

Certificate of Property Use

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

Certificate of Property Use number RA1470-15-02
Risk Assessment number RA1470-15e

Owner: Belle Harbour GP Inc.
(for and on behalf of)
Belle Harbour LP

190 Hotchkiss Street
Gravenhurst, ON, P1P 1H6

Site: 25 Dundas Street West
Belleville, Ontario

with a legal description of:

Part of Lots 9, 10 & 11 South of Water Street; Part of Water Street (closed by RBL 135, By-Law 3766) Registered Plan 14, Thurlow; Part of Water Lot in front of Lot 3, Concession 1, Thurlow, designated as Part 1, Plan 21R24741; Belleville

Being Part of PIN 40477-0261

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:
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|--|-----|
| a. Installing/maintaining any equipment | Yes |
| b. Monitoring any contaminant | Yes |
| c. Refraining from constructing any building unless as specified | Yes |
| d. Refraining from using the Property for any use specified | Yes |

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|----|--|-----|
| e. | Maintaining a barrier to site soils with Hard or Fill Cap | Yes |
| f. | Preparing and implementing a soil management plan for the Property | Yes |
| g. | Preparing and implementing a health and safety plan for the Property | Yes |
- ii) Duration of Risk Management Measures identified in Part 4 of the CPU is summarized as follows:
- a. 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.
 - b. The active sub-slab ventilation systems for on-site buildings shall be required for the Property for as long as the Contaminants of Concern are present on the Property.
 - c. The soil management 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. The 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.
 - e. 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, as amended.

“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.

“Approved Model” has the same meaning as in subsection 1 (1) of Schedule C of O. Reg. 153/04, namely, the data file entitled “Modified Generic Risk Assessment Model” and dated October 19, 2009 as amended from time to time, that is maintained by the Ministry as part of its Brownfield initiative and is available on the Internet and may be available in such other manner as the Minister considers appropriate.

“Capping Soil” means,

- (a) soil found on, in or under the Property in which no Property Specific Contaminants of Concern are present, or
- (b) soil that meets the the Residential/Parkland/Institutional 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 for course textured soils.

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.

“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 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 **RA1470-15-02**.

"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.

“Fill Cap” means cover, above the Property Specific Contaminants of Concern, that,

- (a) is at least, the applicable of,
 - (i) 1.0 metre thick, or any greater thickness than 1.0 metre, as specified in section 7 of the Risk Assessment report, or
 - (ii) 1.5 metres thick, where the option to modify the S3 component value in the Approved Model for protection of subsurface workers from direct soil contact has been used in the Risk Assessment, as specified in section 7 of the Risk Assessment report,

and,

- (b) consists of at least 0.5 metres thickness of Capping Soil, and above this, cover consisting of additional Capping Soil or non-soil surface treatment such as asphalt, concrete or concrete pavers, stone pavers, brick or aggregate.

“Hard Cap” means an asphalt or concrete cover layer, above the Property Specific Contaminants of Concern, that is at least 225 millimetres thick, and consists of at least 75 millimetres thickness of hot mix asphalt or poured concrete underlain by Granular “A” aggregate or equivalent material, and includes a building slab or building foundation and floor slab meeting these specifications.

"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.

"Ministry" means the ministry of the government of Ontario responsible for the administration of the Act, currently named 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" as amended, 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, as amended.

"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 as generated by the Approved Model without incorporation of risk management measures, and as specified in section 3 of the Risk Assessment.

"Property Specific Standards" means the property specific standards established for the Contaminants of Concern in the Risk Assessment number 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 **1470-15e** accepted by the Director on May 24, 2019 and set out in the following documents:

- **Fourth Revision Risk Assessment for the Table 7 Parcel at 25 Dundas Street West, Belleville, Ontario report prepared by BluMetric**

**Environmental, dated February 2021
and**

Fourth Revision Risk Assessment for the Table 9 Parcel at 25 Dundas Street West, Belleville, Ontario report prepared by BluMetric Environmental, dated February 2021

- **“RE: Fourth Revision of the Two RAs for 25 Dundas Street West, Belleville [RA1470-15d, IDS 0053-9X3NWY]” e-mail from Brett Ibbotson, BluMetric Environmental, received by TASDB on March 10, 2021, with the following document attached:**
 - *Fourth Revision T7 Parcel Main RA Compiled.pdf*

- **“RE: 25 Dundas Street West, Belleville [RA1470-15d, IDS 0053-9X3NWY] - New Ownership” e-mail from Paul Bandler, BluMetric Environmental, received by TASDB on April 21, 2021, with the following documents attached:**
 - *Lawyer Letter Apr 21-2021 – compiled.pdf*
 - *PSF - 25 Dundas W Belleville – signed.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.

“Shallow Soil Cap” means cover, above the Property Specific Contaminants of Concern, that is at least 0.5 metres thick, and consists of Capping Soil on top of a geotextile fabric layer.

“Tribunal” has the same meaning as in the Act; namely, the Ontario Land 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,
 - 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 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:
- 1) 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.
 - 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 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 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: mixed Commercial Use and 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 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* for coarse textured soils 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:
- Plan of Survey
- 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: antimony; arsenic; barium; boron (HWS); cobalt; copper; lead; mercury; nickel; thallium; selenium; zinc; electrical conductivity; sodium adsorption ratio; acenaphthylene; anthracene, benzo(a)anthracene; benzo[a]pyrene; benz[b]fluoranthene; benzo[k]fluoranthene; dibenzo[a,h]anthracene; fluoranthene; indeno[1,2,3-cd]pyrene; naphthalene; phenanthrene; benzene; toluene; xylene and petroleum hydrocarbons F2 and F3 in soil which require on-going pathway elimination.

- 3.5 As such, it is necessary to impose Risk Management Measures including: a requirement for barriers to prevent contact with soils; an active sub-slab ventilation for on-site buildings, a soil management plan; no groundwater use; and a health and safety plan for any Intrusive Activities as set out in the Risk Assessment and in Parts 4 and 5 of the CPU.
- 3.6 I am of the opinion, that the requirements set out in Part 6 of the CPU are necessary to supplement the Risk Management Measures described in the Risk Assessment in Part 4 of the CPU.
- 3.7 I believe for the reasons set out in the Risk Assessment that it is also advisable to require the disclosure of the CPU and registration of notice of the CPU on title to the Property as set out in the section 197 order requirements in Part 7 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 Risk Management Measures as set out in Items 4.2 to 4.9 below.
- 4.2 The Hard Cap or Fill Cap barrier risk management measure is set out below:
- a. Covering of all areas of the Property where Property Specific Contaminants of Concern are present at or within 1.0 metre below the soil surface, such that a Hard Cap Barrier or a Fill Cap barrier is in place in these areas, so as to prevent exposure to the Property Specific Contaminants of Concern at the Property, in conjunction with any existing Barriers in any other areas of the Property where Property Specific Contaminants of Concern are present below the soil surface;
 - b. Before commencing development of all or any part of the Property, installing fencing and implementing dust control measures for any part of the Property requiring covering but which has not been covered, so as to restrict access to the part fenced and prevent exposure to the Property Specific Contaminants of Concern at the Property, with the fencing and dust control measures to be maintained until covering of the part fenced is complete;
 - c. Preparing and implementing a written inspection and maintenance program, prepared by a Qualified Person and to be retained by the Owner, and 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:
 - i. procedures and timing for implementing the program;
 - ii. semi-annual inspections, in spring and fall, of the Barrier;

- iii. noting any deficiencies in the Barrier observed during the inspections, or at any other time;
- iv. repairing promptly any such deficiencies, to the original design specifications, with written confirmation by a Licenced Professional Engineer that the barrier has been properly repaired, to be retained by the Owner and be available for inspection upon request by a Provincial Officer;
- v. 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; and
- vi. 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 is,

- vii. delivered to the Owner before residential 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
 - viii. updated and delivered to the Owner within 30 days following making any alteration to the program;
- d. Preparing a site plan of the entire Property, prepared by a Licenced 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 is:
- i. delivered to the Owner before residential 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; and
- e. Preparing and implementing written procedures, prepared by 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 Property Specific 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,

- i. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
- ii. updated and delivered to the Owner within 30 days following making any alteration to the procedures.

4.3 Not constructing any Building on the Property unless the Building includes an Active SVIMS, and the Active SVIMS meets the following requirements:

DESIGN, INSTALLATION AND OPERATION

- a. Designing, installing and operating an Active SVIMS for the Building, designed by a Licenced Professional Engineer in consultation with a Qualified Person and installed by a person acceptable to and under the supervision of a Licenced Professional Engineer, so as to remove soil vapour from below the Building and prevent soil vapour containing the Property Specific Contaminants of Concern from entering the Building air, including the following requirements and components for the Active SVIMS:

SYSTEM REQUIREMENTS

- i. the Active SVIMS is to:
 - (a) be designed, installed and operated with the objective of achieving during all seasons at least a 6 Pascal lower air pressure differential below the foundation floor slab, relative to the indoor air pressure within the Building, across at least 90% of the Building Area; and
 - (b) have in place, measures, as appropriate based on an assessment carried out in accordance with ASTM E1998, to prevent potential depressurization induced back drafting and spillage of combustion products from vented combustion appliances that may be in the Building, due to the use of electrical fan powered vents;

SUB-SLAB FOUNDATION LAYER

- ii. throughout the Building Area below the foundation floor slab, a sub-slab foundation layer, above soil containing the Property Specific Contaminants of Concern, designed by a Licenced Professional Engineer for the Building constructor in consultation with the Licenced Professional Engineer for the Active SVIMS;

SOIL VAPOUR VENTING LAYER

- iii. throughout the Building Area below the foundation floor slab and above the sub-slab foundation layer, a soil vapour venting layer designed for collection and venting of soil vapour from below the floor slab to vent risers for venting to the outdoor air, with the soil vapour venting layer consisting of:
 - (a) perforated collection pipes or geocomposite strips of sufficient size or diameter, frequency and locations to promote efficient collection

and venting , embedded in granular materials of sufficient air permeability and depth;

or,

other soil vapour collection and venting products used to construct a soil vapour venting layer with continuous open void space, such as an aerated sub-floor below the floor slab and around the exterior walls, which provides similar or greater air permeability and collection and venting efficiency;

- (b) for a Building with isolated soil vapour venting layer areas caused by interior grade beams or areas of thickened slabs, ventilation pipes to connect the isolated areas or a soil vapour venting layer that extends below these elements of the Building foundation; and
- (c) clean-outs, drains or openings to ensure drainage and removal of condensate or water, including any entrained dust, that may enter collection pipes, geocomposite strips or vent risers and, if required, to ensure drainage or dewatering of the soil vapour venting layer in Property areas with a shallow ground water table;

SOIL VAPOUR BARRIER MEMBRANE

- iv. throughout the Building Area, a continuous leak free soil vapour barrier membrane, such as a sheet geomembrane or spray applied membrane, below the foundation floor slab and above the soil vapour venting layer, and below and along the walls of any subsurface structures such as a sump, and which:
 - (a) is of appropriate thickness and meets the appropriate gas permeability and chemical resistance specifications to be considered substantially impermeable to the soil vapour, in accordance with the appropriate ASTM standards such as D412 and D543, as applicable; and
 - (b) has a suitable protective geotextile, or other suitable protective material, such as a sand layer, immediately below or above the soil vapour barrier membrane, as considered appropriate by the Licenced Professional Engineer;

VENT RISERS

- v. vent risers of sufficient size or diameter, frequency and locations to promote efficient venting and that terminate above the roof of the Building, to convey soil vapour from the soil vapour venting layer to the outdoor air above the roof of the Building and that discharge at an appropriate distance, consistent with the separation provisions in ASTM E2121 but modified as appropriate for the characteristics of the soil vapour and Building, from Building air intakes and openable windows, doors and other openings through which exhausted vapours could be entrained in Building air, including:

- (a) at least one vent riser per isolated section of the soil vapour venting layer caused by interior grade beams or thickened slabs, unless analysis or testing indicates a lesser number of vent risers is required;
- (b) vent pipe riser diameter that is greater than the collection pipe diameter, to promote efficient venting;
- (c) vent risers located within the Building, where appropriate, to promote temperature induced convective venting during colder weather; and
- (d) an electrical powered fan on each vent riser, and an automated monitoring system of fan operation which remotely detects and indicates system malfunctions;

MONITORING DEVICES

- vi. monitoring devices installed below the foundation floor slab across the Building Area for measurement of the (lower) air pressure differential, relative to the indoor air pressure within the Building, being achieved by the soil vapour venting layer, with the number and locations of the monitoring devices installed being as considered appropriate by the Licenced Professional Engineer in consultation with the Qualified Person, taking into account factors such as the Building Area and the design and configuration of the Building foundation;

LABELING OF EQUIPMENT

- vii. labeling of equipment for the Active SVIMS, including information such as the installer's name, date of installation and identification of all visible piping, consistent with the labeling provisions in ASTM E1465 but modified as appropriate for the characteristics of the soil vapour and Building; and

UTILITY SEALING

- viii. where utilities or subsurface Building penetrations are a potential conduit for soil vapour migration,
 - (a) utility trench dams consisting of soil-bentonite mixture, sand-cement slurry or other appropriate material, installed as a precautionary measure to reduce the potential for soil vapour to migrate beneath the Building through relatively permeable trench backfill; and
 - (b) conduit seals constructed of closed cell polyurethane foam, or other inert gas-impermeable material at the termination of all utility conduits and at subsurface Building penetrations, such as sumps, to reduce the potential for vapour migration along the conduit to the interior of the Building;

QUALITY ASSURANCE / QUALITY CONTROL

- b. Preparing and implementing a quality assurance and quality control program, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, so as to ensure that the Active SVIMS is being, and has been, properly installed and the installation documented, including inspections, verification testing and documenting of the installation as it is carried out, including at a minimum:
 - i. procedures and timing for implementing the program, by a person acceptable to and under the supervision of a Licenced Professional Engineer;
 - ii. daily inspections of the installation of the Active SVIMS, including of the quality assurance and quality control measures and procedures undertaken by the installer;
 - iii. undertaking, at a minimum, the following quality control measures and verification testing of the soil vapour barrier membrane:
 - (a) daily inspection reports noting any deficiencies and corrective actions taken;
 - (b) smoke testing of the soil vapour barrier membrane, or equivalent alternative testing method that provides comparable results;
 - (c) verification of the type and thickness of the soil vapour barrier membrane through testing of representative samples of materials used, including destructive testing and repair of portions of the membranes to be conducted in a manner and at a frequency that meets or exceeds manufacturer's recommendations;
 - (d) verification of field seams of sheet geomembranes as being continuous and leak free, through vacuum or pressure testing, geophysical testing or other appropriate means; and
 - (e) verification that appropriate measures to prevent post-construction damage or degradation to the soil vapour barrier membrane have been taken, including at a minimum, appropriate preparation of the sub-slab foundation layer, placement of a protective geotextile, or other suitable protective material, below or above the soil vapour barrier membrane, if included in the design, and work practices to prevent post-construction damage;
 - iv. noting any deficiencies in the materials or installation of the Active SVIMS;
 - v. ensuring the prompt repair of any deficiencies, to the design specifications;
 - vi. preparing a written report of all inspections, quality control measures and verification testing undertaken, and any deficiencies and repairs, prepared

by the Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer;

and which is,

- vii. delivered to the Owner before installation of the Active SVIMS begins; and
- viii. updated and delivered to the Owner within 30 days of making any alteration to the program;

AS CONSTRUCTED PLANS

- c. Preparing as constructed plans of the Active SVIMS, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, showing the location of the Building and the location and specifications of the installed Active SVIMS, including cross-sectional drawings specifying the design and the vertical and lateral extent of the Active SVIMS relative to the Building and the ground surface, and which is:
 - i. delivered to the Owner before use of all or any part of the Building begins, or within 90 days following completion of installation of the Active SVIMS, whichever is earlier; and
 - ii. updated and delivered to the Owner within 30 days following making any alteration to the Active SVIMS, or other relevant feature shown on the plans;

INSPECTION AND MAINTENANCE

- d. Preparing and implementing a written inspection and maintenance program, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, to ensure the continued integrity and effectiveness of the Active SVIMS, including, at a minimum:
 - i. procedures and timing for implementing the program, by a person meeting the qualifications as set out in the program;
 - ii. maintenance and calibration of operational, monitoring and other equipment, as appropriate;
 - iii. inspections of the Active SVIMS, including:
 - (a) semi-annual inspections, in spring and fall, of the visible areas of the foundation floor slab or subsurface walls in contact with soil, to identify any cracks, breaches or other deficiencies that may allow soil vapour to enter the Building;
 - (b) semi-annual inspections, in spring and fall, the visible components of the Active SVIMS, to identify any cracks, breaches or other deficiencies that may hinder the collection or venting of soil vapour from below the Building;

- (c) additional inspections, on a more frequent basis as appropriate, of the electrical powered fans to confirm they turn freely, to confirm the automated monitoring system of fan operation is operational and to confirm operational parameters such as amperage levels are within appropriate ranges; and
 - (d) additional inspections during winter, as appropriate, to identify any significant accumulation of snow or ice requiring removal;
- iv. noting any deficiencies with the floor slab and Active SVIMS identified during any inspection, or at any other time;
- v. repairing promptly any deficiencies, including under the supervision of a Licenced Professional Engineer for a deficiency referred to in part iii. (b);
- vi. factors and considerations for determining if additional inspections or monitoring should be undertaken;
- vii. a contingency plan to be implemented in the event the deficiencies cannot be repaired promptly, including prompt notification of the Ministry if such deficiencies, along with operational monitoring results and any additional lines of evidence suggest that soil vapour intrusion into the Building may occur, as determined by a Licenced Professional Engineer; and
- viii. preparing a written report of all inspections, deficiencies, repairs and maintenance, and of implementation of the contingency plan if necessary, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer;

and which is,

- ix. delivered to the Owner before use of all or any part of the Building begins, or within 90 days following completion of installation of the Active SVIMS, whichever is earlier; and
- x. updated and delivered to the Owner within 30 days following making any alteration to the program;

OPERATIONAL MONITORING

- e. Preparing and implementing a written program for monitoring of the operation of the installed Active SVIMS, prepared by a Licenced Professional Engineer in consultation with a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, to ensure the continued integrity and effectiveness of the Active SVIMS, including, at a minimum:
 - i. procedures and timing for implementing the program, by a person-meeting the qualifications as set out in the program;

- ii. locations and description of the devices and equipment used, or tested, for each monitoring event;
- iii. procedures for undertaking the testing, measurement and evaluation during a monitoring event, including calibration of operational, monitoring and other equipment, as appropriate;
- iv. undertaking operational monitoring, including recording of the monitoring results, in accordance with the following:
 - (a) at least once before occupancy and as considered appropriate by a Licenced Professional Engineer after occupancy has commenced, vacuum testing of the soil vapour venting system by conducting pilot testing using the powered fan(s), including with respect to the soil vapour venting layer being able to achieve a 6 Pascal lower air pressure differential objective below the foundation floor slab across the Building Area, relative to the indoor air pressure within the Building; and
 - (b) at least once before occupancy and semi-annually after occupancy has commenced, measuring of the (lower) air pressure differential below the foundation floor slab across the Building Area, relative to the indoor air pressure within the Building, being achieved by the soil vapour venting layer, using all of the monitoring devices, including those referred to in part vi. of section a. above;
- v. for each year, undertaking an assessment and preparing a written monitoring report, by a Licenced Professional Engineer in consultation with a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, on the operational monitoring undertaken and its results and findings with respect to the integrity and effectiveness of the installed Active SVIMS, including taking into account previous monitoring undertaken, and with recommendations and any follow-up actions to be taken, such as:
 - (a) the need to repeat or undertake additional or follow-up operational monitoring and assessment, or additional inspections;
 - (b) changes to the frequency or nature of the monitoring;
 - (c) the need to make repairs or changes to the design or operation of the Active SVIMS; and
 - (d) if necessary, implementation of the contingency plan in the event needed repairs or changes to the Active SVIMS cannot be made promptly, including notification of the Ministry if the operational monitoring results and any additional lines of evidence suggest that soil vapour intrusion into the Building may occur, as determined by a Licenced Professional Engineer;

and which is,

- vi. delivered to the Owner before use of all or any part of the Building begins, or within 90 days following completion of installation of the Active SVIMS, whichever is earlier; and
- vii. updated and delivered to the Owner within 30 days of following making any alteration to the program;

INTRUSIVE ACTIVITIES CAUTION

- f. Preparing and implementing 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 an installed Active SVIMS, so as to ensure the persons are made aware of the presence and significance of the Active SVIMS and the Property Specific Contaminants of Concern at the Property and the precautions to be taken to ensure the continued integrity of the Active SVIMS when undertaking the Intrusive Activities, and if damaged, to ensure the Active SVIMS is repaired promptly to the original design specifications, or if it cannot be repaired promptly, to ensure the contingency measures are implemented, and records kept, as specified in the inspection and maintenance program; and which are,
 - i. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
 - ii. updated and delivered to the Owner within 30 days following making any alteration to the procedures; and

BUILDING CODE

- g. The Building complies with all applicable requirements of the Building Code, such as the provisions governing the following:
 - i. soil gas control as set out in Division B, subsection 9.13.4. (Soil Gas Control) of the Building Code;
 - ii. protection against depressurization as set out in Division B, Article 9.32.3.8. (Protection Against Depressurization) of the Building Code; and
 - iii. separation of air intakes and exhaust outlet openings and protection against contamination of the ventilation air by the exhaust air as set out in Division B, Article 9.32.3.12. (Outdoor Intake and Exhaust Openings) of the Building Code.
- 4.4 A soil management plan shall be prepared to address activities that involve excavating, storing disposing, reusing and replacing soil on the property. A copy of the plan shall be kept by the Owner and made available for review by a Provincial Officer upon request. Implementation of the plan shall be overseen by a Qualified

Person and shall include, but not be limited to, provisions for soil and water management and record keeping specified below:

- 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 for off-site storage or processing but is to be returned for use as fill at the Property; or
 4. 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:
 1. reflect the distinctions described in parts iii. (a) and (b);
 2. have been lined and covered, as appropriate, to prevent uncontrolled movement or discharge of the Property Specific Contaminants of Concern;
 3. have been bermed or fenced, 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 control erosion when excavating to prevent the movement of entrained soil and Property Specific 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
- 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,

- vi. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
- vii. updated and delivered to the Owner within 30 days following making any alteration to the plan.

4.5 In addition to any requirements under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, A Site Specific Health and Safety Plan shall be prepared by a Competent Person in consultation with a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, that includes information concerning the potential hazards and safe work measures and procedures with respect to the Property Specific Contaminants of Concern at the Property and the communication of this information to all persons who may be involved in Intrusive Activities at the Property, including, at a minimum:

- i. the procedures and timing for implementing the plan, including the supervision of persons implementing the plan;
- ii. all relevant information concerning the presence of, human exposure to, and risk posed by, the Property Specific Contaminants of Concern through dermal contact, soil or ground water ingestion and inhalation of soil particles or vapour, and concerning any biogenic gases such as methane that may be present at the Property including information in the Risk Assessment,
- iii. all relevant information, measures and procedures concerning protection of the persons from exposure to the Property Specific Contaminants of Concern and the precautions to be taken when undertaking Intrusive Activities, including the supervision of workers, occupational hygiene requirements, use of personal protective equipment, provision of air flow augmentation in excavations or other areas or situations of minimal air ventilation, and other protective measures and procedures as appropriate;

- iv. all relevant information concerning the presence and significance of the risk management measures and requirements which are being, or have been, implemented at the Property,
 - v. the procedures and timing for implementing emergency response and contingency measures and procedures, including contact information, in the event of a health and safety incident; and
 - vi. the recording, in writing, of the implementation of the plan and any health and safety incidents that occur, to be retained by the Owner and be available for inspection upon request by a Provincial Officer;
- and which is,
- vii. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and updated and delivered to the Owner within 30 days following making any alteration to the plan.
- 4.6 Any deep rooted plants that are planted on the property shall be installed with a minimum thickness of 1.5 metre of clean planting medium around the root ball. On-site soils shall not be used for growing produce for human consumption.
- 4.7 No Groundwater Use
- a. Do not use ground water in or under the Property as a source of water;
 - b. Properly abandon any wells on the Property, as defined in section 35. (1) of O. Reg. 153/04, according to R.R.O. 1990, Regulation 903 (Wells), as amended, made under the Ontario Water Resources Act, R.S.O. 1990, c. O.40; and
 - c. Do not construct on the Property any wells as defined in section 35. (1) of O. Reg. 153/04.
- 4.8 The Owner shall retain a copy of the site plan prepared and signed by a Qualified Person prior to residential occupancy which will describe the Property, placement and quality of all of the shoreline and surface barrier systems. The site plan will include a plan and cross section drawings specifying the vertical and lateral extent of the barriers. This site plan shall be retained by the Owner for inspection upon request by a Provincial Officer. The site plan shall be revised following the completion of any alteration to the extent of the barriers to site soils and shoreline.
- 4.9 Beginning the year following the start of development construction, the Owner shall prepare by March 31, 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 upon request by a Provincial Officer. The report shall include, but not be limited to, the following minimum information requirements:
- a. a copy of all records relating to the inspection and maintenance program for the barrier to site soils;
 - b. a copy of all records related to operation, testing and maintenance of the active SVMS;
 - c. a copy of all records relating to the soil management plan and to the health and safety plan;

- d. a copy of all signed site plans including any alterations for barriers to site soils.

Part 5: CPU Restrictions on Property Use, Building Construction and Notice Requirements

I hereby require the Owner to do or cause to be done the following under the authority of paragraph 168.6(1)2 of the Act:

Property Use Restrictions

- 5.1 Refrain from using the Property for any of the following use(s): all property uses, except for mixed commercial use and residential use as defined in O. Reg 153/04.

Building Construction Restrictions

- 5.2 Refrain from constructing the following building(s): Any new building that is not slab-on-grade and which does not comply with Item 4.3 of the CPU.

Notice of Restrictions

- 5.3 Pursuant to subsection 168.6(4) of the Act, 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 5.1 and 5.2. 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.

Part 6: Additional Requirements

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

Site Changes Affecting Risk Management Measures

- 6.1 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, the Owner shall forthwith notify the Director of such changes and the steps taken or proposed, 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 of any Contaminant of Concern or the discharge of any Contaminant of Concern into the natural environment from the Property. In support of this work, the Director may require a new risk assessment be completed in accordance with O. Reg. 153/04 and submitted to the Ministry for acceptance if the change in the physical site conditions or receptor characteristics is such that it is not contemplated by the existing Risk Assessment or cannot be

adequately managed by the Risk Management Measures. 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.

Report Retention Requirements

- 6.2 The Owner shall retain a copy of any reports required under the CPU for a period of seven (7) years from the date the report is created and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the requesting Director or Provincial Officer.

Owner Change Notification

- 6.3 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

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

Part 7: Section 197 Order – Property Notice and Certificate of Requirement Registration

I hereby order the Owner to do or cause to be done the following under the authority of subsections 197(1) and (2) of the Act:

Property Notice Requirement

- 7.1 I hereby order the Owner 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 with the Property.

Certificate of Requirement Registration

- 7.2 Within fifteen (15) days 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 the title to the Property in the appropriate land registry office.

Verification

- 7.3 Within five (5) days after registering of 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.

Part 8: General Requirements

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 Subsection 186(3) of the Act provides that non-compliance with the requirements of the CPU constitutes an offence.
- 8.5 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.
- 8.6 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.
- 8.7 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.

- 8.8 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.
- 8.9 The Risk Management Measures identified in the Risk Assessment and also in Part 4 of the CPU and other requirements of the CPU shall commence upon the issuance of the CPU and continue in full force and effect until such time as the Director alters or revokes the CPU.
- 8.10 The provisions of the CPU shall take precedence in the event of a conflict between the provisions of the CPU and the Risk Assessment.
- 8.11 In the event that the Owner complies with the provisions of Items 7.2 and 7.3 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 9: Hearing before the Ontario Land Tribunal

- 9.1 Pursuant to section 139 of the Act, you may require a hearing before the Ontario Land 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.
- 9.2 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.
- 9.3 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 contact information of the Tribunal and the Director are:

Registrar
Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto, ON, M5G 1E5

Tel : (416) 212-6349 or Toll Free (866) 448-2248
Email: OLT.Registrar@ontario.ca

and

Trevor Dagilis
Ministry of the Environment, Conservation and Parks
Kingston District Office
1259 Gardiners Road, Unit 3
Kingston, ON K7P 3J6
Fax: 613-548-6920
Email: trevor.dagilis@ontario.ca

- 9.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.

Further information on the Ontario Land Tribunal's requirements can be obtained directly from the Tribunal at:

Tel: (416) 212- 6349 or Toll Free (866) 448-2248
olt.gov.on.ca

Issued at Kingston this 19th day of October, 2021.



Trevor Dagilis
Director, section 168.6 of the Act

Schedule 'A'

Property Specific Standards for each Contaminant of Concern

Contaminants of Concern (COC)	Property Specific Standards Soil ($\mu\text{g/g}$)
Antimony	8.8
Barium	436
Boron (HWS)	3.9
Boron (total)	162
Copper	120
Lead	296
Mercury	2.1
Trichloroethylene	3.2
Benzene	0.09
Ethylbenzene	0.28
Toluene	0.6
Xylene Mixture	0.55
PHC F3	1,680

SCHEDULE B

CERTIFICATE OF REQUIREMENT

s.197(2)

Environmental Protection Act

This is to certify that pursuant to Item 7.1 of Certificate of Property Use number RA1470-15-02 issued by Trevor Dagilis, Director of the Ministry of the Environment, Conservation and Parks, under sections 168.6 and 197 of the Environmental Protection Act, on October 19, 2021, being a Certificate of Property Use and order under subsection 197(1) of the Environmental Protection Act relating to the property municipally known as 25 Dundas Street West, Belleville, Ontario, being PART OF Property Identifier Number 40477-0261 (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property.

Belle Harbour GP Inc. (for and on behalf of Belle Harbour 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 this certificate, acquires an interest in the Property.

Figure 1: Plan of Survey

