



Ministry of the Environment, Conservation and Parks

Ministère de l'Environnement, de la Protection de la nature et des Parcs

## 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 1137-C6NRPL-1  
Risk Assessment number 1137-C6NRPL

**Owner:**

Briarwood (Nwmkt) Inc.  
693 Edward Avenue  
Richmond Hill, Ontario  
L4C 3A5

(Registered Owner)

Briarwood Newmarket Limited Partnership  
by its general partner  
Briarwood (Nwmkt) Inc.

(Beneficial Owner)

**Property:** 693 and 713 Davis Drive and 35 Patterson Street, Newmarket (Property)

with a legal description as follows:

693 & 713 Davis Drive – PART LOT 1 CONCESSION 2 EAST GWILLIMBURY, PARTS 1, 2, 3, 4, 5, 6, 7 AND 8, PLAN 65R40155; SUBJECT TO AN EASEMENT OVER PARTS 1, 2, 3 AND 4 PLAN 65R40155 AS IN EG19760; SUBJECT TO AN EASEMENT OVER PARTS 3, 4 AND 6 PLAN 65R40155 AS IN B77153B; SUBJECT TO AN EASEMENT OVER PART 4 PLAN 65R40155 AS IN YR1378496; SUBJECT TO AN EASEMENT AS IN YR3450958; SUBJECT TO AN EASEMENT OVER PART 6 PLAN 65R40155 AS IN B76784B; SUBJECT TO AN EASEMENT OVER PARTS 5 AND 6 PLAN 65R40155 AS IN YR1378245; SUBJECT TO AN EASEMENT AS IN YR3567395; Town of Newmarket

35 Patterson Street – PART BLOCK A PLAN M1495 DESIGNATED PARTS 4, 5, 6 PLAN 65R38682; SUBJECT TO AN EASMENT AS IN YR3450958; Town of Newmarket

**Being all of PINs:** 693 & 713 Davis Drive –03567-0115(LT)  
35 Patterson Street – 03567-0113(LT)

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

## Summary:

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

i) CPU requirements addressed in Part 4 of the CPU, Director Requirements, are summarized as follows:

- |   |     |
|---|-----|
| a. Installing/maintaining any equipment   | Yes |
| b. Monitoring any contaminant   | Yes |
| c. Refraining from constructing any building specified  | Yes |
| d. Refraining from using the Property for any use specified   | Yes |
| e. Other: maintaining a barrier to site soils with a hard cap or fill cap, implementing a soil management plan and health and safety plan during intrusive activities, and a prohibition against new water supply wells | Yes |

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

- a. The barrier to site soils, soil management plan, health and safety plan, vapour intrusion mitigation for new buildings 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.

“Capping Soil” means soil that meets the soil criteria identified in Table 3: Full Depth Background Site Condition Standards for residential/parkland/institutional use of the Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Act published by the Ministry and dated April 15, 2011;

“Certificate of Property Use” or “CPU” means this certificate of property use bearing the number 1137-C6NRPL-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.

“Licensed Professional Engineer” means a person who holds a license, limited license or temporary license 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, described in the “Owner” section on page 1 above, and any subsequent registered or beneficial 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 license, limited license, or temporary license 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 1137-C6NRPL submitted with respect to the Property and accepted by a Director under section 168.5 of the Act on January 24, 2024, and set out in the following documents:

- “Pre-Submission Form for 693 and 713 Davis Drive 35 Patterson Street, Newmarket, Ontario”, report prepared by Terraprobe Inc., report dated September 7, 2021
- “Risk Assessment for Briarwood (Newmarket) Inc. 713 Davis Drive & 35 Patterson Street Newmarket, Ontario”, report prepared by Terraprobe Inc, dated May 17, 2022
- “Re-submission of Tier III Risk Assessment 693 and 713 Davis Drive and 35 Patterson Street, Newmarket, Ontario”, report prepared by Terraprobe Inc., dated November 17, 2022
- “Re-submission of Tier III Risk Assessment 693 and 713 Davis Drive and 35 Patterson Street, Newmarket, Ontario”, report prepared by Terraprobe Inc., dated May 19, 2023
- “Re-submission of Tier III Risk Assessment 693 and 713 Davis Drive and 35 Patterson Street, Newmarket, Ontario”, report prepared by Terraprobe Inc., dated August 14, 2023
- “Re-submission of Tier III Risk Assessment 693 and 713 Davis Drive and 35 Patterson Street, Newmarket, Ontario”, report prepared by Terraprobe Inc., dated November 16, 2023

“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, including a 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 Licensed 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 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:
  - 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: “residential use” and “commercial 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 3** of the **Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act** for coarse textured soils 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: Vapour Mitigation System (Detail A & Detail B)
  - Figure 3: Vapour Mitigation System (Detail C)
  - Figure 4: Vapour Mitigation System (Detail D)
  - Figure 5a: Typical Hard Cap Barrier – Development Lands
  - Figure 5b: Typical Fill Cap Barrier – Development Lands
  - Figure 6a: Typical Hard Cap Barrier – Conveyance Lands
  - Figure 6b: Typical Fill Cap Barrier – Conveyance Lands
  - Figure 7: Typical Utility Trench
  - Figure 8: Vapour Mitigation System
- 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 and/or organics 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 Items 4.3 to 4.13 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 Hard Cap Barrier or Fill Cap Barrier Risk Management Measure**

Cover all areas of the Property where Contaminants of Concern are present at or within 1.0 metre(s) below the soil surface such that a Hard Cap Barrier or Fill Cap Barrier is in place in those areas, so as to prevent exposure to the Contaminants of Concern at the Property, in conjunction with any existing Barriers in any other areas of the Property where Contaminants of Concern are present below the soil surface; and

- a. Hard caps on the development portion of the Property shall have a minimum depth of 300 mm consisting of a minimum of 50 mm of hot mix asphalt or concrete underlain by at least 250 mm of granular fill and/or Capping Soil, as illustrated by Figure 5a of the CPU.
- b. Fill caps on the development portion Property shall have a minimum depth of 1.0 m consisting of Capping Soil. Fill caps around deep rooting plants (including trees or deep rooting shrubs) that have a rooting depth deeper than 1.0m shall be excavated to a minimum of 1.5m below the surface, extending a minimum radius of 2.4m surrounding the root ball diameter with Capping Soil, as illustrated by Figure 5b of the CPU.
- c. Hard caps on the conveyance portion of the Property shall include 150mm of hot mix asphalt, concrete, pavers or equivalent, underlain by a minimum of 500mm granular or equivalent material and geotextile material above Capping Soil, with a combined barrier thickness of at least 2m, as illustrated by Figure 6a of the CPU.
- d. Fill caps on the conveyance portion Property shall have a minimum depth of 2.0 m consisting of a combination of 150mm of landscape barrier such as rip-rap, granular material, or topsoil, underlain by a geotextile over Capping Soil, as illustrated by Figure 6b of the CPU.
- e. Refrain from growing gardens with edible plants or plants with edible produce on the Property unless plants grown in raised beds or planters;
- f. Before commencing development of all or any part of the Property install fencing and implement dust control measures for any of the Property requiring covering, but which has



not been covered, to prevent exposure to the Contaminants of Concern at the property. Fencing and dust control measures shall be maintained until such time as the hard cap barrier or fill cap Barrier (s) are installed.

#### 4.4 Inspection, Maintenance, and Reporting Requirements for all Barriers

- a. Prepare and implement a written inspection and maintenance program, prepared by a Qualified Person and to be retained by the Owner, and to be available for inspection upon request by a Provincial Officer, 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 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 that the Barrier has been properly repaired;
  - 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 are:
  1. delivered to the Owner before use of all or any part of the Property begins, or within 90 days following completion of covering of all or any part of the Property, whichever is earlier; and
  2. updated within 30 days following making any alteration to the program.
- b. Prepare a site plan of the entire Property, prepared by a Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, showing the Property, any fencing, and the location, type and design of each Barrier at the Property, including cross-sectional drawings of the Barrier showing its design and vertical and lateral extent; which are,
  - i. delivered to the Owner before use of all or any part of the Property begins, or within 90 days following completion of covering of all or any part of the Property, whichever is earlier; and
  - ii. updated and delivered to the Owner within 30 days following making any alteration to the location, design or extent of the Barrier, or other relevant feature shown on the site plan.

#### 4.5 Soil and Groundwater Management Plan:

A written property specific soil and groundwater management plan shall be prepared and implemented during all Intrusive Activities potentially in contact with or exposing Contaminants of Concern in soil or groundwater on the Property, as described in Section 3.3 of Appendix J of the RA. The soil management plan for the Property shall be 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 prevent exposure to or uncontrolled movement or discharge of the Contaminants of Concern in soil or ground water at the Property, including, at a minimum:

- a. procedures and timing for implementing the plan, including the supervision of persons implementing the plan; and
- b. measures to control dust and prevent tracking of soil by vehicles and persons from the Property, including the cleaning of equipment and vehicles; and
- c. measures, in addition to any applicable measures specified in O. Reg. 153/04 and O. Reg. 406/19, 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. is Capping Soil;
    2. meets the Property Specific Standards for COCs and applicable Site Condition Standards for other analysed parameters; or
    3. exceeds the Property Specific Standards for COCs or applicable Site Condition Standards for other analysed parameters; or
    4. meets the applicable Excess Soil Quality Standards for potential re-use sites;
  - ii. 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
  - iii. stockpiling of excavated soil and any soil brought to the Property in separate designated areas that:
    1. reflect the distinctions described in parts (c) i and ii; and
    2. have been lined and covered, as appropriate, to prevent uncontrolled movement or discharge of the Contaminants of Concern; and
    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; and
- d. measures to manage storm water and any ground water from dewatering at the Property to prevent the movement of entrained soil and Contaminants of Concern within and away from the Property, including, in addition to any applicable measures specified pursuant to other applicable law or other instruments, measures such as silt fences, filter socks for catch-basins and utility covers, and provision for discharge to a sanitary sewer or to other approved treatment if needed; and
- 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 and O.Reg. 406/19 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. management activities for any ground water from dewatering;
  - viii. names and contact information for the Qualified Persons and on-site contractors involved in the Intrusive Activities;
  - ix. 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
  - x. any complaints received relating to the Intrusive Activities, including the soil, storm water and any ground water management activities;
- and which is,
- 1. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
  - 2. updated and delivered to the Owner within 30 days following making any alteration to the plan.

#### 4.6 Health and Safety Plan:

In addition to any requirements under the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, prepare and implement a written health and safety plan for the Property, prepared by a Competent Person (as defined by OSHA, 1990) 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 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:

- a. the procedures and timing for implementing the plan, including the supervision of persons implementing the plan; and
- b. all relevant information concerning the presence of, human exposure to, and risk posed by, the Contaminants of Concern through dermal contact, soil or ground water ingestion and inhalation of soil particles or vapour, any non-aqueous phase liquid impacted groundwater, and concerning any biogenic gases such as methane that may be present at the Property including information in the Risk Assessment; and
- c. all relevant information, measures and procedures concerning protection of the persons from exposure to the 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; and

- d. 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; and
- e. 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
- f. 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,

- 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 plan.

#### 4.7 Building with Storage Garage (continuous 3.9 Litres/second of ventilation) Risk Management Measure.

Refrain from constructing any Building on the Property unless the Building includes a Storage Garage, and:

- a. the Storage Garage is constructed at or below the Grade of the Building;
- b. the Storage Garage area covers the entire Building Area at Grade;
- c. the Storage Garage complies with all applicable requirements of the Building Code, such as the provisions governing:
  - i. design of a mechanical ventilation system as set out in Division B, Article 6.2.2.3. (Ventilation of Storage and Repair Garages) of the Building Code;
  - ii. interconnection of air duct systems as set out in Division B, Sentence (2) of Article 6.2.3.9. (Interconnection of Systems) of the Building Code;
  - iii. air leakage as set out in Division B, Section 5.4. (Air Leakage) of the Building Code; and
  - iv. the mechanical ventilation system for the Storage Garage is designed to provide, and provides at all times, a continuous supply of outdoor air at a rate of not less than 3.9 litres per second for each square metre of floor area, as set out in table 7.1 of the Risk Assessment.

#### 4.8 Future Residential Buildings – Vapour Mitigation Risk Management Measures:

Refrain from constructing any residential Building on, in or under the Property unless the Building contains a passive soil vapour intrusion mitigation system (SVIMS) consistent with section 3.1.2 of Appendix J of the Risk assessment, and including at a minimum:

- a. The Property shall include the design and installation of a concrete caisson wall, or equivalent waterproofing system along the Property perimeter.

- b. All Building(s) on the Property include the sealing of foundation penetrations and sumps, a Vapour Barrier, Sub Slab Vapour Venting Layer and Venting Components as described in the Risk Assessment.
- c. The Owner shall retain a copy of all Vapour Barrier, Sub Slab Vapour Venting Layer and Venting Component as-built drawings signed by a Professional Engineer along with the proposed testing and performance requirements for the Vapour Barrier, Sub Slab Vapour Venting Layer and Venting Component of any building on the Property for inspection by a Provincial Officer.
- d. An inspection and maintenance program shall be prepared and implemented to ensure the continuing integrity of the vapour mitigation system. A final inspection for cracks, holes or penetrations in the below grade walls and floors shall be conducted before any finishes are applied to the walls and floors and prior to occupancy and shall be recorded in a logbook. Any holes, cracks or penetrations shall be repaired and sealed immediately and recorded in a logbook.
- e. The venting layer and venting components, inspections of the venting layer and venting components, where visually accessible, will be made for potential breaches. The inspection program shall include semi-annual (every six months) inspections as or as recommended as part of the system design and monitoring and maintenance program, and any deficiencies shall be repaired forthwith. The inspection results shall be recorded in a logbook maintained by the Owner and available upon request by a Provincial Officer.
- f. Soil vapour probes shall be constructed in the gravel sub-slab venting layer as illustrated in Figure 4 of the CPU with construction and measures taken to ensure a gas tight seal for the probes recorded in a logbook.
- g. Quality assurance and quality control measures shall be implemented during the construction of the SVIMS
- h. The sub-slab vapour monitoring program shall include two locations within the underground parking garage as described in Figure 8 of the CPU. All vapour monitoring programs shall be done in accordance with USEPA Method TO-15 for the Contaminants of Concern listed in Table 2 of Schedule 'A' of the CPU. The air monitoring program shall be carried out as follows:
  - i. The sub-slab soil vapour monitoring shall be carried out on a quarterly basis (every three months) and seasonally in winter, spring and summer thereafter such time as the Director, upon application by the Owner, has reviewed the data available and either alters or revokes the CPU requirement.
  - ii. If the monitoring result for any Contaminants of Concern exceeds Table 2 of Schedule 'A', the Owner shall notify the Director within 5 business days of receipt of the result, of the exceedance along with a copy of the laboratory's certificate of analysis and chain of custody, field notes indicating the initial and final canister pressures, atmospheric pressure, weather, and temperature.
  - iii. In the event of an exceedance of the Table 2 of Schedule 'A' trigger levels, resampling shall be undertaken within 15 business days. If this confirmatory result

meets the trigger levels, regular monitoring will resume in accordance with Item 4.8h. of the CPU. Where the confirmatory sample continues to exceed the trigger levels, a contingency plan prepared by a Licensed Professional Engineer shall be prepared and submitted to the director within 30 days of the receipt of the confirmatory result.

- iv. The Owner shall keep a copy of all sampling data and records available for inspection by a Provincial Officer upon request.
- i. Within 90 days of the installation of the VMS for a Building, the Owner shall submit to the Director as-built drawings and detailed design specifications of the vapour barrier and VMS, 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.

#### 4.9 Groundwater Supply Well Restriction

Upon issuance of the CPU, the Owner shall take all actions necessary or advisable to prevent any use of ground water in or under the Property as a potable water source. The Owner shall,

- a. Refrain from using ground water in or under the Property as a potable source of water; and
- b. Except, as may be required for continued use as a monitoring well, as defined in the Ontario Water Resources Act, R.S.O. 1990, c. O.40 (OWRA):
  - i. properly abandon on the Property any wells, as described or defined in the OWRA, according to the requirements set out in Regulation 903 of the Revised Regulations of Ontario 1990: (Wells), made under the OWRA; and,

#### 4.10 Groundwater Monitoring Program

- a. The groundwater monitoring program described in Section 6.5 of Appendix J of the Risk Assessment shall commence within ninety (90) days of receipt of the CPU on a semi-annual basis (every six months) for two years until such time as the Director, upon application by the Owner, has reviewed the data available and either amends or revokes the CPU requirement. The groundwater monitoring shall be carried out as follows:
  - i. The groundwater monitoring program shall include wells MW201, MW202, MW203, MW204 and MW205, and measurement of water levels and groundwater quality parameters, with sampling according to Ministry's Protocol for Analytical Methods Used in the Assessment of Properties under Part XV.1 of the Environmental Protection Act (MOE, 2004b) as amended from time to time.
  - ii. The Owner shall keep a copy of all sampling data available for inspection by a Provincial Officer upon request.
  - iii. Should a measured groundwater concentration exceed the Property Specific Standards in Table 1, Schedule A, the owner shall notify the ministry within five business days. Resampling will be completed within 30 business days and provided

to the ministry within 5 business days. Where confirmatory sampling continues to exceed the Property Specific Standards, the Owner shall develop and submit to the ministry a detailed contingency plan within 30 business days of the second exceedance as described in Section 7.2.4 of Appendix J.

#### 4.11 Utility Trenches and Trench Plugs:

New sub-surface service connections and utilities on the Site shall be constructed to minimize the potential for groundwater and/or subsurface vapour migration, as illustrated in Figure 7, and include:

- a. Trench plugs, consisting of either clay or aggregate/bentonite composite materials, or conforming to applicable Ontario Provincial Standard Drawing 802.095, a minimum of 1 m thick measured along the pipe and should completely replace the embedment and backfill material surrounding the service. The trench plugs should be placed at regular intervals, extending 300mm into the trench wall; and
- b. Trenches will be completed with Capping Soil or granular material, with a minimum 0.5m depth below the utility and
  - i. with a diameter of at least 1.2m for utilities less than 0.9m in diameter, or
  - ii. with a diameter of at least 2.6m for utilities larger than 0.9m diameter.

#### 4.12 Intrusive Activities Caution:

The Owner shall ensure that all individuals/contractors undertaking Intrusive Activities which have the potential to interfere with the Barriers to Site soils, and/or soil vapour intrusion mitigation system described by the CPU are made aware of the need to take appropriate precautions to ensure the operation and integrity of these measures. If the Hard Cap, Fill Cap, Vapour Barrier or SVIMS is damaged at any point, the Owner shall ensure that it is repaired as soon as practicable.

#### 4.13 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, at a minimum:

- a. A copy of all records related to the inspection and maintenance program for the barrier to site soils;
- b. A copy of all records related to the soil management plan on the Property described by Item 4.5 of this CPU
- c. Records of operation, inspection, maintenance, and monitoring activities as applicable regarding the future building SVIMS as described by Item 4.8 of this CPU.

- d. Copies of all records for all indoor air, soil vapour and/or groundwater monitoring including the laboratory's certificate of analyses and chain of custody forms, and field notes;
- e. A log of any modifications and/or maintenance efforts carried out to mitigate concerns identified because of the implementation of any RMM;
- f. A copy of all as-built drawings signed by a Licensed Professional Engineer; and
- g. 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 type of property use specified in O. Reg 153/04 which is more sensitive than Residential Use and Commercial Use as specified in O. Reg 153/04.
- 5.2 **Building Construction Restrictions:** Any building unless construction is in accordance with Items 4.7 or 4.8 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.

8.11 Where there is more than one Owner each person is jointly and severally liable to comply with any requirements of the CPU unless otherwise indicated.

## **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

District Manager  
York Durham District Office  
Ministry of the Environment, Conservation and Parks  
230 Westney Road South, 5<sup>th</sup> Floor  
Ajax, Ontario  
Email: [Environment.YorkDurham@ontario.ca](mailto:Environment.YorkDurham@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 [Date] day of [Month], 2024.

Celeste Dugas  
Director, section 168.6 of the Act

**Schedule 'A'**

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

<b>Media</b>	<b>Contaminants of Concern (COC)</b>	<b>Units</b>	<b>Property Specific Standards</b>
Soil	Hexane (n)	µg / g	105.9
Soil	Benzene	µg / g	18.24
Soil	Toluene	µg / g	7.81
Soil	Xylene Mixture	µg / g	34.08
Soil	PHC F1	µg / g	524.4
Soil	PHC F2	µg / g	240
Groundwater	Dichloroethane, 1,2-	µg / L	339.6
Groundwater	Dichloroethylene, cos-1,2-	µg / L	6.86
Groundwater	Hexane (n)	µg / L	214
Groundwater	Methyl tert-Butyl Ether (MTBE)	µg / L	2472
Groundwater	Trichloroethylene	µg / L	3.672
Groundwater	Vinyl Chloride	µg / L	10.48
Groundwater	Benzene	µg / L	11,976
Groundwater	Toluene	µg / L	1860
Groundwater	Ethylbenzene	µg / L	1332
Groundwater	Xylene Mixture	µg / L	2832
Groundwater	PHC F1-BTEX	µg / L	3648
Groundwater	PHC F2	µg / L	864

**Table 2: Sub-Slab Vapour Target Levels for Volatile COCs ( $\mu\text{g}/\text{m}^3$ )**

<b>Contaminant of Concern</b>	<b>Residential Health-Based Indoor Air Criteria (<math>\mu\text{g}/\text{m}^3</math>)</b>	<b>Sub-Slab Vapour Targets (<math>\mu\text{g}/\text{m}^3</math>)</b>
1,2-Dichloroethane	4.28 E-02	2.14 E+00
Hexane (n)	5.21 E+02	2.61 E+04
Methyl tert-Butyl Ether (MTBE)	4.28 E+00	2.14 E+02
Trichloroethylene	2.71 E-01	1.36 E+01
Vinyl Chloride	1.26 E-01	6.3 E+00
Benzene	5.06 E-01	2.53 E+01
Ethylbenzene	4.17 E+02	2.09 E+04
Toluene	1.04 E+03	5.2 E+04
Xylene Mixture	1.46 E+02	7.3 E+03
PHC-F1	2.49 E+03	1.25 E+05
Aliphatic C6-C8	9.59 E+03	4.8 E+05
Aliphatic C>8-C10	5.21 E+02	2.61 E+04
Aromatic C>8-C10	1.04 E+02	5.2 E+03
PHC-F2	4.71 E+02	2.36 E+04
Aliphatic C>10-C12	5.21 E+02	2.61 E+04
Aliphatic C>12-C16	5.21 E+02	2.61 E+04
Aromatic C>10-C12	1.04 E+02	5.2 E+03
Aromatic C>12-C16	1.04 E+02	5.2 E+03

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 1137-C6NRPL-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 [DATE, 2023] being a Certificate of Property Use and order under subsection 197(1) of the *Environmental Protection Act* relating to the property municipally known as, 693 and 713 Davis Drive and 35 Patterson Street, Newmarket, Ontario, being all of PINs: 03567-0115(LT) and 03567-0113(LT), (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property,

Briarwood (Nwmkt) 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

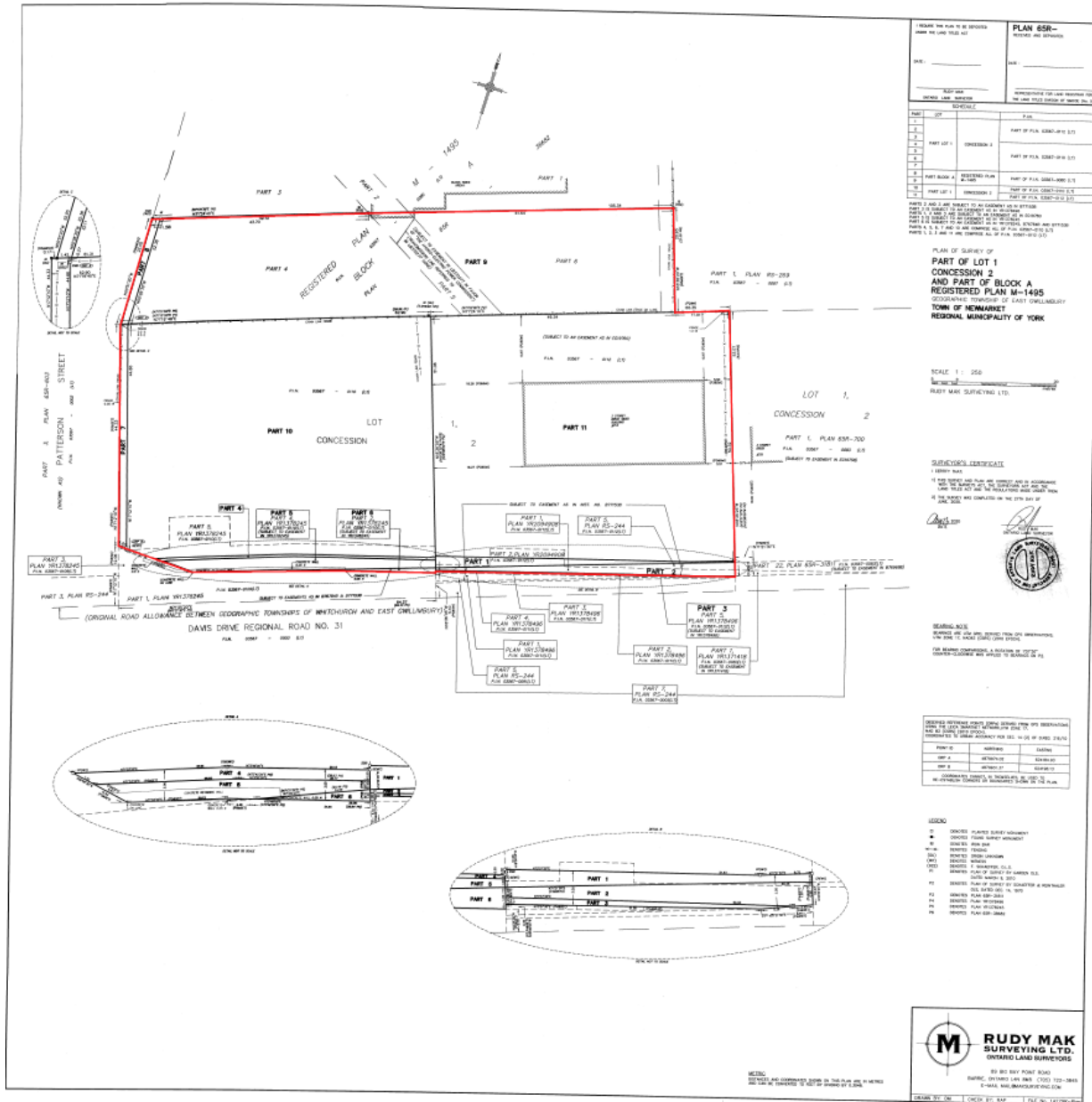




Figure 2: Vapour Mitigation System (Detail A & Detail B)

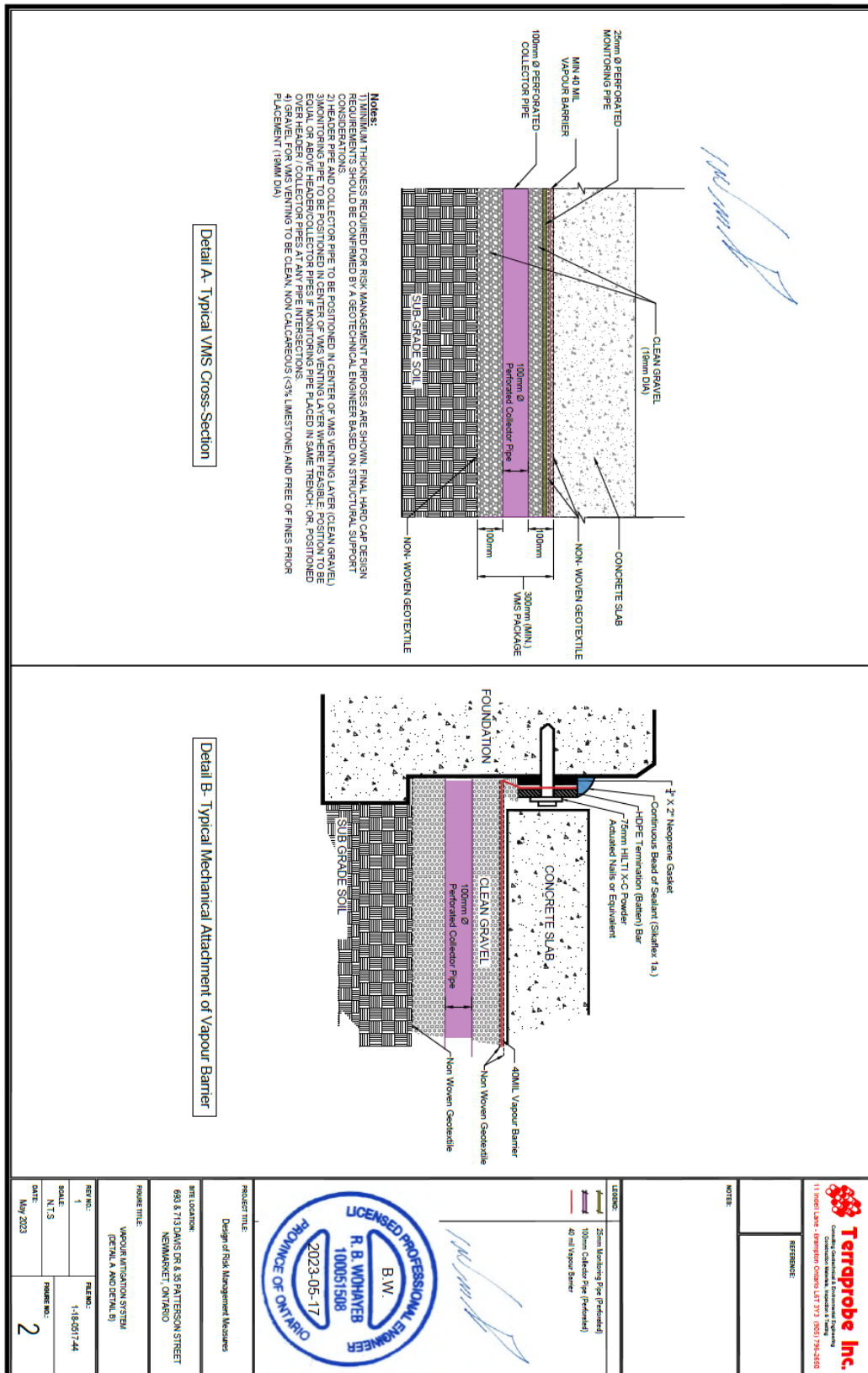


Figure 3: Vapour Mitigation System (Detail C)

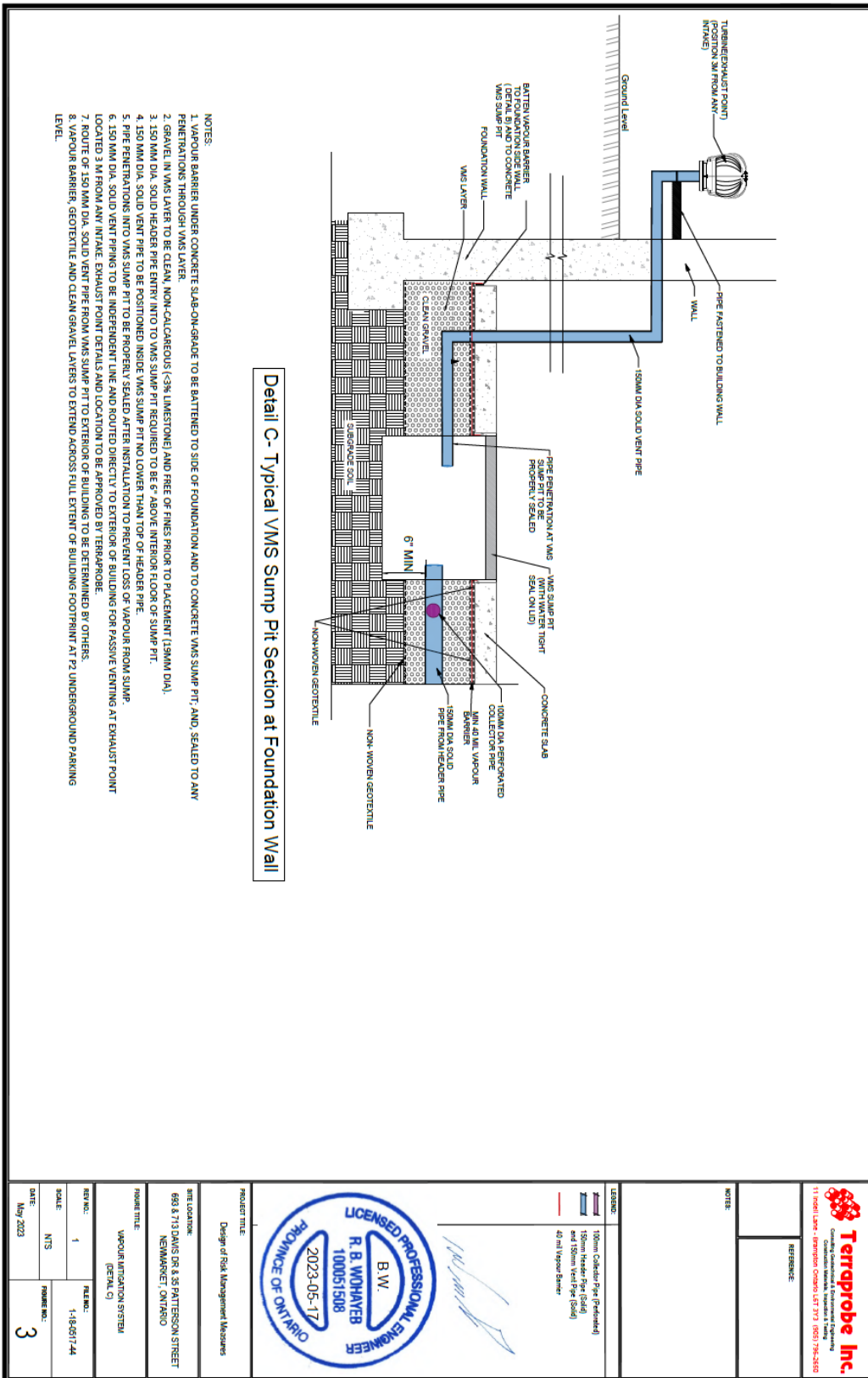
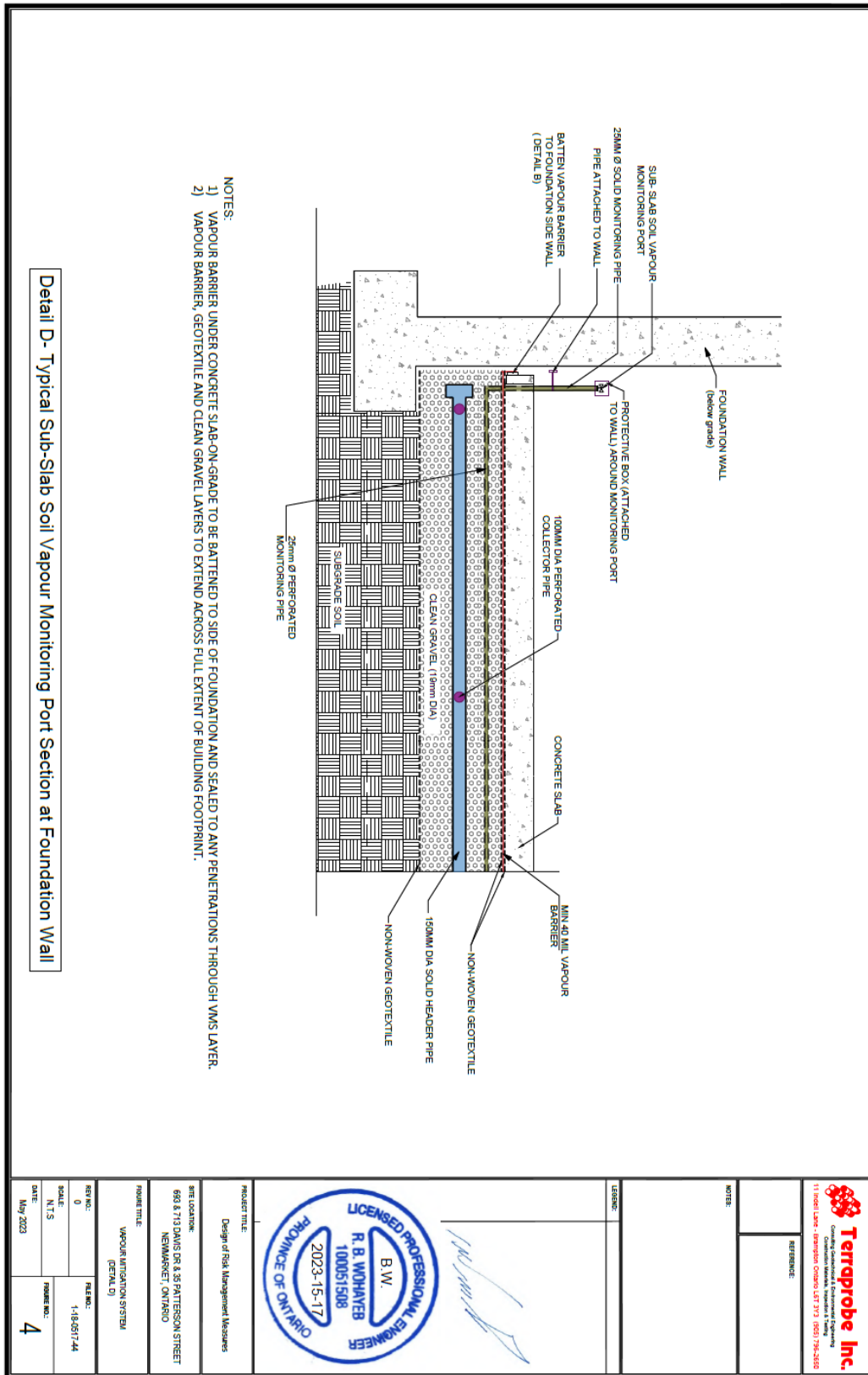


Figure 4: Figure 4: Vapour Mitigation System (Detail D)



**Terraprobe Inc.**  
 Consulting Geotechnical & Environmental Engineering  
 11 Chapel Lane - Scarborough, Ontario M1V 5G9 (416) 291-2450

**LICENSED PROFESSIONAL ENGINEER**  
 B.W.  
 R.B. WOHAVEB  
 100051508  
 2023-15-17  
 PROVINCE OF ONTARIO

PROJECT TITLE	Design of Risk Management Measures		
SITE LOCATION	698 & 713 DAVENPORT DR & 25 PATTERSON STREET NEWMARKET, ONTARIO		
PROJECT TITLE	VAPOUR MITIGATION SYSTEM (DETAIL D)		
REV NO.	0	FILE NO.	1-18-2517-24
SCALE	N.T.S	FRAME NO.	4
DATE	May 2023		



Figure 5b: Typical Fill Cap Barrier – Development Lands

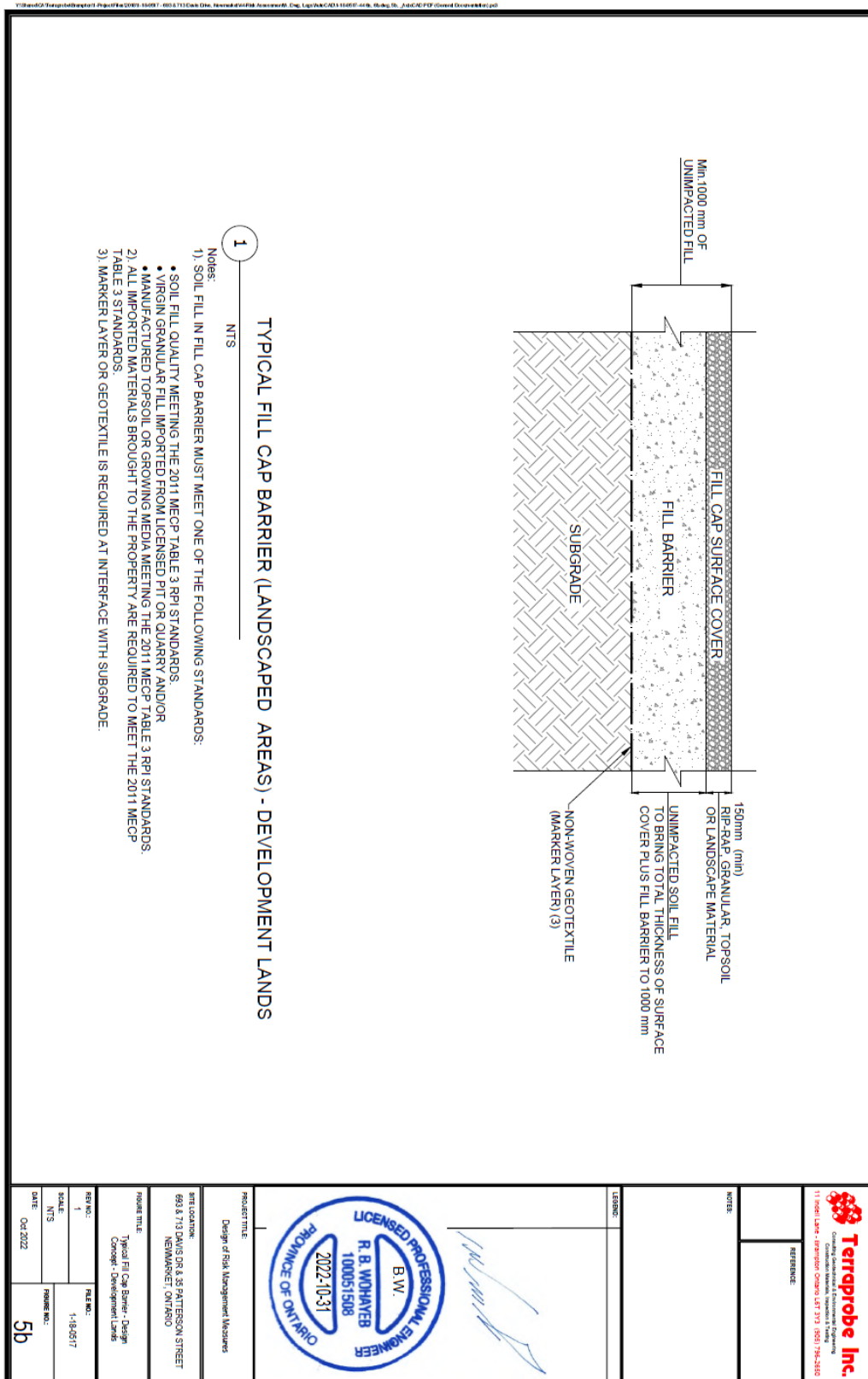


Figure 6a: Typical Hard Cap Barrier – Conveyance Lands

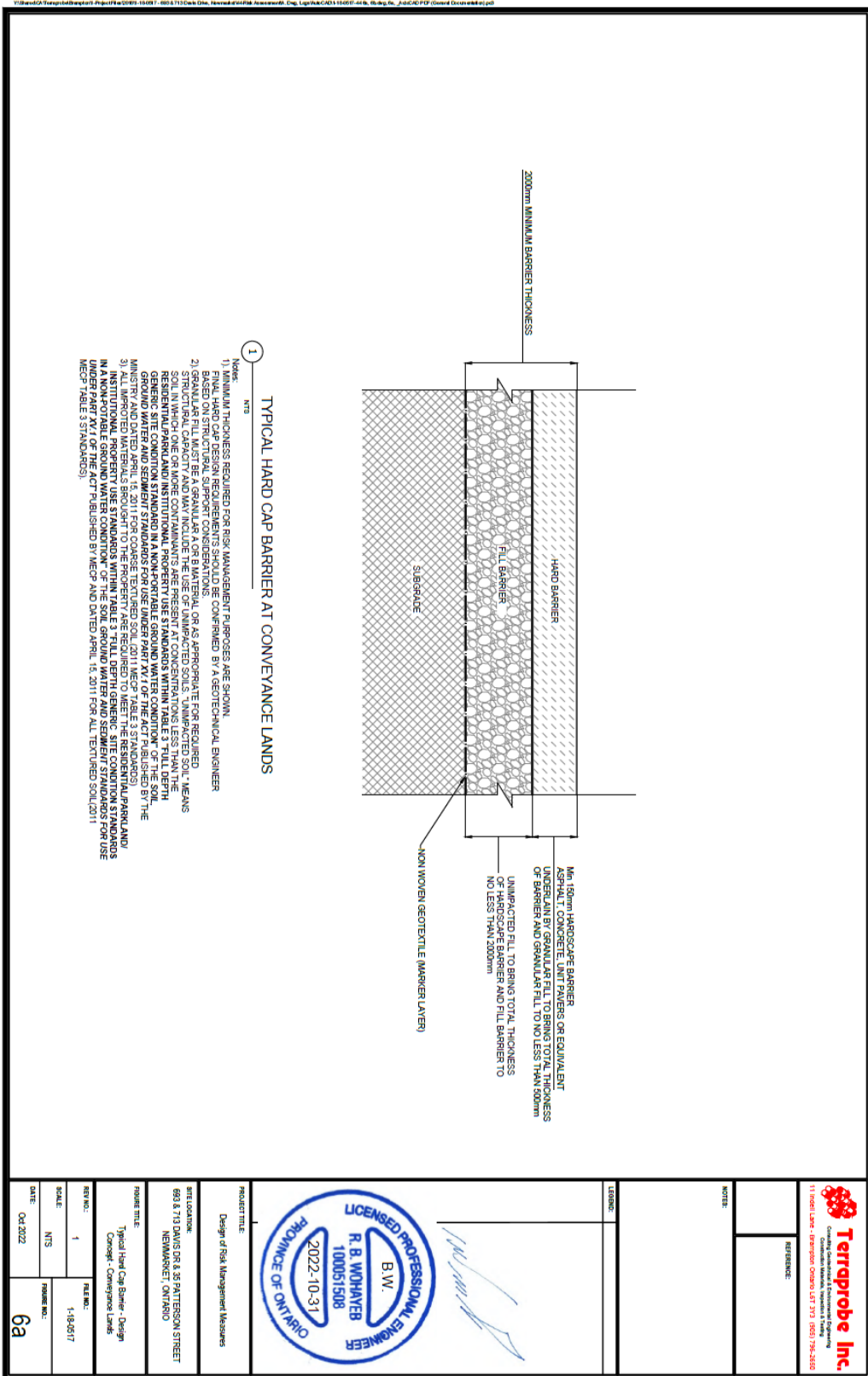




Figure 6b: Typical Fill Cap Barrier – Conveyance Lands

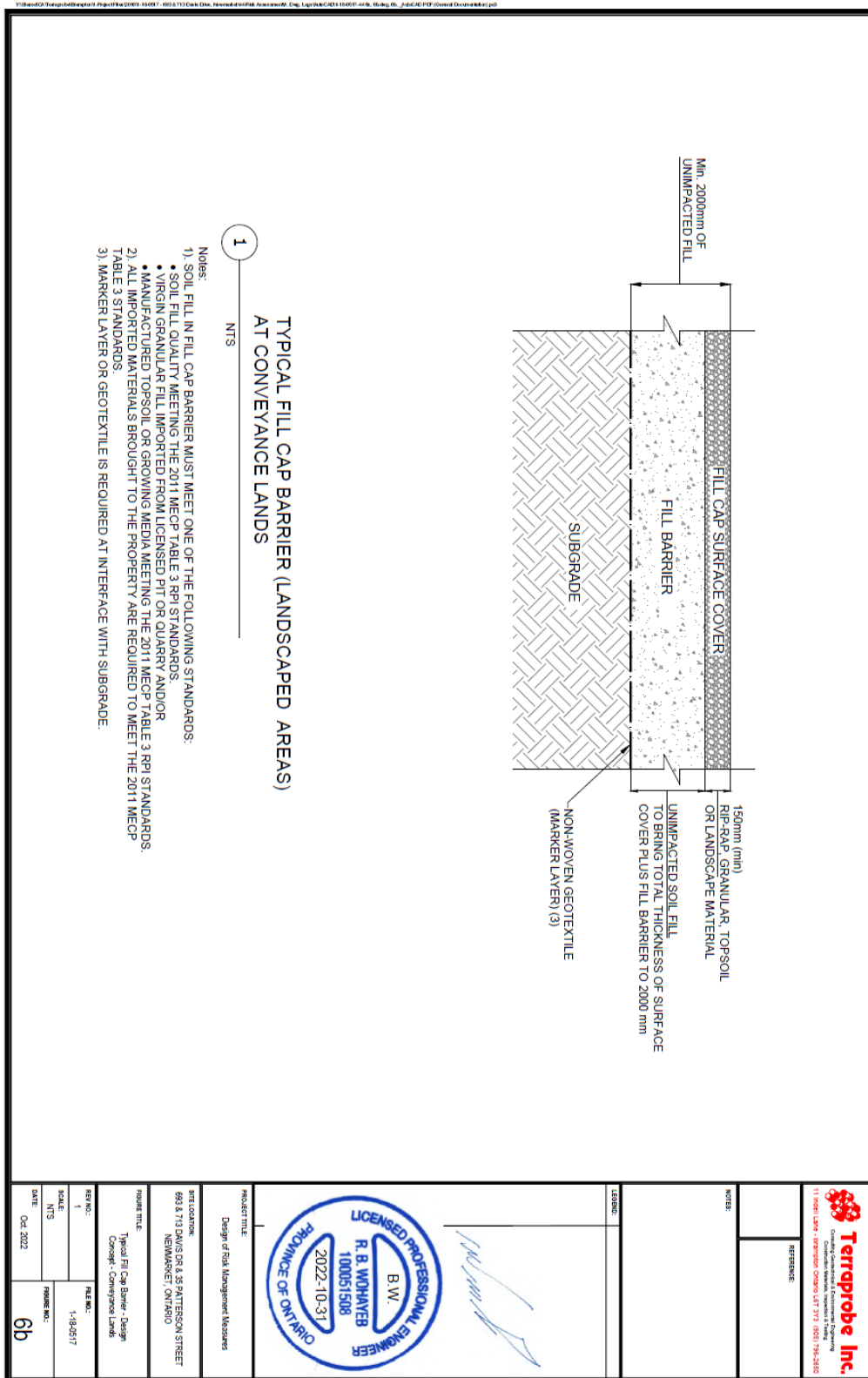






Figure 8: Vapour Mitigation System

