permit localized wall leakage repair but leakage repairs become necessary in year two, the condominium corporation

would be required to apply the applicable PEFs because this is the same work as that described in the PEF study.

- If the expected major repair schedule included a project in year five to modernize the elevators based on the consultant's best opinion of the likely future performance of the components, but an elevator fails in year two and it becomes necessary for the elevators to be modernized sooner, the elevator modernization would not have warranty coverage. This is because elevators have first year warranty coverage. In this case, the condominium corporation can proceed with the modernization and apply the PEFs related to this item to the project. Even if the applicable PEFs are not sufficient to cover the full cost of the work, there is no further warranty claim to be made as elevators have first year warranty coverage.