

Certificate of Property Use

Environmental Protection Act, R.S.O. 1990, c. E.19, s.168.6 and 197

Certificate of Property use number 0331-B4WPZL-1
Risk Assessment number 0331-B4WPZL

Owner: 1606-1614 Charles Street East GP Inc. (Registered Owner)
as general partner for and on behalf of

1606-1614 Charles Street East LP (Registered and Beneficial Owner)
Suite 800 – 20 Adelaide Street East
Toronto, Ontario, M5C 2T6

Site: 1606, 1610 and 1614 Charles Street
Town of Whitby, Regional Municipality of Durham

with a legal description of:

PART LOTS 7, 8, 9, 14, 15 AND 16, BLOCK 4, PLAN H50035, PARTS 1, 2, 3 AND 4, PLAN 40R30273; SUBJECT TO AN EASEMENT OVER PART LOTS 8 AND 15, BLOCK 4, PLAN H50035, PART 2, PLAN 40R30273 AS IN CO139720; SUBJECT TO AN EASEMENT OVER PART LOTS 7 AND 16, BLOCK 4, PLAN H50035, PART 3, PLAN 40R30273 AS IN CO132238; TOWN OF WHITBY

Being All of PIN 26484-0183 (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: Prohibiting the construction or use of any potable groundwater supply wells; maintaining a barrier to site soils | Yes |

with a hard cap or fill cap; any new building will include storage garage (continuous ventilation of 3.9 L/sec) and vapour barrier; and preparing and implementing a soil and groundwater management plan and health and safety plan for the Property.

ii) Duration of Risk Management Measures identified in Part 4 of the CPU is summarized as follows:

- a. The prohibition against potable groundwater use and construction of potable supply wells applies for as long as the Contaminants of Concern are present on the Property.
- b. The barrier to site soils over the entirety of the Property shall be maintained for as long as the Contaminants of Concern are present on the Property.
- c. The soil and groundwater management plan and health and safety plan shall be required for the Property during any Intrusive Activities for as long as the Contaminants of Concern are present on the Property.
- d. All other Risk Management Measures shall continue indefinitely until the Director alters or revokes the CPU.

Part 1: Interpretation

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

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

“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.

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

“Capping Soil” means, soil that meets the applicable site condition standards for the Property and does not contain any contaminant for which no applicable site condition standard for soil is prescribed under Part IX (Site Condition Standards and Risk Assessment) and which is associated with any potentially contaminating activity described in the Risk Assessment.

"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 causes or may cause an Adverse Effect.

"Contaminants of Concern" has the meaning as set out in Item 3.2 of the CPU.

"CPU" means this Certificate of Property Use as may be altered from time to time and bearing the document number **0331-B4WPZL-1**.

"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.

"Intrusive Activities" means any intrusive activity undertaken at the Property, such as excavating or drilling into soil or ground water, which may disturb or expose Property Specific Contaminants of Concern at the Property.

"Licensed Professional Engineer" means a person who has obtained the appropriate education and training and has demonstrated experience and expertise in the areas related to the work required to be carried out in this CPU and holds a license, limited license or temporary license under the *Professional Engineers Act*, R.S.O. 1990, c. P.28.

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

"O. Reg. 153/04" means Ontario Regulation 153/04, "Record of Site Condition – Part XV.1 of the Act" made under the Act.

"Owner" means the owner(s) of the Property, beginning with the person(s) to whom the CPU is issued, described in the "Owner" section on Page 1 above, and any subsequent owner(s) of the Property.

"OWRA" means the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.

"Professional Engineer" means a person who holds a licence, limited licence or temporary licence under the *Professional Engineers Act*, R.S.O. 1990, c. P. 28.

"Property" means the property that is the subject of the CPU and described in the "Site" section on page 1 above.

"Property Specific Contaminants of Concern" means one or more contaminants found on, in or under the Property at a concentration that exceeds the applicable site condition standards for the Property and any higher standards for the contaminant or contaminants, and as specified in section 3 of the Risk Assessment.

"Property Specific Standards" or "PSS" means the property specific standards established for the Contaminants of Concern in the Risk Assessment and in Item 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 subsection 5 (2) of O. Reg. 153/04, namely a person who:

- a. Holds a licence, limited licence or temporary licence under the *Professional Engineers Act*, or
- b. Holds a certificate of registration under the *Professional Geoscientists Act, 2000*, and is a practising member, temporary member, or limited member of the Association of Professional Geoscientists of Ontario.

"Risk Assessment" means the Risk Assessment number **0331-B4WPZL** accepted by the Director on November 30, 2020 and set out in the following documents:

- Risk Assessment 1606-1614 Charles Street, Whitby, Ontario, report prepared by EXP Services Inc. dated April 18, 2019
- Risk Assessment, 1606-1614 Charles Street, Whitby, Ontario, report prepared by EXP Services Inc., dated October 7, 2019
- Risk Assessment, 1606-1614 Charles Street, Whitby, Ontario, report prepared by EXP Services Inc., dated March 24, 2020
- Risk Assessment, 1606-1614 Charles Street, Whitby, Ontario, report prepared by EXP Services Inc., dated July 31, 2020
- “RE: 1606-1614 Charles Street, Whitby, Ontario; RA1717-18d; IDS#0331-B4WPZL” e-mail from Ruxandra Cote, exp Services Inc., received by TASDB on October 8, 2020 with the following document attached:
 - o RA_Addendum_Charles St_Oct2020.pdf

"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 L of the “Risk Assessment” report dated October 2020.

“Storage Garage” has the same meaning as in the Building Code and includes a mechanical ventilation system designed to provide a continuous supply of outdoor air at a rate of not less than 3.9 litres per second for each square metre of floor area.

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

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,

- i. the performance of any action specified in the certificate of property use;
 - ii. 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
 - iii. 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 a risk assessment related to the property has been accepted under clause 168.5 (1) (a), the Director may issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
 - i. Take any action that is specified in the certificate and that, in the Director's opinion, is necessary to prevent, eliminate or ameliorate any adverse effect that has been identified in the Risk Assessment, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
 - ii. 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),
 - i. alter any terms and conditions in the certificate or impose new terms and conditions; or
 - ii. 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 property to refrain from using the property for a specified use or from constructing a specified building on the property,
 - i. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
 - ii. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and the owner of the property shall ensure that every occupant of the property complies with the provision.

- 2.7 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.

- 2.8 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.

- 2.9 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.
- 2.10 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 was undertaken for the Property on behalf of the Owner to assess the human health risks and ecological risks associated with the presence or discharge of Contaminants on, in or under the Property and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended use: **“residential use”** as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in or under the Property that are present above the Residential/Parkland/Institutional/Industrial/Commercial/Community Property Use Standards within **Table 9** of the *Soil, Groundwater 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 defined as the Contaminants of Concern. The Property Specific Standards for the Contaminants of Concern are set out in Schedule “A” attached to and forming part of the CPU. Also attached to and forming part of the CPU is the following figures:
- Figure 1: Site Survey
 - Figure 2: Soil Barrier Options
 - Figure 3: Vapour Barrier Schematic
 - Figure 4: Groundwater Monitoring Program
- 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 including: volatile organic compounds; petroleum hydrocarbons; polycyclic aromatic hydrocarbons; and/or metals and inorganics in soil and groundwater which require on-going pathway elimination. As such, it is necessary to impose Risk Management Measures including: building construction requirements for vapour barriers and storage garage with minimum ventilation rates, a restriction on any potable groundwater use at the Property; a requirement for barriers to prevent contact with soils; restrictions on salt intolerant vegetation and gardens; and a soil and groundwater management plan and health and safety plan for any Intrusive Activities as set out in the Risk Assessment and in Parts 4 and 5 of the CPU.
- 3.5 I believe for the reasons set out in the Risk Assessment that it is also advisable to require the disclosure of this CPU and the registration of notice of the CPU on title to the Property as set out in the Section 197 order requirements in Items 4.9 And 4.10 Of the CPU.

Part 4: CPU Risk Management Measures Relating to the Risk Assessment and the Property

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

- 4.1 Implement, and thereafter maintain or cause to be maintained, the following Risk Management Measures and requirements identified in the Risk Assessment and set out in Items 4.2.1 to 4.2.10 as applicable.
- 4.2 Without restricting the generality of the foregoing in Item 4.1, carry out or cause to be carried out the following key elements of the Risk Management Measures:

4.2.1 Prohibition on groundwater use

- i.. Refrain from using groundwater in or under the Property as a source of potable water;
- ii. Properly abandon any wells on the Property, as defined in section 35 of O. Reg. 153/04, according to R.R.O. 1990, Regulation 903 (Wells), made under the OWRA; and
- iii. Refrain from constructing on the Property any wells as defined in section 35 of O. Reg. 153/04.

4.2.2 Storage Garage with Vapour Barrier Risk Management Measure:

Refrain from constructing any Building on the Property unless the Building includes a Storage Garage and a vapour barrier as follows:

- a. Storage Garage:
 - a. All below grade components of the Storage Garage shall include a Vapour Barrier and the sealing of all sumps and penetrations into the Building along with a groundwater dewatering system where required;
 - b. The Storage Garage is constructed at or below the Grade of the Building;
 - c. The Storage Garage area covers the entire Building Area at Grade; and
 - d. The Storage Garage complies with all applicable requirements of the Building Code, such as the provisions governing:
 1. design of a mechanical ventilation system as set out in Division B, Article 6.2.2.3. (Ventilation of Storage and Repair Garages) of the Building Code;
 2. interconnection of air duct systems as set out in Division B, Sentence (2) of Article 6.2.3.9. (Interconnection of Systems) of the Building Code; and
 3. air leakage as set out in Division B, Section 5.4. (Air Leakage) of the Building Code; and
 4. The mechanical ventilation system for the Storage Garage is designed to provide, and provides during operating hours, a continuous supply of outdoor air at a rate of not less than 3.9 liters per second for each square metre of floor area.
- ii. Vapour Membrane Barrier:
 - a. A low permeability barrier resistive to the COCs, extending across the full width and length of any Building, providing a gas tight barrier beneath the Building slab, including all seams, penetrations, transitions, piping, sumps or other utility connections with the characteristics described in Section 7 and Appendix J of the Risk Assessment and figure 3 of the CPU.
 - b. The installation of the vapour barrier shall be completed under the supervision of

a qualified Licensed Professional Engineer and a Qualified Person

- c. A vapour barrier implementation report will be prepared, signed by a Qualified Person, and submitted to the Director prior to occupancy at the Site. This report will provide details regarding the RA property, grade elevation, locations of all buildings, and final detailed design of the vapour barrier in relation to the building envelopes. Specifically, the report will include information regarding the incorporation of the vapour barrier into building features, such as footings, piles, piers, foundation drainage systems, building envelope components, utility and site servicing infrastructure within the building envelope areas, as well as any other aspect of the site development relating to the building envelopes that may affect or alter the design of the vapour barrier to be implemented. Additional considerations will be included in the report such as the final grade elevation of the Site buildings and distance to the groundwater table. The vapour barrier implementation report will be revised and resubmitted to the Director following the completion of any significant alterations to the vapour barriers.
- iii. A quality assurance/quality control (QA/QC) program as described in Section 1.7.3 of Appendix J of the Risk Assessment shall be undertaken during the installation of the vapour barrier and storage garage and shall be completed by, and clearly documented in a report prepared by a qualified contractor and overseen by a qualified Licensed Professional Engineer and Qualified Person;
- iv. An inspection and operational maintenance program shall be prepared and implemented for the Storage Garage to include at a minimum:
 - a. Development of an operational monitoring program by a Professional Engineer in consultation with a Qualified Person to ensure the continued operation and effectiveness of the storage garage and vapour barrier, including at a minimum: A description of the operational monitoring locations; devices; procedures; and frequency of monitoring necessary to ensure the continuous mechanical ventilation system achieves the required 3.9L/sec for each square metre of floor area.
 - b. Semi-annual visual inspections of the foundation walls and floor slab in contact with soil and potential groundwater to observe potential evidence of cracks, breaches or other deficiencies including seepage of ground water which may permit the entry of vapours. The inspection program shall include identification of any deficiencies (i.e. seepage, settlements, or voids or other types of structure damage), which shall be repaired forthwith. The inspection results shall be recorded in a log book maintained by the Owner and made available upon request by a Provincial Officer.

4.2.3 Barriers to Site Soils:

- i. Where Property Specific Contaminants of Concern are present at or within 1m of ground surface, a barrier to site soils designed, installed and maintained in accordance with the Risk Assessment so as to prevent exposure to the Contaminants of Concern. The barrier to site soils shall consist of a hard cap or fill/soil cap as specified below:
 - a. Hard caps on the Property shall consist of asphalt, concrete, a building slab, or a building foundation and floor slab, consisting of at least 150mm granular

"A" sub-base or equivalent material overlain by at least 75mm of hot mix asphalt or concrete (as illustrated in figure 2 of the CPU).

- b. The fill cap shall consist of one or more of the following:
 1. A minimum of 1m of cover including at least 0.5m of soil meeting the April 15, 2011 Table 9 Site Condition Standards in combination with aggregate, granular fill or other non-surface treatment all above a demarcation geotextile layer;
 2. Where the fill cap extends into floodplain, a minimum of 0.45m soil meeting the April 15, 2011 Table 9 Site Condition Standards in combination with a synthetic, non-permeable liner; or
 3. Where deep-rooting trees are planted, a minimum of 1.5m of soil meeting the April 15, 2011 Table 9 Site Condition Standards where deep rooting vegetation and no demarcation geotextile layer.
- ii. During Barrier construction on all or any part of the Property, install fencing and implement dust control measures for any part of the Property requiring covering but which has not been covered, so as to prevent exposure to the Contaminants of Concern at the Property. Fencing and dust control measures shall be maintained until such time as the Barrier (s) are installed;
- iii. Refrain from planting salt sensitive vegetation.
- iv. Refrain from growing edible plants or plants with edible produce on the Property unless grown in raised beds or planters;
- v. Within 90 days of completion of the installation of barriers on the Property, or any portion (s) of the Property under development or redevelopment, the Owner shall submit to the Director written confirmation signed by a Professional Engineer that the barriers have been installed in accordance with the requirements of Section 7 of the Risk Assessment and Item 4.6.1 of this CPU along with final design specifications/drawings and/or as built drawings.
- vi. Within 90 days of completion of the installation of the hard cap and fill cap barriers on the Property, or any portion (s) of the Property under development or redevelopment, the Owner shall submit to the Director a site plan that clearly identifies the location of each of the different barriers.

4.2.5 Inspection, maintenance and reporting requirements for barriers

- i. Prepare and implement a written inspection and maintenance program, prepared by a Qualified Person and to be retained by the Owner, and to be available for inspection upon request by a Provincial Officer, so as to ensure the continuing integrity of each Barrier at the Property so long as the Property Specific Contaminants of Concern are present at the Property, including, at a minimum:
 - a. procedures and timing for implementing the program;
 - b. semi-annual inspections, in spring and fall, of the Barrier;
 - c. noting any deficiencies in the Barrier observed during the inspections, or at any other time;
 - d. repairing promptly any such deficiencies, to the original design specifications, with written confirmation that the Barrier has been properly repaired;

- e. contingency measures, such as fencing, to be implemented if cracks, breaches or any loss of integrity of the Barrier cannot be repaired or addressed in a timely manner, to prevent exposure to the Property Specific Contaminants of Concern in that area of the Property or may affect vapour mitigation measures; and
- f. recording, in writing, all inspections, deficiencies, repairs and implementation of contingency measures, to be retained by the Owner and be available for inspection upon request by a Provincial Officer;

and which are:

- g. prepared within 90 days of issuance of the CPU; and
 - h. updated within 30 days following making any alteration to the program.
- ii. Prepare a site plan of the entire Property, prepared by a Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, showing the Property, any fencing, and the location, type and design of each Barrier at the Property, including cross-sectional drawings of the Barrier showing its design and vertical and lateral extent, and which are:
 - a. 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
 - b. 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; and
 - iii. Prepare and implement written procedures, prepared by a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, for written and oral communication to all persons who may be involved in Intrusive Activities at the Property that may disturb a Barrier at the Property, so as to ensure the persons are made aware of the presence and significance of the Barrier and the Contaminants of Concern at the Property and the precautions to be taken to ensure the continued integrity of the Barrier when undertaking the Intrusive Activities, and if damaged, to ensure that the Barrier is repaired promptly to the original design specifications, or, if it cannot be repaired promptly, to ensure that the contingency measures are implemented, and records kept, as specified in the inspection and maintenance program, and which are:
 - a. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
 - b. updated and delivered to the Owner within 30 days following making any alteration to the procedures.

4.2.6 Soil and groundwater management plan:

Prepare and implement a written soil and groundwater management plan for the Property, prepared by a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, for managing excavated soil or soil brought to the Property, and, if any, groundwater from dewatering during Intrusive Activities at the Property, so as to prevent exposure to or uncontrolled movement or discharge of the Property Specific Contaminants of Concern in soil or groundwater at the Property, including, at a minimum:

- i. procedures and timing for implementing the plan, including the supervision of persons implementing the plan;

- ii. measures to control dust and prevent tracking of soil by vehicles and persons from the Property, including the cleaning of equipment and vehicles;
- iii. measures, in addition to any applicable measures specified in O. Reg. 153/04, 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:
 - 1. is Capping Soil;
 - 2. meets the Property Specific Standards; or
 - 3. 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:
 - 1. used as Capping Soil at the Property;
 - 2. otherwise used as fill at the Property;
 - 3. removed from the Property.
 - c. stockpiling of excavated soil and any soil brought to the Property in separate designated areas that:
 - 1. reflect the distinctions described in parts iii. (a) and (b) above;
 - 2. have been lined and covered, as appropriate, to prevent uncontrolled movement;
 - 3. have been bermed, as appropriate, to restrict access by persons; and
 - 4. 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.
- iv. measures to manage storm water and any ground water from dewatering at the Property to prevent the movement of entrained soil 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
- v. 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;
- and which is,
- k. prepared before any Intrusive Activities are undertaken at the Property; and
 - l. updated within 30 days following making any alteration to the plan.

4.2.7 Health and Safety Plan

A site-specific health and safety plan shall be developed for the Property and implemented during all Intrusive Activities and a copy shall be maintained on the Property for the duration of these intrusive activities. The Owner shall ensure that the health and safety plan accounts for the presence of the Contaminants of Concern, is designed to reduce or eliminate exposures to vapours in trench air and is implemented prior to any intrusive work being done on the Property in order to protect workers from exposure to the Contaminants of Concern. The health and safety plan shall be prepared in accordance with applicable Ministry of Labour health and safety regulations, shall address any potential risks identified in the Risk Assessment, and shall include, but not be limited to, occupational hygiene requirements, requirements for personal protective equipment, and contingency plan requirements as described in Section 7.2.3 of the Risk Management Plan. Prior to initiation of any project (as defined in the *Occupational Health and Safety Act*) on the Property, the local Ministry of Labour office shall be notified of the proposed activities and that the Property contains contaminated soil and ground water. Implementation of the health and safety plan shall be overseen by persons qualified to review the provisions of the plan with respect to the proposed site work and conduct inspections as required. The Owner shall retain a copy of the plan, which shall be made available for review by a Provincial Officer upon request.

4.2.8 Groundwater Monitoring Program

Within 90 calendar days of the issuance of this CPU, the Groundwater Monitoring Program described in Section 7.4.4 of the Risk Assessment shall be implemented by the Owner.

The Groundwater Water Monitoring Program shall:

- i. Be overseen by a Qualified Person;
- ii. Include semi-annual water level and groundwater quality sampling at the locations for the parameters specified in Table 3: Groundwater Monitoring Program;
- iii. Where a groundwater monitoring location exceeds one or more of the trigger values described in Table 3: Groundwater Monitoring Program, the location will be resampled within 14 days of the receipt of the result and if confirmed, reported to the Ministry within 14 days. An action plan prepared by a Qualified Person will be submitted to the Director within 30 days of the receipt of the second exceedance of the relevant trigger value; and
- iv. Any changes to the monitoring program must be submitted to the Director and may only be implemented with the Director's written approval.

4.2.9 Indoor Air Monitoring Program

Within 90 calendar days of the issuance of this CPU, the Indoor Air Monitoring Program described in Section 7.4.3 of the Risk Assessment shall be implemented by the Owner.

The Indoor Air Monitoring Program shall:

- i. Be overseen by a Qualified Person;

- ii. Include quarterly sampling at appropriate locations determined by the Qualified Person as required to ensure the effectiveness of the vapour mitigation measures to the future building, for the parameters specified in Table 4: Indoor Air Monitoring Program;
- iii. Where a indoor air monitoring location exceeds one or more of the trigger described in Table 4: Indoor Air Monitoring Program, the location will be resampled within 30 days of the receipt of the result and if confirmed, reported to the Ministry within 14 days. An action plan prepared by a Qualified Person will be submitted to the Director within 30 days of the receipt of the second exceedance of the relevant trigger value; and
- iv. Any changes to the monitoring program must be submitted to the Director and may only be implemented with the Director's written approval.

4.2.10 Annual Reports

The Owner shall prepare by March 31st of each year, an annual report documenting activities relating to the Risk Management Measures undertaken during the previous calendar year. A copy of this report shall be maintained on file by the Owner and shall be made available for review by a Provincial Officer upon request. The report shall include, but not be limited to, the following minimum information requirements:

- i. A copy of all records relating to the inspection and maintenance program for the site barriers to the site soils;
- ii. A copy of all records relating to the soil and groundwater management plan;
- iii. A copy of all records relating to the health and safety plan;
- iv. A copy of current site plans including barriers, fencing, groundwater monitoring wells, buildings and storage garage, and any alterations;
- v. A copy of all storage garage and vapour barrier inspection and maintenance records;
- vi. A copy of all groundwater monitoring results;
- vii. A copy of all indoor air monitoring results; and
- viii. Any recommendations for changes to inspection, maintenance, and/or monitoring programs with supporting rational.

4.3 Refrain from using the Property for any of the following use(s): "Agriculture or Other" property use as defined in O. Reg 153/04.

4.4 Refrain from constructing the following building(s):
No building construction unless construction is in accordance with Item 4.2.2 of the CPU.

4.5 The Owner shall ensure that every occupant of the Property is given notice that the Ministry has issued this CPU and that it contains the provisions noted above in Items 4.3 and 4.4. For the purposes of this requirement, an occupant means any person with whom the Owner has a contractual relationship regarding the occupancy of all or part of the Property.

Site Changes

- 4.6 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

- 4.7 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

- 4.8 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

- 4.9 Within fifteen (15) days from the date of receipt of a certificate of requirement issued under subsection 197(2) of the Act completed as outlined in Schedule 'B', register the certificate of requirement on title to the Property, in the appropriate land registry office.

Verification

- 4.10 Within five (5) days after registering the certificate of requirement, provide to the Director a copy of the registered certificate and of the parcel register(s) for the Property confirming that registration has been completed.

Owner Change

- 4.11 While the CPU is in effect, the Owner shall 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 appurtenant common elements on the Property.

Financial Assurance

- 4.12 The Director has not included in the CPU a requirement that the Owner provide financial assurance.

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, such finding does not invalidate or render unenforceable the requirement in other circumstances nor does it invalidate or render unenforceable the other requirements of the CPU.
- 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 alter 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 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 failure to comply with the requirements of the CPU constitutes an offence.
- 5.5 The requirements of the CPU are minimum requirements only and do not relieve the Owner 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. The Director shall also alter the CPU where the approval or acceptance of the Director is required in respect of a matter under the CPU and the Director either does not grant the approval or acceptance or does not grant it in a manner agreed to by the Owner.
- 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 the Owner 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 the provisions of Items 4.9 and 4.10 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 can be carried out by the condominium corporation 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 noted below:

The Secretary
Environmental Review Tribunal
655 Bay Street, Suite 1500
Toronto, ON, M5G 1E5
Fax: (416) 326-5370
Email: TribunalSecretary@ontario.ca

and

Celeste Dugas, Director
Ministry of the Environment, Conservation and Parks
230 Westney Road South, 5th Floor
Ajax, Ontario, L1S 7J5 Fax: (905) 427-5602
Email: Celeste.Dugas@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 Environmental Registry of Ontario. 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 Environmental Registry of Ontario. The notice must be delivered to the Minister of the Ministry of the Environment, Conservation and Parks, College Park 5th Flr, 777 Bay St, Toronto, ON 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 Environmental Registry of Ontario; and

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

Further information on the Environmental Review Tribunal requirements for an appeal can be obtained directly from the Tribunal at:

Tel: (416) 212- 6349

Fax: (416) 326-5370

<https://olt.gov.on.ca>

Issued this 19th day of April, 2021.



Celeste Dugas
Director, section 168.6 of the Act

Schedule "A"

Table 1: Property Specific Soil Standards

Contaminant of Concern	Medium	Property Specific Standard (µg/g)
PHC F1	Soil	40
PHC F2	Soil	252
PHC F3	Soil	1,200
PHC F4	Soil	13,200
Benzene	Soil	2.2
1,2-Dichlorethane	Soil	0.5
Ethylbenzene	Soil	4.7
Hexane	Soil	50
Toluene	Soil	2.8
Vinyl chloride	Soil	0.035
Xylenes	Soil	32
Acenaphthene	Soil	2.8
Anthracene	Soil	1.6
Benzo(a)anthracene	Soil	2.3
Benzo(a)pyrene	Soil	2.2
Benzo(b)fluoranthene	Soil	3
Benzo(g,h,i)perylene	Soil	1.3
Benzo(k)fluoranthene	Soil	0.79
Dibenzo(a,h)anthracene	Soil	0.26
Fluoranthene	Soil	7.9
Fluorene	Soil	1.4
Indeno(1,2,3-cd)pyrene	Soil	1.4
1- and 2- Methylnaphthalene	Soil	5.9
Naphthalene	Soil	1.1

Contaminant of Concern	Medium	Property Specific Standard (µg/g)
Phenanthrene	Soil	4.3
Pyrene	Soil	6.2
Antimony	Soil	8.5
Barium	Soil	540
Beryllium	Soil	11
Boron (Total)	Soil	184
Hot Water Soluble Boron	Soil	5.4
Cadmium	Soil	8.2
Chromium (Total)	Soil	283
Copper	Soil	408
Lead	Soil	468
Mercury	Soil	8.9
Molybdenum	Soil	48
Nickel	Soil	491
Selenium	Soil	2.3
Silver	Soil	5.5
Uranium	Soil	4.9
Electrical Conductivity (mS/cm)	Soil	20
Sodium Adsorption Ratio (unitless)	Soil	144

Table 2: Property Specific Groundwater Standards

Contaminant of Concern	Medium	Property Specific Standard (µg/L)
Benzene	Groundwater	49
Carbon tetrachloride	Groundwater	0.48
1,4-Dichlorobenzene	Groundwater	1.2
1,1-Dichloroethylene	Groundwater	0.72
cis-1,2-Dichloroethylene	Groundwater	4.2
trans-1,2-Dichloroethylene	Groundwater	0.6
1,1,2,2-Tetrachloroethane	Groundwater	1.2
Tetrachlorethylene	Groundwater	0.6
Trichloroethylene	Groundwater	0.6
Vinyl chloride	Groundwater	38
Sodium	Groundwater	4,920,000
Chloride	Groundwater	8,760,000

Table 3: Groundwater Monitoring Program

Monitoring Wells	Monitoring Parameters and Trigger Concentrations	Trigger Concentration (µg/L)
MW-20 MW-12 MW-18	Sodium	4,920,000
	Chloride	8,760,000
	Benzene	49.2
	Cis-1,2-Dichloroethylene	4.2
	Vinyl chloride	37.9
MW-10B MW-5 MW-9 MW-2	Sodium	1,800,000
	Chloride	1,800,000
	Benzene	44
	Cis-1,2-Dichloroethylene	1.6
	Vinyl chloride	0.5

Table 4: Indoor Air Monitoring Program

Target Analytes	Trigger Indoor Air Quality Criteria (IAQC) (µg/m3)
1&2-Methylnaphthalene	0.772
Naphthalene	0.772
Mercury	0.0188
Benzene	0.506
Ethylbenzene	417
Xylenes	146
PHC F2	471
Carbon tetrachloride	0.417
1,2-DCA	0.0428
Hexane	521
Tetrachloroethylene	4.28
Trichloroethylene	0.271
Vinyl Chloride	0.126

SCHEDULE 'B'

CERTIFICATE OF REQUIREMENT

s.197 (2)

Environmental Protection Act

This is to certify that pursuant to Item 4.8 of Certificate of Property Use Number 0331-B4WPZL-1 issued by Celeste Dugas, Director of the Ministry of the Environment, Conservation and Parks, dated April 19, 2021 under sections 168.6 and 197 of the *Environmental Protection Act*, being a Certificate of Property Use and order under subsection 197(1) relating to the property municipally known as 1606, 1610 and 1614 Charles Street, Whitby, Ontario, being all of Property Identifier Number (PIN) 26484-0183 (LT), (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property

1606-1614 Charles Street East GP Inc.

1606-1614 Charles Street East LP

and any other persons having an interest in the Property are required before dealing with the Property in any way, to give a copy of the Certificate of Property Use, including any amendments thereto, to every person who will acquire an interest in the Property.

Under subsection 197(3) of the *Environmental Protection Act*, the requirement applies to each person who, subsequent to the registration of the certificate, acquires an interest in the Property.

Figure 2: Soil Barrier Options

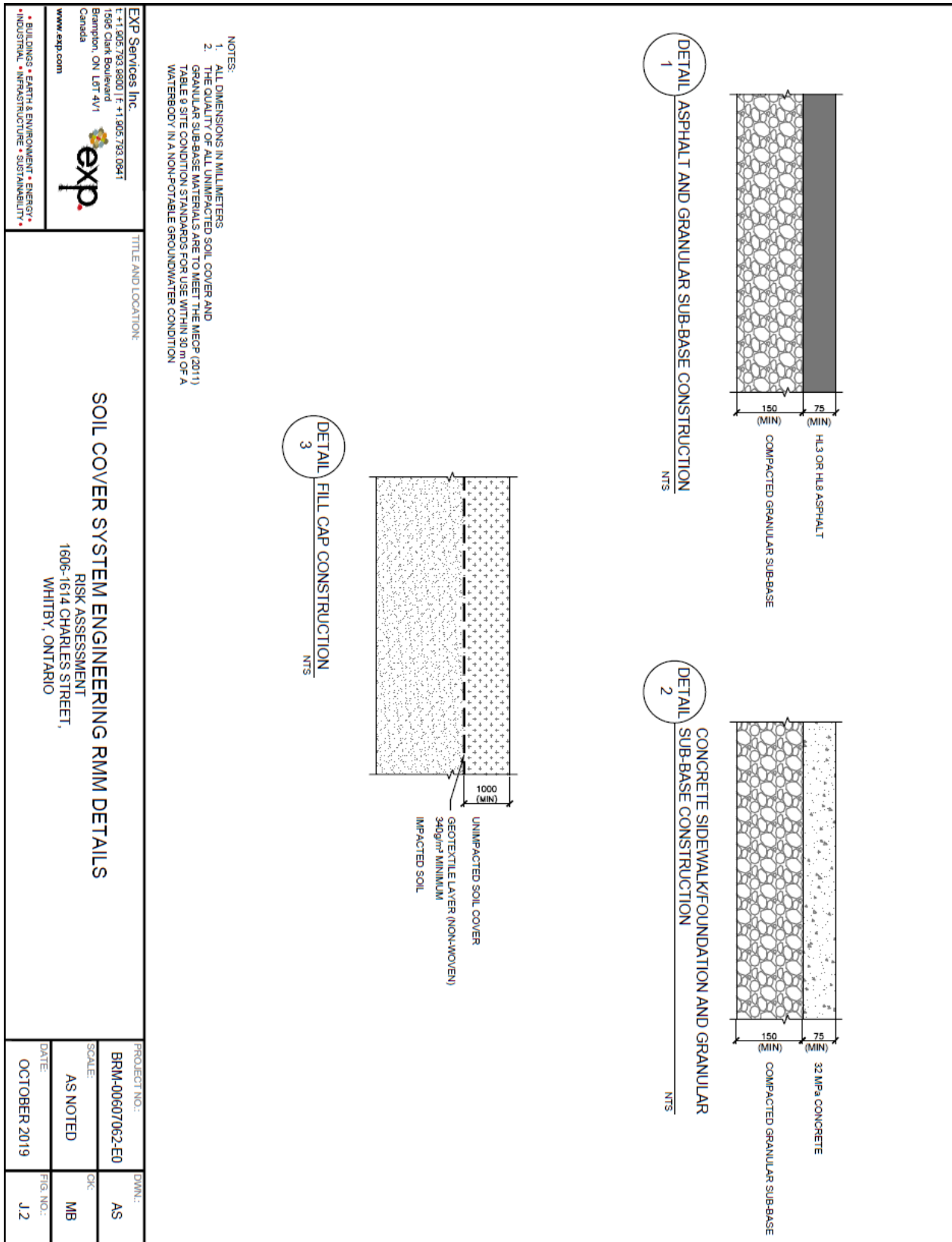


Figure 3: Vapour Barrier Schematic

