

Ministry of the Environment,  
Conservation and Parks  
Ministère de l'Environnement, de la Protection  
de la nature et des Parcs

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## Certificate of Property Use

Environmental Protection Act, R.S.O. 1990, c.E.19, s.168.6

Certificate of Property Use number: **6086-BELLDH**  
Risk Assessment number: **1647-ARG29K**

**Owner:**

Dawn Victoria Homes (Brantford) Limited  
1550 Yorkton Court, Unit 18  
Burlington ON L7P 5B7

**Site:**

85 Poulette Street  
Hamilton, Ontario

**Legal Description:**

PT OF LOTS 97, 98, 99 AND 104 PLAN 244; LOTS 5, 6, 7 AND PT LOT 8 BLOCK G  
PLAN 253; PT LOT 18 CON 3 BARTON; BEING PARTS 1, 2, 3 ON 62R-20646;  
HAMILTON

PART OF LOT 98, PLAN 244, PART OF LOTS 1, 2 & 3, LOT 4, PART LOT  
MISCELLANEOUS, BLOCK G, PLAN 253, PART LOT 18, CONCESSION 3 BARTON,  
BEING PARTS 4, 5, 6, 7, 8, 9 ON 62R20646; HAMILTON

Being all of Property Identification Numbers: 17139-0273 (LT) and 17139-0297 (LT)

**The conditions of this Certificate of Property Use (CPU) address the Risk Management Measures in the Risk Assessment noted above and described in detail in Part 1 below (Risk Assessment). In the event of a conflict between the CPU and the Risk Assessment, the conditions of the CPU take precedence.**

**Summary:** *Refer to Part 1 of the CPU, Interpretation, for the meaning of all the defined capitalized terms that apply to the CPU.*

- i) CPU requirements addressed in Part 4 of the CPU, Director Requirements, are summarized as follows:
- |   |     |
|---|-----|
| a. Installing/maintaining any equipment                     | Yes |
| b. Monitoring any contaminant                               | Yes |
| c. Refraining from constructing any building specified      | Yes |
| d. Refraining from using the Property for any use specified | Yes |
| e. Other: see ii below for details                          | Yes |
- ii) Duration of Risk Management Measures identified in Part 4 of the CPU is summarized as follows:
- a. A Surface Soil thickness of up to 1.5 meters below ground surface is required for as long as Contaminants of Concern are present within Subsurface Soil on the Property;
  - b. The fill cap and hard cap barriers installed on the Property are required to be maintained for as long as the Contaminants of Concern are present on the Property;
  - c. The restriction on the construction of building(s) on the Property unless the building(s) incorporate a soil vapour intrusion mitigation system shall be required for as long as the Contaminants of Concern are present on the Property;
  - d. The health and safety plan for all intrusive work and excavation activities potentially exposing the Contaminants of Concern identified on the Property shall be required for as long as the Contaminants of Concern are present on the Property;
  - e. The soil management plan for work that may potentially expose Contaminants of Concern identified on the Property shall be required for as long as the Contaminants of Concern are present on the Property; and
  - f. The other Risk Management Measures shall continue indefinitely until the Director amends or revokes the CPU.

## Part 1: Interpretation

In the CPU the following terms shall have the meanings described below:

“Adverse Effect” has the same meaning as in the Act; namely,

- (a) impairment of the quality of the natural environment for any use that can be made of it,
- (b) injury or damage to property or to plant or animal life,

- (c) harm or material discomfort to any person,
- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of property, and
- (h) interference with the normal conduct of business;

“Act” means the Environmental Protection Act, R.S.O. 1990, c. E. 19, as amended;

“Building(s)” means an enclosed structure (s) occupying an area greater than ten square metres consisting of a wall or walls, roof and floor.

“CPU” means this Certificate of Property Use Number No. **6086-BELLDH** as may be amended from time to time;

“Competent Person” has the same meaning as in the Occupational Health and Safety Act, R.S.O. 1990, c. O.1.

“Contaminant” has the same meaning as in the Act; namely any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them, resulting directly or indirectly from human activities that may cause an Adverse Effect;

“Contaminant of Concern” & “COC” has the meaning as set out in section 3.2 of the CPU;

"Director" means the undersigned Director or any other person appointed as a Director for the purpose of issuing a certificate of property use;

“EBR” means the Environmental Bill of Rights, 1993, .S.O. 1993, c.28, as amended;

“Licensed Professional Engineer” means a person who holds a license, limited license or temporary license under the Professional Engineers Act, R.R.O. 1990, c.P.28, as amended;

"Ministry" means Ontario Ministry of the Environment, Conservation and Parks;

“Owner” means **Dawn Victoria Homes (Brantford) Limited**, the current owner of the Property, and any future Property Owner (s);

"OWRA" means the Ontario Water Resources Act, R.S.O. 1990, c.0.40, as amended;

“Property” means the property that is the subject of the CPU and described in the “Property” section on page 1 above, and illustrated in **Figure 1** of Schedule ‘A’ which is attached to and forms part of this CPU;

“Property Specific Standards” means the property specific standards established for the Contaminants of Concern set out in the Risk Assessment and in section 3.2 of the CPU;

"Provincial Officer" means a person who is designated as a provincial officer for the purposes of the Act;

“Qualified Person” means a person who meets the qualifications prescribed in O. Reg. 153/04, as amended, made under the Act;

“Regulation” means Ontario Regulation 153/04 (Record of Site Condition – Part XV.1 of the Act), as amended, made under the Act.

"Risk Assessment" (RA) means the Risk Assessment No. **1647-ARG29K** accepted by the Director on **July 31, 2019** (“RA”), and set out in the following documents:

- **“Risk Assessment, 85 Poulette Street, Hamilton, Ontario”, prepared by AEL Environment, dated July 12, 2018;**
- **“Risk Assessment, 85 Poulette Street, Hamilton, Ontario, Addendum 1”, prepared by AEL Environment, dated December 6, 2018; and**
- **“Risk Assessment, 85 Poulette Street, Hamilton, Ontario, Addendum 2”, report prepared by AEL Environment, dated May 7, 2019**

“Risk Management Measures” means the risk management measures specific to the Property described in the Risk Assessment and/or Part 4 of the CPU;

“Risk Management Plan” means the final version of the risk management plan as set out in section 7 and Appendix 12 of the “Risk Assessment” report dated May 7, 2019;

“Subsurface Soils” means soil present on the Property at a depth greater than 1.5 metres below ground surface, that contains Contaminants of Concern at levels less than the Subsurface Soil Property Specific Standards set out in **Table 1B of Schedule ‘A’** of this CPU;

“Surface Soils” means soil present on the Property up to a depth of 1.5 metres below ground surface, that contains Contaminants of Concern at levels less than the Surface Soil Property Specific Standards set out in **Table 1A of Schedule ‘A’** of this CPU;

“Tribunal” has the same meaning as in the Act; namely, the Environmental Review Tribunal;

“Unimpacted Soil” means soil that meets the **Surface Soil** criteria identified for **Residential, Parkland, Institutional** property use on **Table 5: Stratified Site Condition Standards in a Non-Potable Ground Water Condition (coarse textured soil)** of the Ministry’s *Soil, Ground Water and Sediment Standards for Use Under Part*

XV.1 of the *Environmental Protection Act* published by the Ministry and dated April 15, 2011.

## **Part 2: Legal Authority**

- 2.1 Section 19 of the Act states that a certificate of property use is binding on the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.
- 2.2 Subsection 132(1.1) of the Act states that the Director may include in a certificate of property use a requirement that the person to whom the certificate is issued provide financial assurance to the Crown in right of Ontario for any one or more of,
  - a. the performance of any action specified in the certificate of property use;
  - b. the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by a contaminant on, in or under the property to which the certificate of property use relates; and
  - c. measures appropriate to prevent adverse effects in respect of the property to which the certificate of property use relates.
- 2.3 Section 168.6 (1) of the Act states that if the Director accepts a risk assessment relating to a property, he or she may, when giving notice under clause 168.5 (1)(a), issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
  1. Take any action specified in the certificate that, in the Director's opinion, is necessary to prevent, eliminate or ameliorate any adverse effect on the property, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
  2. Refrain from using the property for any use specified in the certificate or from constructing any building specified in the certificate on the property.
- 2.4 Subsection 168.6(2) of the Act states that a certificate of property use shall not require an owner of property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.
- 2.5 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate has been issued under subsection 168.6(1),
  - a. alter any terms and conditions in the certificate or impose new terms and conditions; or

- b. revoke the certificate.
- 2.6 Subsection 168.6(4) of the Act states that if a certificate of property use contains a provision requiring the owner of the property to refrain from using the property for a specified use or from constructing a specified building on the property,
- a. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
  - b. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
  - c. the owner of the property shall ensure that every occupant of the property complies with the provision.
- 2.7 Subsection 196(1) of the Act states that the authority to make an order under the Act includes the authority to require the person or body to whom the order is directed to take such intermediate action or such procedural steps or both as are related to the action required or prohibited by the order and as are specified in the order.
- 2.8 Subsection 197(1) of the Act states that a person who has authority under the Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.
- 2.9 Subsection 197(2) of the Act states that a certificate setting out a requirement imposed under subsection 197(1) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection 197(1) and is accompanied by a registrable description of the property.
- 2.10 Subsection 197(3) of the Act states that a requirement, imposed under subsection 197(1) that is set out in a certificate registered under subsection 197(2) is, from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real property.
- 2.11 Subsection 197(4) of the Act states that a dealing with real property by a person who is subject to a requirement imposed under subsection 197(1) or 197(3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement.

### Part 3: Background

- 3.1 The Risk Assessment (RA) was undertaken for the Property to establish the risks that the Contaminants identified in the Risk Assessment may pose to future users and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended uses: **Residential, Parkland, Institutional** as defined in O. Reg. 153/04, as amended, made under the Act.
- 3.2 The Contaminants on, in or under the Property that are present either above **Table 5: Stratified Site Condition Standards in a Non-Potable Ground Water Condition (coarse textured soil)** of the *Soil, Ground water and Sediment Standards for Use under Part XV.1 of the Act* published by the Ministry and dated April 15, 2011 or for which there are no such standards, are set out in the Risk Assessment (Contaminants of Concern). The Property Specific Standards for these Contaminants of Concern in **Surface Soils** and **Subsurface Soils** are set out in **Tables 1A and 1B of Schedule 'A'** which is attached to and forms part of this CPU.
- 3.3 I am of the opinion, for the reasons set out in the Risk Assessment that the Risk Management Measures described therein and outlined in Part 4 of the CPU are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property.
- 3.4 The Risk Assessment indicates the presence of Contaminants of Concern in soil which requires on-going restriction of land use and pathway elimination. As such, it is necessary to restrict the use of the Property and impose building restrictions and implement Risk Management Measures as set out in the Risk Assessment and in Part 4 of the CPU.

### Part 4: Director Requirements

Pursuant to the authority vested in me under section 168.6(1) of the Act, I hereby require the Owner to do or cause to be done the following:

#### Risk Management Measures

- 4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures.
- 4.2 Without restricting the generality of the foregoing in Section 4.1, carry out or cause to be carried out the following key elements of the Risk Management Measures:
  - 4.2.1 **Surface Soils** shall be maintained on the Property or portion(s) of the Property for as long as COC are present within **Subsurface Soils**.

- 4.2.2 The permanent relocation of **Subsurface Soils** on the Property to depths shallower than 1.5 metres below ground surface on the Property or portion(s) of the Property is prohibited for as long as COC are present within **Subsurface Soils**;
- 4.2.3 Prior to first occupancy, barriers shall be installed on the Property, or portion (s) of the Property under development as set out on **Figures 2, 3 and 4** of Schedule 'A' of this CPU and in the Risk Management Plan. New fill cap and hard cap barriers shall cover all areas of the Property where COC are present at or within 1.0 metre below the ground surface and consist of:
- i. fill cap barriers of at least 0.5 metres of Unimpacted soil immediately on top of geotextile material and, above the Unimpacted soil, may also include up to 0.5 metres of non-soil surface treatment such as asphalt, concrete or aggregate.
  - ii. hard cap barriers of at least 150 millimetres of granular A, or equivalent material, overlain by at least 75 millimetres of hot mix asphalt or concrete.
  - iii. vegetation with rooting depths greater than the depth of the fill cap barrier shall be installed in planter boxes containing Unimpacted Soil on top of the fill cap barrier.
- 4.2.4 Prior to the development of all or any part of the Property, the Owner shall install fencing and implement dust control measures for any part of the Property requiring barriers specified by Part 4.2.3 of this CPU but which has not been covered, so as to restrict access to the part that is fenced and prevent exposure to COC at the Property. The fencing and dust control measures are to be maintained until the installation of the barriers described by Part 4.2.3 of this CPU within the fenced part is complete.
- 4.2.5 Within 90 days of completion of the installation of the barriers described by Part 4.2.3 of this CPU, the Owner shall submit to the Director written confirmation signed by a qualified Licensed Professional Engineer that the barriers have been installed in accordance with the requirements of the Risk Management Plan and this CPU along with final design specifications/drawings and/or as-built drawings.
- 4.2.6 The Owner shall prepare and maintain a site plan of the Property, prepared by a Licenced Professional Engineer, and be available for inspection upon request by a Provincial Officer, showing the Property, any fencing, and the location, type and design of the barriers described by Part 4.2.3 of this CPU, including cross-sectional drawings showing the vertical and lateral extent of the barriers; and which is,



- i. delivered to the Owner before use of all or any part of the property begins, or within 90 days following completion of covering of all or any part of the property, whichever is earlier; and
- ii. updated and delivered to the Owner within 30 days following making any alteration to the location, design or extent of the barrier, or other relevant feature shown on the site plan.

4.2.7 The Owner shall prepare and implement written procedures, prior to undertaking any intrusive activities which might disturb the barriers indicated by Part 4.2.3 of this CPU. These procedures must ensure that persons are made aware of the presence and significance of the barriers, the presence of the Property specific Contaminants of Concern, precautions to be taken and measures to ensure the continued integrity of the barriers when undertaking intrusive activities. If the barriers are damaged during intrusive activities, the barriers must be repaired promptly to the original design specifications. If the barriers cannot be repaired promptly, contingency measures must be implemented, with records kept. These procedures must be prepared by a Qualified Person, be retained by the Owner, and be available for inspection upon request by a Provincial Officer. The procedures must be delivered to the Owner prior to intrusive activities being undertaken at the property. If the procedures are altered, the updated procedures must be delivered to the Owner within 30 days of making any alterations.

4.2.8 An inspection and maintenance program shall be implemented to ensure the continuing integrity of the barriers described by Part 4.2.3 of this CPU for as long as the COC are present on the Property. The inspection program shall include semi-annual (spring and fall) inspections of the barrier's integrity in accordance with the inspection and maintenance program set out in the Risk Management Plan. Any barrier deficiencies shall be repaired forthwith in accordance with the Risk Management Plan. If cracks, breaches or any loss of integrity in the barriers cannot be repaired or addressed in a timely manner, contingency measures shall be implemented to ensure no exposure to the COC present on the Property. The restoration of any damaged portions of the barriers shall meet the specifications set out, at minimum, in Part 4.2.3 of this CPU and the Risk Management Plan. In the event of a repair to a barrier, the Owner shall submit to the Director written confirmation prepared and signed by a Licensed Professional Engineer that the barriers have been repaired in accordance with the requirements of this CPU and the Risk Management Plan. The written confirmation shall also include a description of any contingency measures put in place and shall be submitted to the Director within 30 days of the completion of any barrier repairs and/or restorations. The Owner shall keep records of the inspections and maintenance and make them available for review by the Ministry upon request.

4.2.9 The Owner shall maintain and implement a written soil management plan (herein "Plan") for the Property, prepared by a Qualified Person and be

available for inspection upon request by a Provincial Officer. The Plan must be delivered to the Owner prior to undertaking any intrusive activities at the property, and if alterations are made to the Plan, the Plan must be updated and delivered to the Owner within 30 days following the alterations to the Plan. The Plan shall include:

- i. oversight by a Qualified Person;
- ii. procedures and timing for implementing the plan, including the supervision of persons implementing the plan;
- iii. measures to control dust and prevent tracking of soil by vehicles and persons from the Property, including the cleaning of equipment and vehicles;
- iv. measures, in addition to any applicable measures specified by the Regulation, to manage soil excavated at the Property and any soil brought to or removed from the Property, including:
  - a. characterizing for contaminant quality all excavated soil and any soil brought to the Property, including determining whether the soil:
    - i. is Unimpacted Soil;
    - ii. meets the Property Specific Standards; or
    - iii. exceeds the Property Specific Standards;
  - b. managing excavated soil separately from any soil brought to the Property, including any excavated soil that is to be:
    - i. used as Unimpacted Soil at the Property;
    - ii. otherwise used as fill at the Property;
    - iii. removed from the Property for off-site storage or processing but is to be returned for use as fill at the Property; or
    - iv. removed from the Property for off-site use as fill or disposal; and
  - c. stockpiling of excavated soil and any soil brought to the Property in separate designated areas that:
    - i. reflect the distinctions described in Part 4.2.9 iv. (a) and (b) of this CPU;
    - ii. have been lined and covered, as appropriate, to prevent uncontrolled movement or discharge of the COC;
    - iii. have been bermed or fenced, as appropriate, to restrict access by persons; and
    - iv. have storm water runoff controls in place to minimize storm water runoff contacting stockpiled soil, with provision

for discharge of storm water runoff to a sanitary sewer or to other approved treatment if needed;

- v. measures to manage storm water and any ground water from dewatering at the Property to prevent the movement of entrained soil and Contaminants of Concern within and away from the Property, including, in addition to any applicable measures specified pursuant to other applicable law or other instruments, measures such as silt fences, filter socks for catch basins and utility covers, and provision for discharge to a sanitary sewer or to other approved treatment if needed; and
- vi. recording, in writing, the soil, storm water and any ground water management measures undertaken, in addition to any applicable record keeping requirements specified in O. Reg. 153/04 or pursuant to other applicable law or other instruments, to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, including:
  - a. dates and duration of the intrusive activities being undertaken;
  - b. weather and site conditions during the Intrusive Activities;
  - c. the location and depth of excavation activities, and dewatering activities, if any;
  - d. dust control and soil tracking control measures;
  - e. characterization results for excavated soil and any soil brought to or removed from the Property, and for any ground water from dewatering;
  - f. soil management activities including soil quantities excavated and brought to and removed from the Property, and stockpile management and storm water runoff control;
  - g. management activities for any ground water from dewatering;
  - h. names and contact information for the Qualified Persons and on- site contractors involved in the intrusive activities;
  - i. names and contact information for any haulers and receiving sites for soil and any ground water removed from the Property, and for haulers and source sites of any soil brought to the Property; and
  - j. any complaints received relating to the intrusive activities; including the soil, storm water and any ground water management activities.

4.2.10 The construction of any new Building(s) on the Property is prohibited unless the Building(s) are constructed to include a passive soil vapour intrusion mitigation system (SVIMS) as described in the Risk Management Plan and shown conceptually on **Figures 5 and 6** of Schedule 'A' of this CPU. This SVIMS shall be operated, monitored and maintained by the Owner for as long as the COC are present on the Property. The system shall be designed by an appropriately qualified Licensed Professional Engineer in consultation with a

Qualified Person. The design, installation and commissioning of the SVIMS shall include the following:

- i. The SVIMS shall be designed and installed such that it can be converted from a passive ventilated system to an active ventilated system;
- ii. The installation of the SVIMS shall be completed under the supervision of a qualified Licensed Professional Engineer and a Qualified Person; and
- iii. A written quality assurance/quality control (QA/QC) program containing the items set out in the Risk Management Plan shall be prepared and implemented to ensure the proper installation and documentation of the SVIMS. The QA/QC program must be delivered to the Owner before installation of the SVIMS begins. If alterations are made to the program, the updated program must be delivered to the Owner within 30 days of these alterations.

4.2.11 Within 90 calendar days of the installation of the SVIMS described by Part 4.2.10 of this CPU, the Owner shall submit to the Director, the following information prepared by the qualified Licensed Professional Engineer:

- i. As-built drawings and detailed design specifications of the SVIMS, including any verification and QA/QC reports;
- ii. A written statement from the qualified Licensed Professional Engineer indicating that the SVIMS has been installed in accordance with the design specifications and that it has been designed to meet the requirements and objectives of the Risk Assessment and Risk Management Plan; and
- iii. An operation, monitoring, maintenance program and contingency plan report to be implemented by the Owner, prior to first occupancy.

4.2.12 Upon completion of installation of the SVIMS, a written inspection and maintenance program must be prepared and implemented for the Property. This inspection and maintenance program shall include the items set out by the Risk Management Plan, be prepared by a Licenced Professional Engineer, be retained by the Owner, and be available for inspection upon request by a Provincial Officer. The inspection and maintenance program must be delivered to the Owner prior to any or all use of the Property begins, or 90 days following the completion of SVIMS installation, whichever is earlier. If the program is altered, the updated program must be delivered to the property owner within 30 days of making any alterations.

- 4.2.13 Prior to undertaking any intrusive activities at the Property which might disturb the SVIMS; written procedures (herein “procedures”) must be prepared and implemented, so as to ensure that persons are made aware of the presence and significance of the SVIMS and the need to take appropriate precautions to ensure the continued integrity of the SVIMS during intrusive activities. If the SVIMS is damaged during intrusive activities, the SVIMS must be repaired promptly to original design specifications. If the SVIMS cannot be repaired promptly, contingency measures must be implemented, with records kept. These procedures must be prepared by a Qualified Person, be retained by the property owner, and be available for inspection upon request by a Provincial Officer. The procedures must be delivered to the Owner prior to intrusive activities being undertaken at the property. If the procedures are altered, the updated procedures must be delivered to the Owner within 30 days of making any alterations.
- 4.2.14 Prior to first occupancy of a Building(s) described by Part 4.2.10 of this CPU, the Owner shall implement an operational monitoring program in accordance with the Risk Management Plan. Specifically, the operational monitoring program shall include, but not be limited to, the following components:
- i. Be overseen by a Qualified Person.
  - ii. Be carried out quarterly for the first year and twice per year thereafter.
  - iii. In each calendar year, one operational monitoring event is conducted in either January or February.
  - iv. Sub-slab differential pressure measurements relative to the indoor air pressure within the Building(s) on the Property shall be compared to the criteria set out in the Risk Management Plan.
  - v. Indoor air and sub-slab vapour samples shall be collected from at least two locations within each Building(s) as identified by a Qualified Person to be representative of potential exposures to any persons using or occupying the Building(s) on the Property. All indoor air quality and sub-slab vapour measurements shall be compared to the alert criteria set out on **Table 1C** of Schedule ‘A’ of this CPU.
  - vi. In coordination with any indoor air sampling, an outdoor air sample shall be collected contemporaneously with the indoor air samples and shall be located on the Property to be representative of ambient air occurring on the Property as identified by a Qualified person.
  - vii. If the sub-slab pressure differential measurements performed as described by Part 4.2.14 iv. of this CPU are less than the criteria set

out in the Risk Management Plan, the Owner shall notify the Director in writing within 15 days of the measurements being taken and:

1. Include a description of any corrective actions undertaken to eventually achieve the criteria set out by the Risk Management Plan; or
  2. Provide a work plan with timelines to the Director for further investigations and recommendations (contingency actions) to attain the criteria set out by the Risk Management Plan.
- viii. If a measured indoor air and/or sub-slab concentration exceeds the alert criteria set out on **Table 1C** of Schedule 'A' of this CPU, at any of the locations described by Parts 4.2.14 v. of this CPU, the Owner shall notify the Director in writing within 15 days of receipt of the analytical results.
- ix. If a measured indoor air and/or sub-slab concentration exceeds the values set out on **Table 1C**, Schedule 'A' of this CPU, at any of the locations described by Part 4.2.14 v. of this CPU, then the Owner shall collect an additional (confirmatory) sample at the locations described by Parts 4.2.14 v. of this CPU where the exceedence(s) occurred, within 30 days of receipt of the analytical results and undertake the following as applicable:
1. If none of the concentrations of the COC exceed the values set out on **Table 1C**, Schedule 'A' of this CPU on the confirmatory monitoring event, then monitoring shall be carried out as described by Parts 4.2.14 i., ii., iii., v. and vi. of this CPU;
  2. If any of the concentrations of the COC exceed the values set out on **Table 1C**, Schedule 'A' of this CPU, on the confirmatory monitoring event, then an appropriately qualified Licenced Professional Engineer shall be retained and within 30 days of the receipt of the analytical results, shall:
    - a. Develop and submit a work plan with timelines to the Director for further investigations and recommendations (contingency actions) including conversion of the system to an active system to minimize/mitigate vapour intrusion into the occupied areas of the Building(s); or
    - b. In the case of a confirmed indoor air exceedence, develop and submit a report to the Director confirming that the indoor air exceedances are due to ambient (outdoor) air sources and continue sampling as directed by Parts 4.2.14 i., ii., iii., v. and vi. of this CPU.

3. Upon the Owner receiving written approval from the Director regarding contingency plans submitted as required by **Part 4.2.14 vii. 2. and/or 4.2.14 ix. 2. a.** of this CPU, the Owner shall forthwith implement the plan and provide confirmation to the Director. The contingency plan shall be completed under the supervision of an appropriately qualified Licensed Professional Engineer.

- x. Upon the occurrence of two consecutive years of operational monitoring results undertaken as described by Part 4.2.14 of this CPU in conformance with the criteria set out by this CPU and the Risk Management Plan, the Owner may apply to the Director to alter the frequency or revoke the operational monitoring program in accordance with Part 5.2 a) of this CPU.
- xi. The Owner shall keep a copy of all operational monitoring data available for inspection by a Provincial Officer upon request.

4.2.15 A Health and Safety Plan (HASP) shall be developed by a Competent Person, in consultation with a Qualified Person and implemented prior to all intrusive activities potentially in contact with or exposing COC identified on the Property or portion (s) of the Property. A copy of the plan shall be maintained at the Property for the duration of all intrusive activities. The HASP shall be prepared in accordance with the requirements set out in the Risk Management Plan and include, but not be limited to, occupational hygiene requirements, personal protective equipment, contingency plans and contact information. The Owner shall retain a copy of the HASP to be available for review by the Ministry upon request.

4.2.16 Before April 30<sup>th</sup> of the year following the year in which this CPU is issued and annually thereafter, the Owner shall prepare an annual report documenting the activities relating to the Risk Management Measures undertaken during the previous calendar year. This report is to be prepared by a Qualified Person and be made available upon request by the Ministry. The report shall include the following information:

- i. Inspection and maintenance activities in regards to the barriers described by Part 4.2.8 of this CPU;
- ii. Soil management activities described by Part 4.2.9 of this CPU;
- iii. Inspection and maintenance activities in regards to the SVIMS as described by Part 4.2.12 of this CPU;
- iv. Operational monitoring activities as described by Part 4.2.14 of this CPU; and
- v. Any other information determined to be necessary by the Qualified Person.

### Site Changes

- 4.3 In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the Risk Management Measures and/or any underlying basis for the Risk Management Measures, forthwith notify the Director of such changes and the steps taken, to implement, maintain and operate any further Risk Management Measures as are necessary to prevent, eliminate or ameliorate any Adverse Effect that will result from the presence on, in or under the Property or the discharge of any Contaminant of Concern into the natural environment from the Property. An amendment to the CPU will be issued to address the changes set out in the notice received and any further changes that the Director considers necessary in the circumstances.

### Reports

- 4.4 Retain a copy of any reports required under the CPU, the Risk Assessment and any reports referred to in the Risk Assessment (until otherwise notified by the Director) and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the Director or Provincial Officer.

### Property Requirement

- 4.5 For the reasons set out in the CPU and pursuant to the authority vested in me under subsection 197(1) of the Act, I hereby order you and any other person with an interest in the Property, before dealing with the Property in any way, to give a copy of the CPU, including any amendments thereto, to every person who will acquire an interest in the Property, as a result of the dealing.

### Certificate of Requirement

- 4.6 Within fifteen (15) days from the date of receipt of a certificate of requirement, issued under subsection 197(2) of the Act, register the certificate of requirement on title to the Property in the appropriate Land Registry Office.
- 4.7 Immediately after registration of the certificate of requirement, provide to the Director written verification that the certificate of requirement has been registered on title to the Property.

### Owner / Occupant Change

- 4.8 While the CPU is in effect, forthwith report in writing to the Director any changes of ownership, of the Property, except that while the Property is registered under the Condominium Act, 1998, S.O. 1998, c.19, as amended, no notice shall be given of changes in the ownership of individual condominium units or any related common elements on the Property.



## Financial Assurance

- 4.9 The Director has not included in the CPU a requirement that the Owner provide financial assurance to the Crown in right of Ontario.

### **Part 5: General**

- 5.1 The requirements of the CPU are severable. If any requirement of the CPU or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the CPU shall not be affected thereby.
- 5.2 An application under sub section 168.6(3) of the Act to,
- a) alter any terms and conditions in the CPU or impose new terms and conditions; or
  - b) revoke the CPU;
- shall be made in writing to the Director, with reasons for the request.
- 5.3 The Director may amend the CPU under subsections 132(2) or (3) of the Act to change a requirement as to financial assurance, including that the financial assurance may be increased or provided, reduced or released in stages. The total financial assurance required may be reduced from time to time or released by an order issued by the Director under section 134 of the Act upon request and submission of such supporting documentation as required by the Director.
- 5.4 Subsection 186(3) of the Act provides that non-compliance with the requirements of the CPU constitutes an offence.
- 5.5 The requirements of the CPU are minimum requirements only and do not relieve you from,
- a) complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or
  - b) obtaining any approvals or consents not specified in the CPU.
- 5.6 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require.
- 5.7 In the event that, any person is, in the opinion of the Director, rendered unable to comply with any requirements in the CPU because of,
- a) natural phenomena of an inevitable or irresistible nature, or insurrections,
  - b) strikes, lockouts or other labour disturbances,
  - c) inability to obtain materials or equipment for reasons beyond your control,
- or

- d) any other cause whether similar to or different from the foregoing beyond your control,

the requirements shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the Director must be notified immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the requirements in question.

- 5.8 Failure to comply with a requirement of the CPU by the date specified does not absolve you from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 5.9 In the event that the Owner complies with provisions of Parts 4.6 and 4.7 of the CPU regarding the registration of the certificate of requirement on title to the Property, and then creates a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the *Condominium Act*, 1998, S.O. 1998, c.19, as amended, and then transfers ownership of the Property to various condominium unit owners, the ongoing obligations of the Owner under this CPU may be carried out and satisfied by the condominium corporation by and on behalf of the new Owners of the Property.

## **Part 6: Hearing before the Environmental Review Tribunal**

- 6.1 Pursuant to section 139 of the Act, you may require a hearing before the Environmental Review Tribunal (the "Tribunal"), if within fifteen (15) days after service on you of a copy of the CPU, you serve written notice upon the Director and the Tribunal.
- 6.2 Pursuant to section 142 of the Act, the notice requiring the hearing must include a statement of the portions of the CPU and the grounds on which you intend to rely at the hearing. Except by leave of the Tribunal, you are not entitled to appeal a portion of the CPU or to rely on a ground that is not stated in the notice requiring the hearing.
- 6.3 Service of a notice requiring a hearing must be carried out in a manner set out in section 182 of the Act and Ontario Regulation 227/07: Service of Documents, made under the Act as they may be amended from time to time. The address, email address and fax numbers of the Director and the Tribunal are:

The Secretary  
Environmental Review Tribunal  
655 Bay Street, Suite 1500  
Toronto, ON, M5G 1E5

Fax: (416) 326-5370  
Fax Toll Free: 1(844) 213-3474

Email: ERTTribunalSecretary@ontario.ca

and

Paul Widmeyer  
Director  
119 King Street West, 9th Floor  
Hamilton, Ontario  
L8P 4Y7

Fax: (905) 521-7806  
Email: Paul.Widmeyer@ontario.ca

- 6.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.
- 6.5 If you commence an appeal before the Tribunal, under section 47 of the Environmental Bill of Rights, 1993 (the “EBR”), you must give notice to the public in the EBR registry. The notice must include a brief description of the CPU (sufficient to identify it) and a brief description of the grounds of appeal.

The notice must be delivered to the Minister of the Environment, Conservation and Parks who will place it on the EBR registry. The notice must be delivered to the Minister of the Environment, Conservation and Parks at 777 Bay Street, 5<sup>th</sup> Floor, Toronto, Ontario M7A 2J3 by the earlier of:

- 6.5.1 two (2) days after the day on which the appeal before the Tribunal was commenced; and
- 6.5.2 fifteen (15) days after service on you of a copy of the CPU.
- 6.6 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.
- 6.7 For your information, under section 38 of the EBR, any person resident in Ontario with an interest in the CPU may seek leave to appeal the CPU. Under section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:
- 6.7.1 fifteen (15) days after the day on which notice of the issuance of the CPU is given in the EBR registry; and

6.7.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR registry.

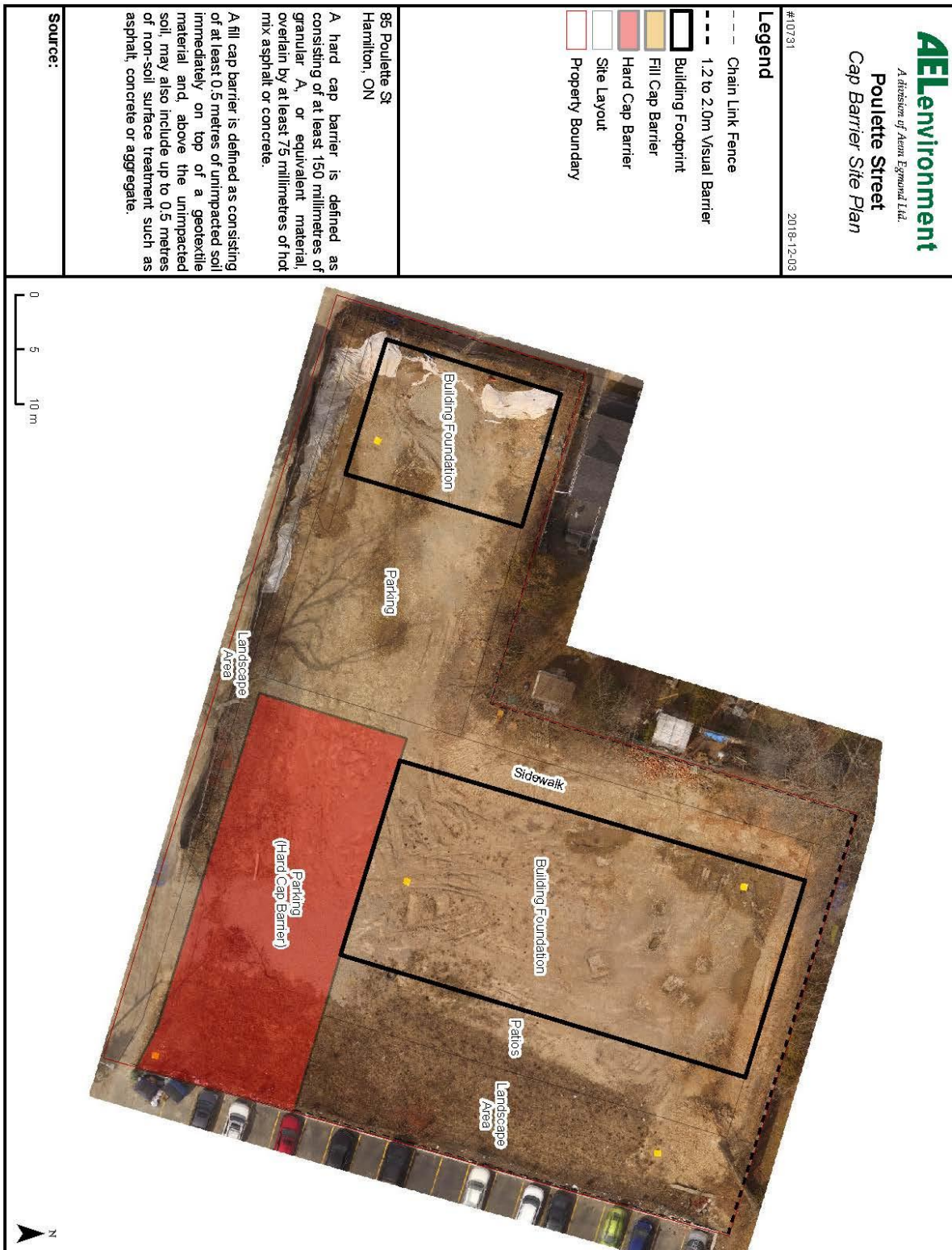
Issued at Hamilton this 1<sup>st</sup> day of **November, 2019**.

***Original signed by***

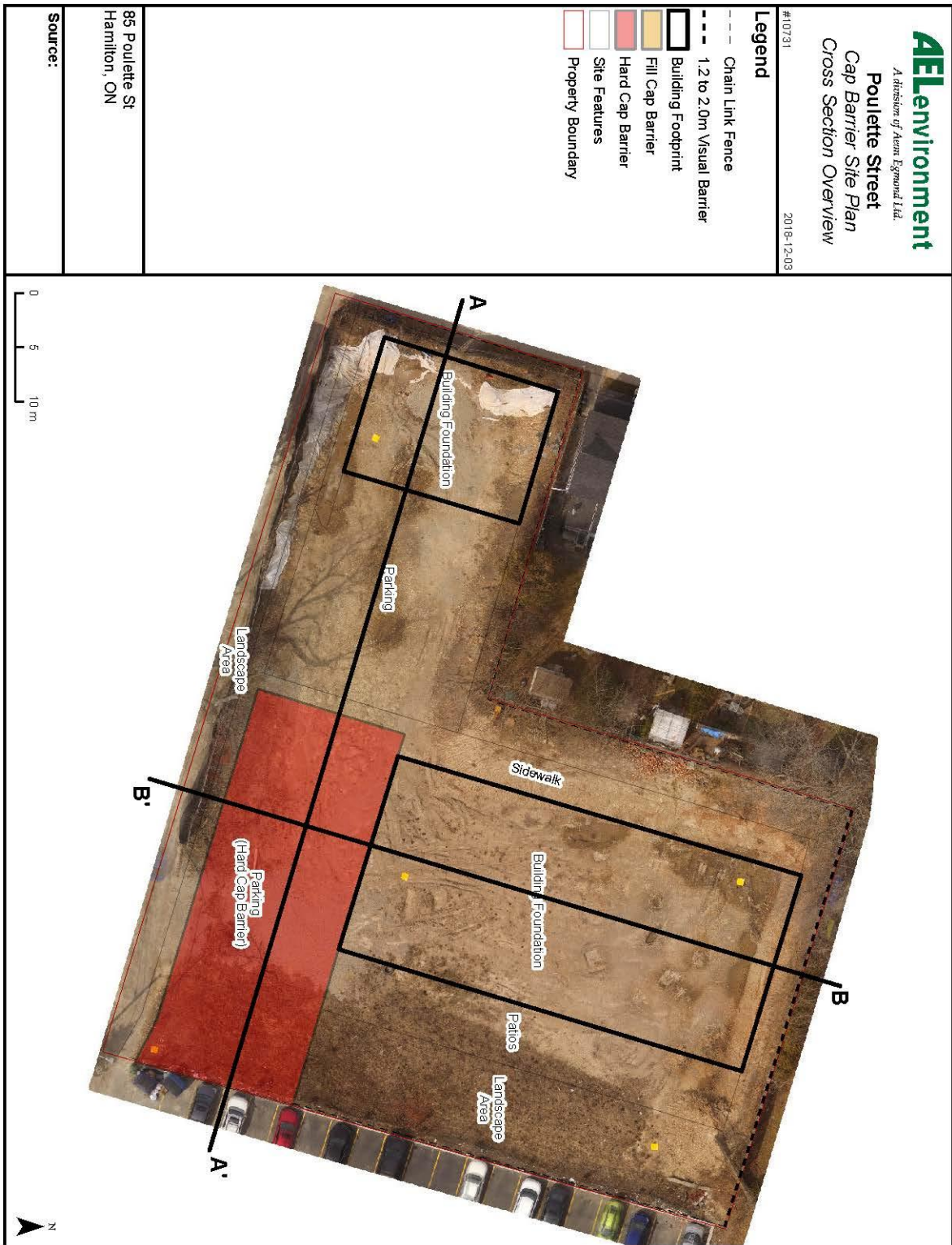
Paul Widmeyer  
Director, section 168.6 of the Act



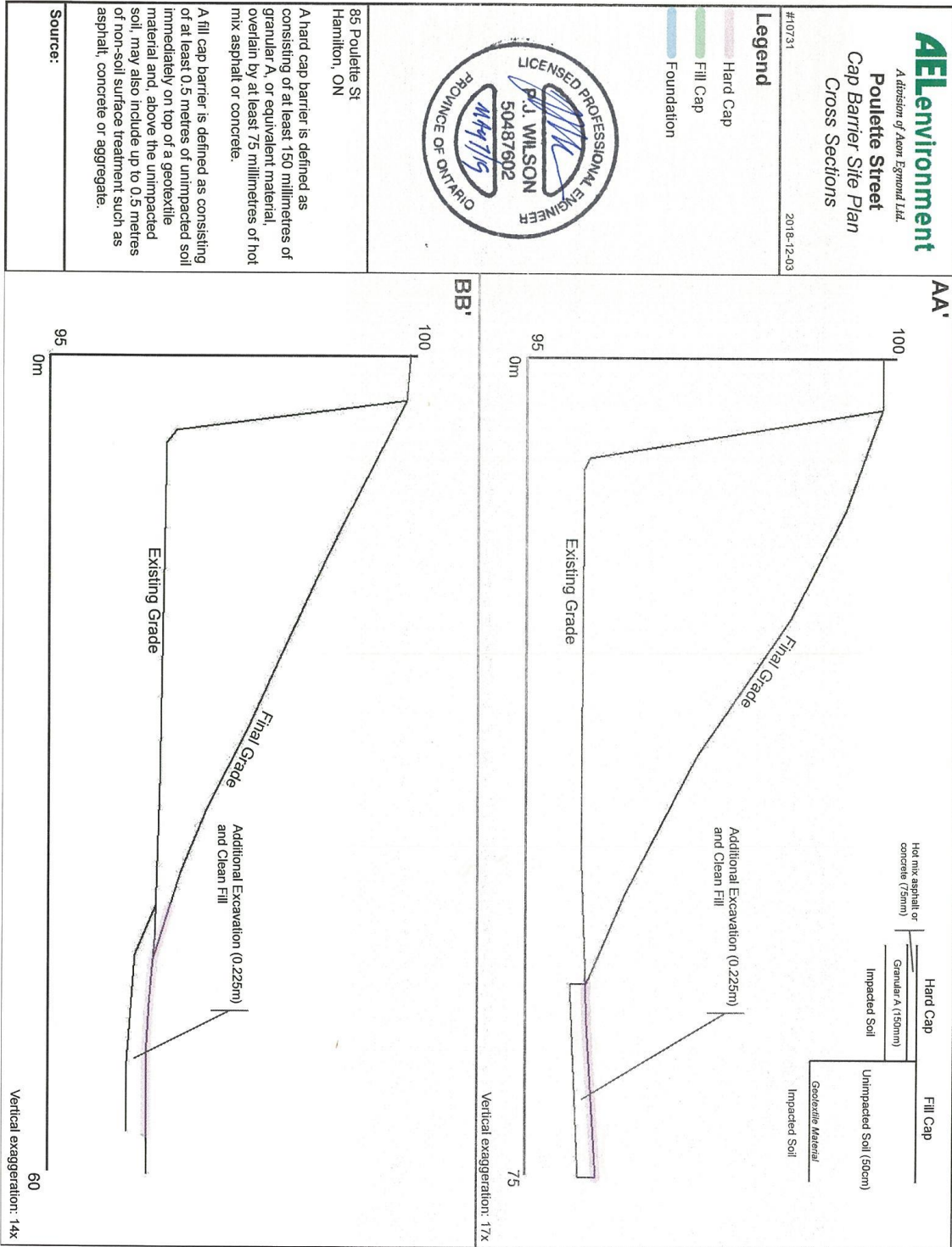
**Schedule 'A': Figure 2 – Location of Fill Caps and Hard Caps  
(not to scale)**



**Schedule 'A': Figure 3 – Capping Cross Section Overview  
(not to scale)**

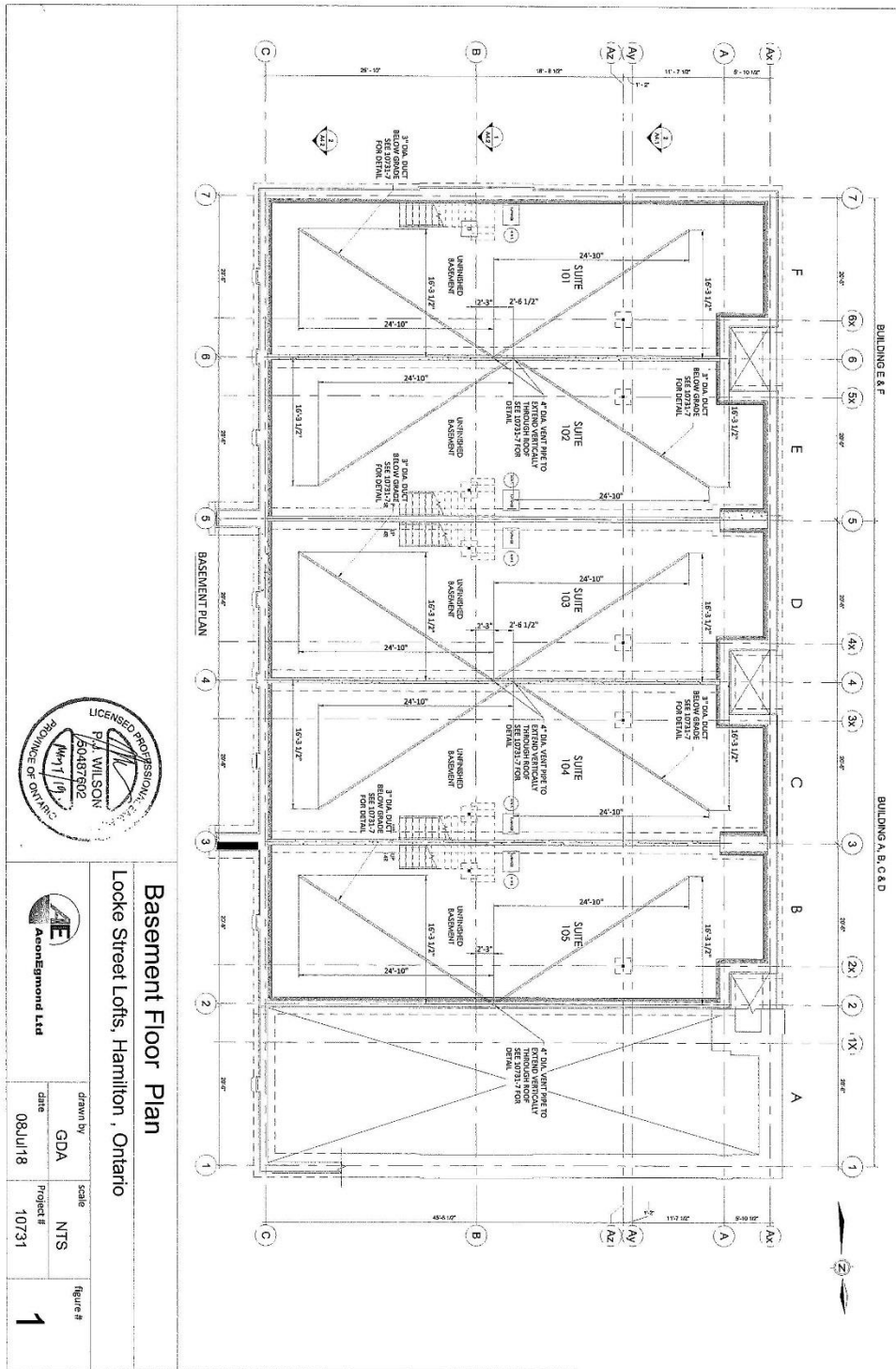


## Schedule 'A': Figure 4 – Capping Elevations and Detail (not to scale)

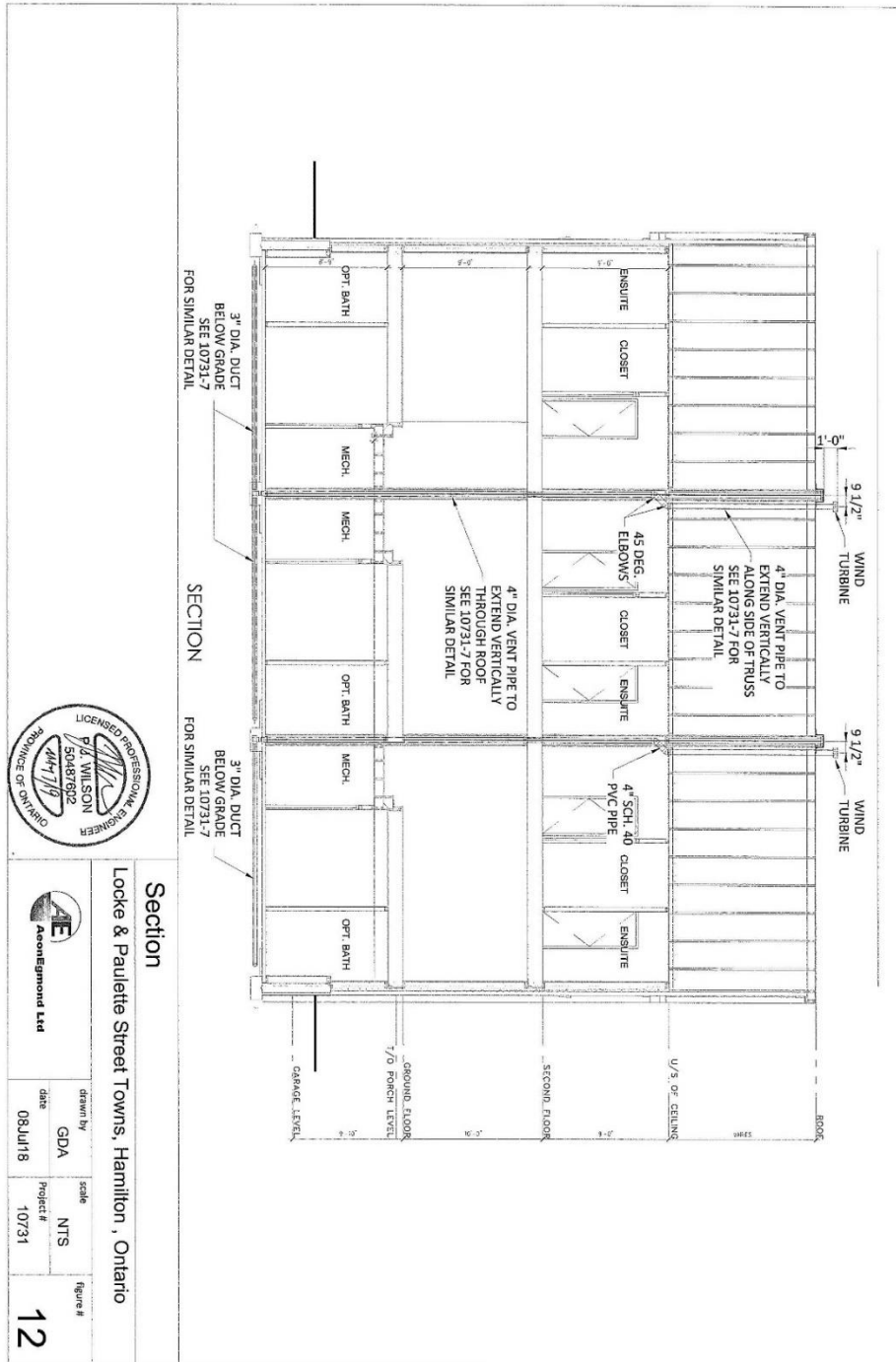




**Schedule 'A': Figure 5 – Vapour Intrusion System Plan View  
(not to scale)**



**Schedule 'A': Figure 6 – Vapour Intrusion System Elevation View  
(not to scale)**



## Schedule 'A': Table 1A: Property Specific Standards – Surface Soil

*All values in micrograms per gram except where indicated*

<b>Contaminant of Concern</b>	<b>Property-Specific Standard</b>
PHC F3	432
PHC F4	4320
Cadmium	2.5
Copper	216
Lead	360
Mercury	0.36
Zinc	588
Benzo[a]anthracene	1.3
Benzo[a]pyrene	1.3
Benzo[b]fluoranthene	1.6
Dibenz[a,h]anthracene	0.20
Fluoranthene	2.8
Indeno[1,2,3-cd]pyrene	1.0

## Schedule 'A': Table 1B: Property Specific Standards – Subsurface Soil

*All values in micrograms per gram except where indicated*

<b>Contaminant of Concern</b>	<b>Property-Specific Standard</b>
PHC F1	76
Benzene	1.0
Xylenes	7.2
Antimony	88
Arsenic	156
Cadmium	29
Lead	1440
Mercury	1.9
Acenaphthylene	1.1
Benzo[a]pyrene	2.0
Benzo[b]fluoranthene	1.9
Dibenz[a,h]anthracene	0.32
Indeno[1,2,3-cd]pyrene	1.2

## Schedule 'A': Table 1C – Indoor Air and Sub-Slab Vapour Alert Criteria

*All values in micrograms per cubic metre except where indicated*

<b>Contaminant of Concern</b>	<b>Indoor Air</b>	<b>Sub-Slab</b>
Benzene	5.06E-01	2.53E+01
Xylenes	1.46E+02	7.30E+03
Mercury	1.88E-02	9.39E-01
Acenaphthylene	1.01E-01	5.06E+00