



# Certificate of Property Use

Issued under the authority of the Environmental Protection Act, R.S.O. 1990, c. E.19, sections 168.6 (CPU) and 197 (Order)

Certificate of Property use number 2678-9J2P3H-1  
Risk Assessment number 2678-9J2P3H

**Owner:** Xylem Ontario Inc.  
**Beneficial Owner:** Xylem Canada LP  
**Site:** 4 Cannon Court, Whitby

with a legal description as follows:

Part Lot 24 CON 1 TOWNSHIP OF WHITBY, Part 1, 40R801 & Part 7, 40R1029; WHITBY, being part of PIN 26488-0019 (LT); and Part Lot 24 CON 1 TOWNSHIP OF WHITBY Part 12, 40R18134; WHITBY,

being all of PIN 26488-0130 (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                                   | No  |
| c. Refraining from constructing any building specified          | Yes |
| d. Refraining from using the Property for any use specified     | Yes |
| e. Other: restricting the construction or use of potable wells; | Yes |

and preparing and implementing health and safety, and soil and groundwater management plans during intrusive activities.

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

- a. The health and safety plan, soil and groundwater management plan, and restriction on potable wells shall be required for the Property for as long as the Contaminants of Concern are present on the Property.
- b. All other Risk Management Measures shall continue indefinitely until the Director alters or revokes the CPU.

## **Part 1: Interpretation**

In this CPU, the following capitalised terms have the meanings described below. These terms are also defined in the Approved Model. Not all of these terms may be used in this CPU.

“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 Code” means Ontario Regulation 332/12 (Building Code) as amended to January 1, 2017, made under the Building Code Act, 1992, S.O. 1992, c. 23.

“Certificate of Property Use” or “CPU” means this certificate of property use bearing the number 2678-9J2P3H-1 issued for the Property by the Director under section 168.6 of the Act, as it may be amended from time to time.

“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 same meaning as in O. Reg. 153/04, which, for the Property, 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, as specified in section 3 of the Risk Assessment report and in Schedule ‘A’ of the CPU.

“Director” means a person in the Ministry appointed as a director for the purpose of issuing a certificate of property use under section 168.6 of the Act.

“Grade” has the same meaning as in the Building Code.

“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.

“Licenced 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.

“Ministry” means the ministry of the government of Ontario responsible for the administration of the Act, currently named the 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 Certificate of Property Use for the Property is first issued by the Director under section 168.6 of the Act based on the Risk Assessment, and any subsequent owner of the Property.

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

“Property” means the property that is the subject of the Risk Assessment.

“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” has the same meaning as in the Act, namely, a person who is designated by the Minister as a provincial officer for the purposes of the Act and the regulations.

“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 2678-9J2P3H submitted with respect to the Property and accepted by a Director under section 168.5 of the Act on July 20, 2022 and set out in the following documents:

- Final Risk Assessment and Risk Management Plan for 4 Cannon Court Whitby, Ontario, report prepared by XCG Consultants Ltd., dated April 10, 2019
- Revised Risk Assessment and Risk Management Plan for 4 Cannon Court Whitby, Ontario, report prepared by XCG Consultants Ltd., dated July 10, 2020
- Risk Assessment and Risk Management Plan (Version 3.0) 4 Cannon Court (Developed Portion) Whitby, Ontario, report prepared by XCG Ltd., dated March 30, 2022

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

“Sub Slab Vapour Barrier Venting Layer” means an engineered venting layer and associated Venting Components below the foundation floor slab and Vapour Barrier and above the sub-slab foundation layer for building construction, as designed by a Licensed Professional Engineer, which operates in a passive manner but can be converted into an active system if necessary, providing pressure relief, collection and venting of vapours away from a Building;

“Tribunal” has the same meaning as in the Act; namely, the Ontario Land Tribunal.

“Vapour Barrier” means a geo-synthetic barrier (including but not limited to geomembrane or spray applied equivalent) meeting the appropriate gas permeability and chemical resistance specifications to be considered impermeable and resistant to the Contaminants of Concern as per Risk Assessment and is considered appropriate by the Licenced Professional Engineer and Qualified Person for its application.

“Venting Components” means a network of perforated piping/plenums or venting composites embedded in granular materials of sufficient permeability or other venting products with continuous formed void space that convey vapours and direct these vapours into vent risers that terminate above the roof elevation with wind-driven turbines to support passive venting, or active venting if required.

## **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

- c. the property to which the certificate of property use relates; and 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:
  - a. 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.
  - b. 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: “**industrial**” 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 1** of the ***Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act*** published by the Ministry and dated April 15, 2011, or for which there are no such standards are defined as the Contaminants of Concern. The Property Specific Standards for these Contaminants of Concern are also set out in Schedule ‘A’ which is attached to and forms part of the CPU. Also attached to and forming part of the CPU are the following figures:
  - Figure 1: Site Survey
  - Figure 2: Indoor Air and Sub-slab Soil Vapour Monitoring Locations
  - Figure 3: Vapour Barrier with Passive / Active Venting (details 1)
  - Figure 4: Vapour Barrier with Passive / Active Venting (details 2)
- 3.3 I am of the opinion, for the reasons set out in the Risk Assessment that the Risk Management Measures described therein and in Part 4 of the CPU are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property that has been identified in the Risk Assessment.
- 3.4 The Risk Assessment indicates the presence of Contaminants of Concern including: inorganics in soil and groundwater which require on-going pathway elimination. As such, it is necessary to restrict the use of the Property, impose building restrictions and implement Risk Management Measures as set out in the Risk Assessment and in Parts 4 and 5 of the CPU.

- 3.5 I am of the opinion, that the requirements set out in Part 6 of this CPU are necessary to supplement the Risk Management Measures described in the Risk Assessment and in Part 4 of the CPU.
- 3.6 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 order requirements in Part 7 of this CPU.

## **Part 4: CPU Risk Management Measures and Requirements 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 paragraph 168.8(1)1 of the Act:

### **Risk Management Measures**

- 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 Sections 4.1 to 4.8 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:
- 4.3 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 during Intrusive Activities at the Property, to prevent exposure to or uncontrolled movement or discharge of the Property Specific Contaminants of Concern in soil at the Property, including, at a minimum:

- a. procedures and timing for implementing the plan, including the supervision of persons implementing the plan;
- b. Dust control measures and prevention of soil tracking by vehicles and personnel from the Property, which may include wetting of soil with potable water, reduced speeds for on-site vehicles, tire washing stations and restricting working in high wind conditions, as required;
- c. 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:
  - i. characterizing for contaminant quality all excavated soil and any soil brought to the Property, including determining whether the soil:
    1. meets the Property Specific Standards; or
    2. exceeds the Property Specific Standards.

- ii. managing excavated soil separately from any soil brought to the Property, including any excavated soil that is to be used as fill or removed from the Property.
  - iii. stockpiling of excavated soil and any soil brought to the Property in separate designated areas that:
    - 1. reflect the distinctions described in part c. (i) and (ii);
    - 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.
  - d. 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
  - e. 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:
    - i. dates and duration of the Intrusive Activities being undertaken;
    - ii. weather and site conditions during the Intrusive Activities;
    - iii. the location and depth of excavation activities, and dewatering activities, if any;
    - iv. dust control and soil tracking control measures;
    - v. characterization results for excavated soil and any soil brought to or removed from the Property, and for any ground water from dewatering;
    - vi. soil management activities including soil quantities excavated and brought to and removed from the Property, and stockpile management and storm water runoff control;
    - vii. names and contact information for the Qualified Persons and on-site contractors involved in the Intrusive Activities;
    - viii. names and contact information for any haulers and receiving sites for soil removed from the Property, and for haulers and source sites of any soil brought to the Property; and
    - ix. any complaints received relating to the Intrusive Activities, including the soil, and storm water management activities;
- and which is,
- x. prepared before any Intrusive Activities are undertaken at the Property; and
  - xi. updated within 30 days following making any alteration to the plan.

#### 4.4 Potable groundwater wells prohibition:

The Owner shall,

- a. refrain from using the groundwater in, on or under the Property as a source of potable water;



- b. except as may be required for continued use as a groundwater monitoring well, properly abandon any wells on the Property, according to R.R.O. 1990, Regulation 903 (Wells), made under the OWRA; and,
- c. except as maybe required for use as a groundwater monitoring well, refrain from constructing any new wells on the Property.

#### 4.5 Health and Safety Plan:

A site-specific health and safety plan shall be developed for the Property and implemented during all intrusive, below-grade construction activities potentially coming in contact with or exposing site soils or groundwater 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 take into account the presence of the Contaminants of Concern 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 addresses 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 including site contact information. Prior to initiation of any project (as defined in the Occupational Health and Safety Act, as amended) on the Property, the local Ministry of Labour office shall be notified of the proposed activities and that the Property contains contaminated soil and groundwater. Implementation of the health and safety plan shall be overseen by persons appropriately qualified to review the provisions of the plan with respect to the proposed site work and conduct daily inspections. The Owner shall retain a copy of the plan, which shall be made available for review by a Provincial Officer upon request.

#### 4.6 Vapour Intrusion Mitigation for the Existing Building:

Continued use and occupancy of the existing site building requires that the owner continue to operate and maintain the existing building ventilation system, as described in Appendix N of the Risk Assessment, "Baseline Heating Ventilation Air Conditioning (HVAC) Study, 4 Canon Court, Whitby, June 28, 2021" to meet the following requirements:

- a. Limit new floor penetrations, and where necessary, ensure any modifications to the floor slab and sealed and will not provide a potential conduit for soil vapour migration;
- b. Conduct semi-annual system inspections by a certified HVAC maintenance contractor, and overseen by an appropriate QP to confirm equipment and system performance is consistent with the baseline conditions described in Appendix N of the Risks Assessment;
- c. In the event this inspection identifies significant changes from the baseline conditions, or any equipment or building modifications with the potential to affect the floor slab or existing ventilation system, the Owner shall undertake a confirmatory monitoring program as follows:
  - i. Under the supervision of a QP, complete indoor air monitoring at locations SV3, SV101, SV105, SV106 as illustrated in Figure 2 of this CPU and any other locations recommended by the QP for the parameters in Table 2 of Schedule 'A';

- ii. Sub-slab soil vapour sampling at existing soil vapour probes will be completed for comparative purposes to assess where indoor air results may reflect interior, industrial sources;
- iii. All indoor air quality monitoring shall be in accordance with USEPA Method TO-15 for the Contaminants of Concerns listed in Table 2 of Schedule 'A' with a summa canisters, using an 8-hour regulator and including field duplicate and blank samples.
- d. Within 30 days of the receipt of monitoring event results, the Owner shall submit to the Director a summary of the monitoring event, including:
  - i. Laboratory results and certificates of analysis;
  - ii. Field logs and documentation of quality assurance and quality control measures;
  - iii. Comparison of results with Table 2 of Schedule 'A' trigger criteria;
  - iv. Conclusions and recommendations discussing system performance meeting the baseline requirements, recommendations for any changes or additional monitoring with anticipated timelines; and
  - v. If an indoor air monitoring result exceeds the Table 2 of Schedule 'A' trigger criteria, this notice shall include a contingency plan with anticipated timelines. The implementation of the contingency plan shall include the continuing monitoring and reporting as per Section 7.5.2 of the Risk Assessment, until all contingency measures have been confirmed to the ministry's satisfaction.

#### 4.7 Vapour Intrusion Mitigation for New Buildings or Expansion of the Existing Building:

The construction of any new building or expansion of the existing building at the Property is prohibited unless the new or expanded building(s) is constructed with a vapour membrane barrier and soil vapour mitigation system (SVMS), as per Section 7.5.3 and Appendix K of the Risk Assessment, and include:

- a. The sealing of foundation penetrations, a Vapour Barrier, Sub-Slab Vapour Barrier Venting Layer and Venting Components as described by the Risk Management Plan and shown on Figures 3 and 4 of this CPU;
- b. The system is designed considering potential shallow groundwater conditions and with the ability to convert the passive SVMS to an active ventilated SVMS;
- c. The design and installation of the vapour mitigation system shall be completed under the supervision of a qualified Licensed Professional Engineer and a Qualified Person
- d. The Owner shall obtain an Environmental Compliance Approval, as necessary, and any other permits or approvals as may be required;
- e. A quality assurance/quality control (QA/QC) program shall be undertaken during the installation of the vapour mitigation system 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;
- f. Within 90 days of the installation of the vapour mitigation system, the Owner shall submit to the Director as-built drawings and detailed design specifications of the vapour mitigation system, including any verification and QA/QC reports, along with a statement by the Licensed Professional Engineer that the system has been designed and installed to meet the Risk Assessment Objectives;
- g. The Owner shall ensure that all individuals/contractors undertaking site activities which have the potential to interfere with the SVMS described by the CPU are made aware of the SVMS and the need to take appropriate precautions to ensure the

- operation and integrity of the system at all times. If the SVMS is damaged at any point, the Owner shall ensure that it is repaired as soon as practicable.
- h. The Licensed Professional Engineer designing the SVMS shall prepare an operation, inspection and maintenance program for implementation by the Owner, prior to occupancy. This program shall evaluate the effectiveness and continuing integrity of the SVMS. The semi-annual visual inspections of all visibly accessible components of the SVMS including potential floor slab perforations or cracks;
  - i. Prior to occupancy of any new or expanded buildings, the Owner shall implement an indoor monitoring program in accordance with Section 7.5.3 of the Risk Assessment. The monitoring program shall include:
    - i. Be under the supervision of a Qualified Person, complete indoor air monitoring at representative locations recommended by the QP for the parameters in Table 2 of this CPU;
    - ii. Semi-annual monitoring with a minimum of one event prior to building occupancy. Where semi-annual results meet the Table 2 trigger criteria for three years, monitoring frequency can be reduced to annual winter (December to March) monitoring events;
    - iii. All indoor air quality monitoring shall be in accordance with USEPA Method TO-15 for the Contaminants of Concerns listed in Table 2 of Schedule 'A' of the CPU with a summa cannisters, using an 8-hour regulator and including field duplicate and blank samples.
  - j. If the concentration of any parameter measured exceeds the applicable trigger values set out in Table 2 of Schedule 'A', then the Owner shall notify the Director within 15 business days of receiving the result, and undertake the following actions:
    - i. Within 30 days of receiving the analytical result, collect additional confirmatory sample(s) at the location(s) where the exceedance was encountered;
    - ii. If an indoor air monitoring result exceeds the Table 2 of Schedule 'A', the Owner shall notify the Director and this notice shall include a contingency plan with anticipated timelines, prepared by a Licensed Professional Engineer. The implementation of the contingency plan shall include the continuing monitoring and reporting as per Section 7.5.3 of the Risk Assessment, until all contingency measures have been confirmed to the ministry's satisfaction.
    - iii. If the confirmatory event meets the Table 2 of Schedule 'A' criteria, the Owner shall provide these results to the Director and continue monitoring as directed by Item 4.7.i. of this CPU.

#### 4.8 Annual Reports:

The Owner shall prepare by March 31 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 upon request by a Provincial Officer. The report shall include the following information:

- a. a copy of all records related to the soil management plan and the health and safety plan on the Property described by Items 4.3 and 4.5 of this CPU
- b. Records of inspection, maintenance, and monitoring activities as applicable regarding the existing building ventilation system or new or expanded building SVMS as described by Items 4.6 and 4.7 of this CPU.

- c. Copies of all records for all air monitoring including the laboratory's certificate of analyses and chain of custody forms, and field notes indicating the initial and final canister pressures, atmospheric pressure, weather, and temperature;
- d. A log of any modifications and/or maintenance efforts carried out to mitigate concerns identified because of the implementation of any RMM;
- e. a copy of all as-built drawings signed by a Licenced Professional Engineer; and
- f. a copy of all signed site plans including any alterations.

## **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:

- 5.1 **Property Use Restriction:**  
Refrain from using the Property for any of the following use(s): Any use other than industrial use as defined in O. Reg 153/04., and from using the groundwater beneath the Property as a potable water supply.
- 5.2 **Building Construction Restrictions:** Any building unless construction is in accordance with Item 4.7 of the CPU.
- 5.3 **Notice of Restrictions**  
Pursuant to the requirements of 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, except where noted N/A, and that every occupant complies with such provisions. 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.

- 6.1 **Site Changes Affecting Risk Management Measures**  
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, 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. In support of this work, a new risk assessment may need to be completed in

accordance with O. Reg. 153/04 and submitted to the Ministry for acceptance. An amendment to the CPU will be issued to address the changes set out in any notice received and any future changes that the Director considers necessary in the circumstances.

#### 6.2 Report Retention Requirements

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.

#### 6.3 Owner Change Notification

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

### **Part 7: Section 197 Order (Property Notice and Certificate of Requirement Registration) Requirements**

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

#### 7.1 Property Notice Requirement

For the reasons set out in the CPU and pursuant to the authority vested in me by 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.

#### 7.2 Certificate of Requirement Registration

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

#### 7.3 Verification

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.

### **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, 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.

- 8.2 An application under 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 Subsection 186(3) of the Act provides that failure to comply with the requirements of the CPU constitutes an offence.
- 8.4 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.
- 8.5 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require.
- 8.6 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.
- 8.7 Failure to comply with a requirement of the CPU by a date specified does not absolve the Owner from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 8.8 The Risk Management Measures identified in the Risk Assessment and also in Part 4 of the CPU and all the other requirements in the CPU shall commence upon the issuance of the CPU and continue in full force and effect in accordance with the terms and conditions of the CPU until such time as the Director alters or revokes the CPU.
- 8.9 The provisions of the CPU shall take precedence in the event of a conflict between the provisions of the CPU and the Risk Assessment save and except for the Part 4 Risk Management Measures.
- 8.10 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 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: Information regarding a Hearing before the Ontario Land Tribunal

With respect to those provisions relating to my authority in issuing a certificate of property use under section 168.6 and an order under section 197 of the Act:

- 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. The contact information for the Director and the Tribunal is the following:

Registrar  
Ontario Land Tribunal  
655 Bay Street, Suite 1500  
Toronto, ON, M5G 1E5  
Email: [OLT.Registrar@ontario.ca](mailto:OLT.Registrar@ontario.ca)

and

Celeste Dugas  
York Durham District Office  
Ministry of the Environment, Conservation and Parks  
230 Westney Road South, 5<sup>th</sup> Floor  
Ajax, Ontario  
Email: [Celeste.Dugas@ontario.ca](mailto:Celeste.Dugas@ontario.ca)

The contact information of the Ontario Land Tribunal and further information regarding its appeal requirements can be obtained directly from the Tribunal at:

Tel: (416) 212-6349 or Toll Free 1 (866) 448-2248 or [www.olt.gov.on.ca](http://www.olt.gov.on.ca).

Further information regarding service can be obtained from e-Laws at [www.ontario.ca/laws](http://www.ontario.ca/laws). Please note that where service is made by mail, it is deemed to be made on the fifth day after the date of mailing and choosing service by mail does not extend any timelines.

- 9.4 Unless stayed by the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.
- 9.5 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 5<sup>th</sup> Flr, 777 Bay St., Toronto, ON M7A 2J3 by the earlier of: (a) two (2) days after the day on which the appeal before the Tribunal was commenced; and (b) fifteen (15) days after service on you of a copy of the CPU.
- 9.6 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, on order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.
- 9.7 Pursuant to section 38 of the EBR, any person resident in Ontario with an interest in the CPU may seek leave to appeal the CPU. Pursuant to section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of: (a) fifteen (15) days after the day on which the notice of the decision to issue the CPU is given in the Environmental Registry of Ontario; and (b) if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the Environmental Registry of Ontario.
- 9.8 The procedures and other information provided in this Part 9 are intended as a guide. The legislation should be consulted for additional details and accurate reference. Further information can be obtained from e-Laws at [www.ontario.ca/laws](http://www.ontario.ca/laws).

Issued this \_ day of \_ 2022.

Celeste Dugas  
Director, section 168.6 of the Act



## Schedule 'A'

**Table 1: Contaminants of Concern and Property Specific Standards**

Media	Contaminants of Concern (COC)	Units	Property Specific Standards
Soil	Barium	µg/g	360
Soil	PHC F1	µg/g	32.4
Soil	PHC F2	µg/g	156
Soil	PHC F3	µg/g	3840
Soil	PHC F4	µg/g	7080
Soil	Dichloroethane, 1,1-	µg/g	1.68
Soil	Dichloroethylene, 1,1-	µg/g	0.62
Soil	Dichloroethylene, cis-1,2-	µg/g	0.08
Soil	Tetrachloroethylene	µg/g	0.32
Soil	Trichloroethane, 1,1,1-	µg/g	24
Soil	Trichloroethylene	µg/g	1.32
Groundwater	Barium	µg/L	852
Groundwater	Benzene	µg/L	2.4
Groundwater	Toluene	µg/L	2.4
Groundwater	PHC F2	µg/L	468
Groundwater	Dichloroethane, 1,1-	µg/L	2880
Groundwater	Dichloroethane, 1,2-	µg/L	2.88
Groundwater	Dichloroethylene, 1,1-	µg/L	204
Groundwater	Dichloroethylene, cis-1,2-	µg/L	192
Groundwater	Dichloroethylene, trans-1,2-	µg/L	2.4
Groundwater	Tetrachloroethylene	µg/L	37
Groundwater	Trichloroethane, 1,1,1-	µg/L	1800
Groundwater	Trichloroethane, 1,1,2-	µg/L	3.0
Groundwater	Trichloroethylene	µg/L	44
Groundwater	Vinyl Chloride	µg/L	49

**Table 2: Target Indoor Air Quality Criteria (Industrial Use)**

<b>Target Analytes</b>	<b>Target Indoor Air Concentration (<math>\mu\text{g}/\text{m}^3</math>)</b>
1,1-Dichloroethane	118
1,2-Dichloroethane	0.14
1,1-Dichloroethylene	50
Cis-1,2-Dichloroethylene	107
Trans-1,2-Dichloroethylene	43
1,1,1-Trichloroethane	715
Tetrachloroethylene	14
Trichloroethylene	0.401
Vinyl Chloride	0.406

SCHEDULE 'B'

**CERTIFICATE OF REQUIREMENT**

**s.197(2)**

***Environmental Protection Act***

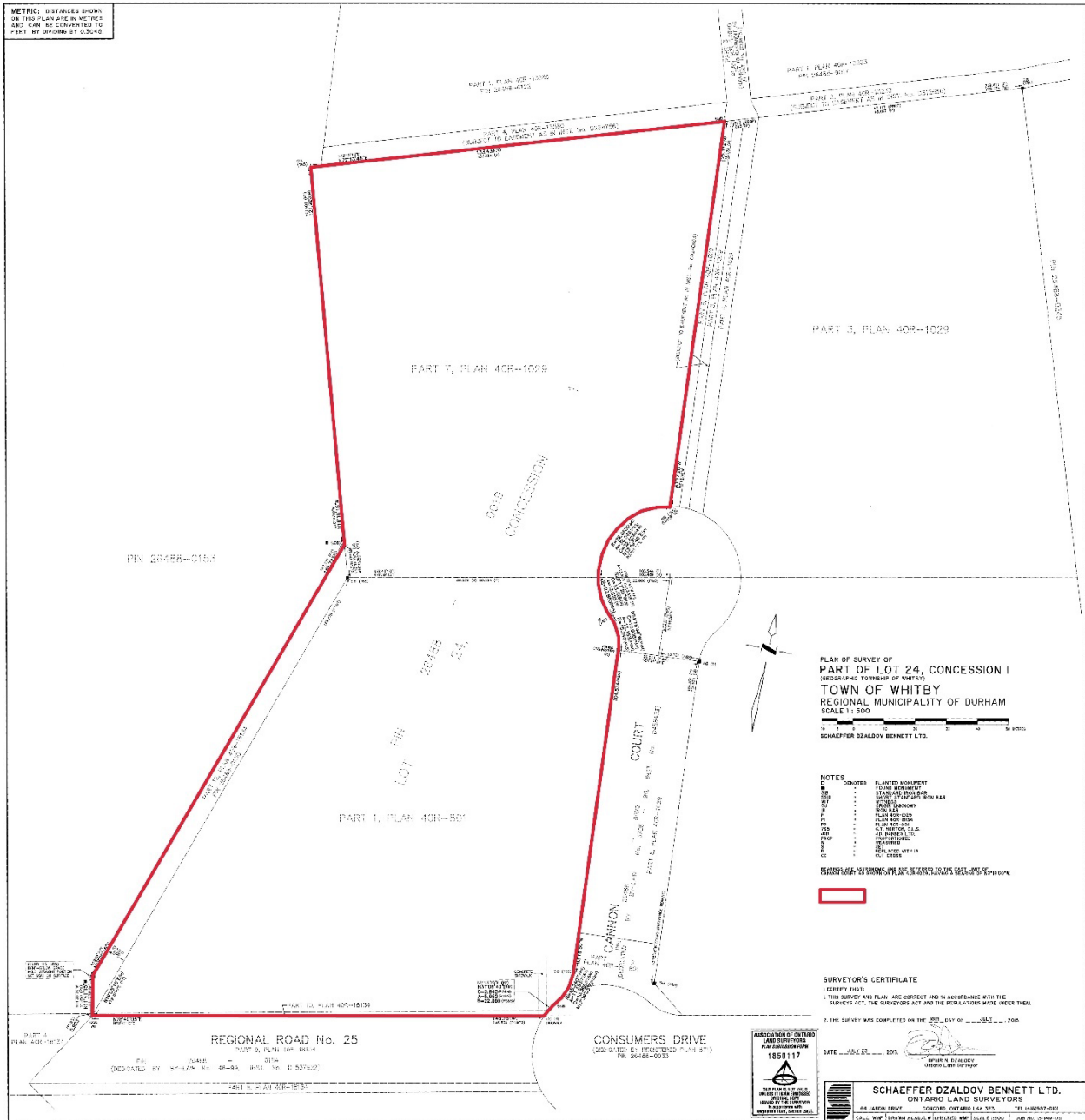
This is to certify that pursuant to Item 7.1 of Certificate of Property Use number **2678-9J2P3H-1** issued by Celeste Dugas, Director of the Ministry of the Environment, Conservation and Parks, under sections 168.6 and 197 of the *Environmental Protection Act*, on \_\_, 2022 being a Certificate of Property Use and order under subsection 197(1) of the *Environmental Protection Act* relating to the property municipally known as 4 Cannon Court, Whitby, Ontario being Part Lot 24 CON 1 TOWNSHIP OF WHITBY, Part 1, 40R801 & Part 7, 40R1029; WHITBY, being part of PIN 26488-0019 (LT); and Part Lot 24 CON 1 TOWNSHIP OF WHITBY Part 12, 40R18134; WHITBY, being all of PIN 26488-0130 (LT). (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property

**Xylem Ontario Inc.**

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**



**Figure 2: Indoor Air and Sub-slab Soil Vapour Monitoring Locations**

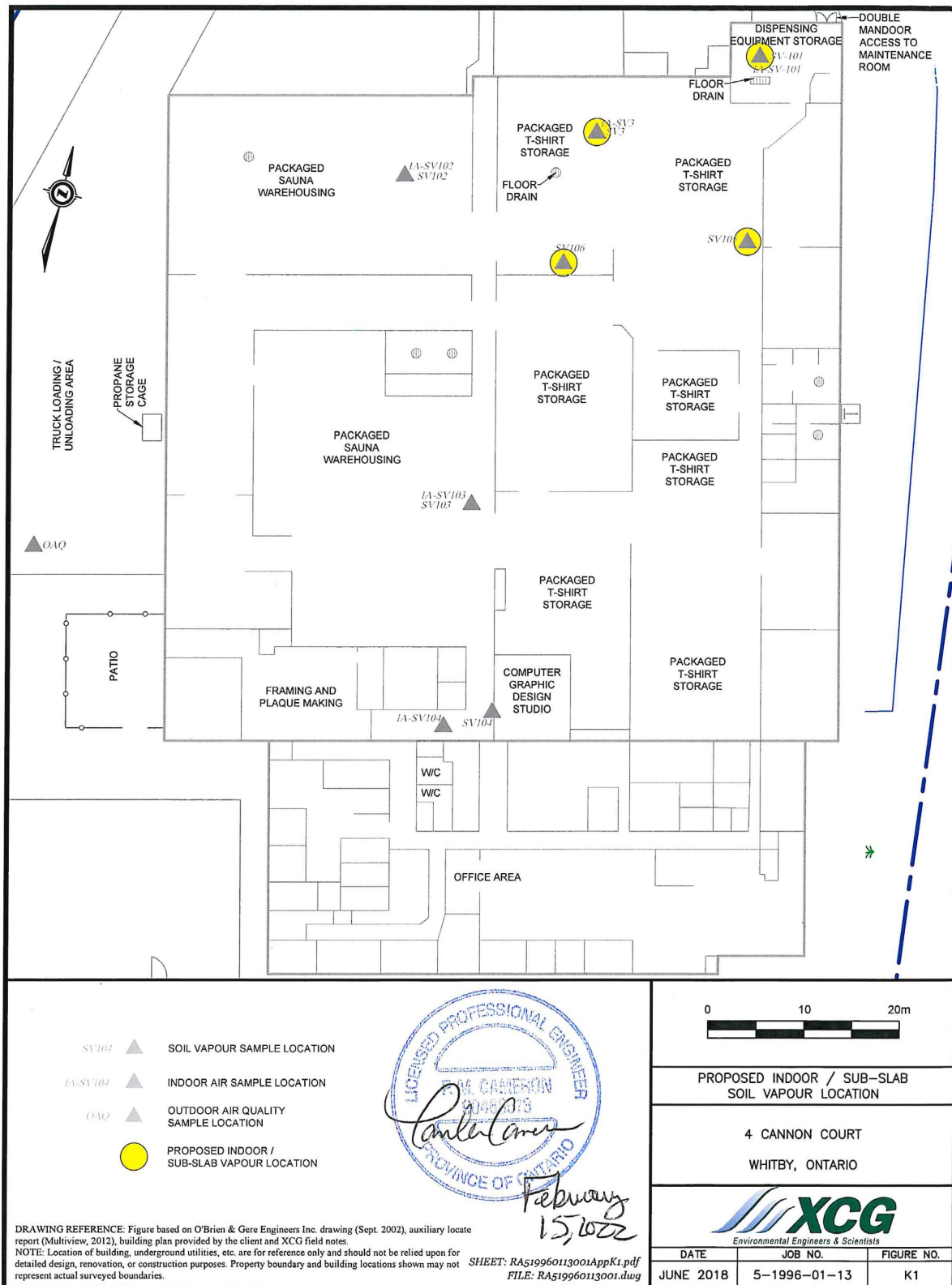
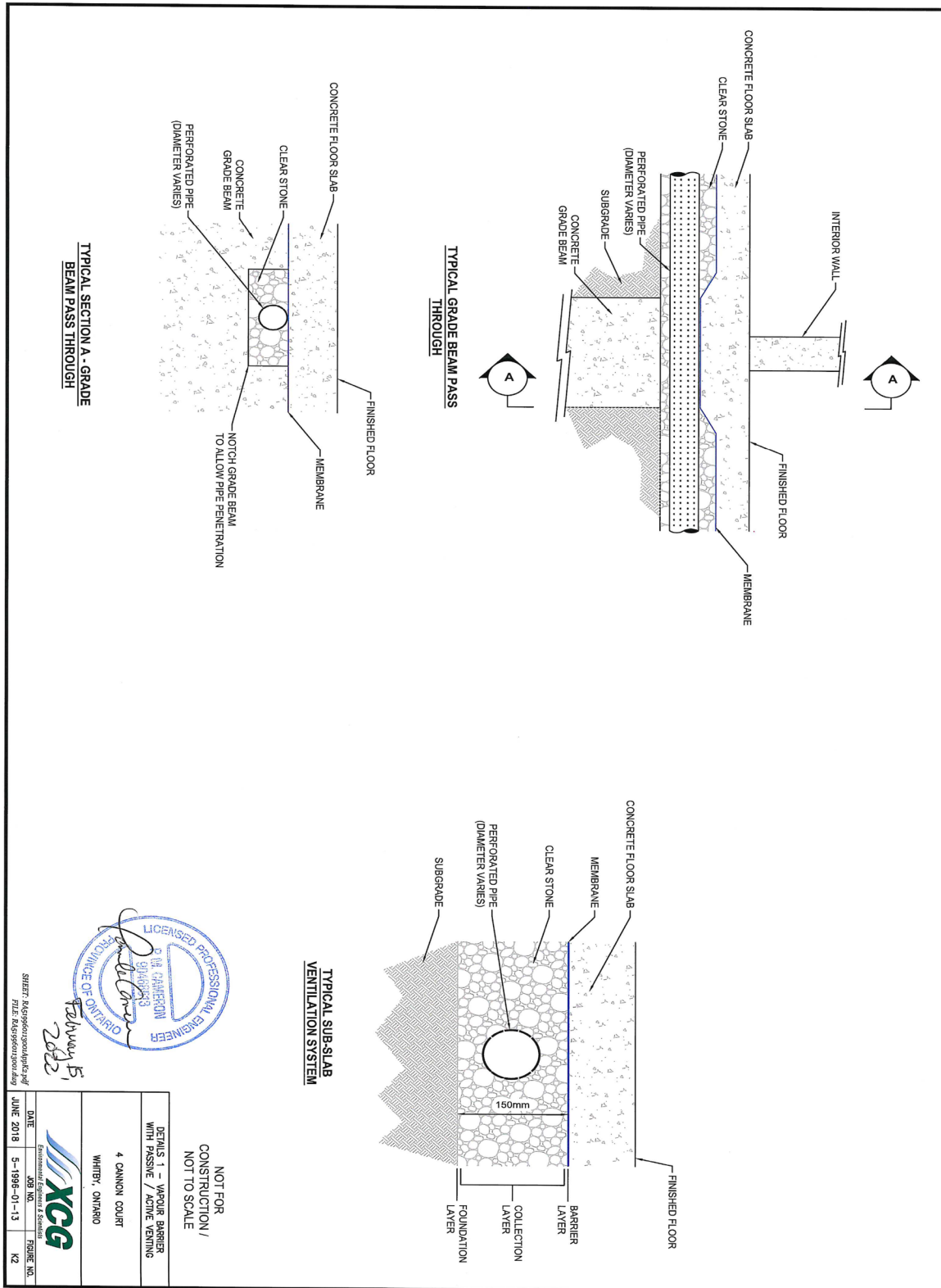


Figure 3: Vapour Barrier with Passive / Active Venting (details 1)



LICENSED PROFESSIONAL ENGINEER  
 IN THE PROVINCE OF ONTARIO  
 CIVIL ENGINEERING  
 1304013  
 2022  
 February 15, 2022

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 FILE: R:\3996\01\3\001\13\13.dwg

DATE	5-1996-01-13	FIGURE NO.	K2
			
NOT FOR CONSTRUCTION / NOT TO SCALE DETAILS 1 - VAPOR BARRIER WITH PASSIVE / ACTIVE VENTING 4 CANNON COURT WHITBY, ONTARIO			

Figure 4: Vapour Barrier with Passive / Active Venting (details 2)

