
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: 7882-BM5LHV01
Risk assessment number: 4237-8E4SD6

Owner:

(Owner)

1028888 Ontario Inc.

520 Queen Street South
Kitchener, ON, N2G 1X1

Property:

(Property)

851 King Street East, Kitchener

With a Legal Description of:

**Part Lots 2-3, Plan 404 Kitchener, Part Lot 206 Streets & Lanes Kitchener Part 1 Plan 58R-4633;
S/T 1033645, 353829E; Kitchener.**

Being all of PIN: 22506-0006 (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.

Risk Management Measures (RMMs) that are required to be implemented are found in Part 4 of the CPU, Director Requirements. Key RMMs specified in Part 4 include, but are not limited to:

- Installing, inspecting and maintaining any new hard cap, fill cap and or shallow soil cap barriers on the areas of the Property as identified Schedule 'A': Figure 2- Locations Requiring Soil Barrier RMMs (**Figure 2**) as per Section 4.2 (a) and 4.2 (e) of this CPU;
- Prohibiting the construction of any Building (s) on the Property unless the new Building (s) is constructed as specified in Section 4.2 (f) of this CPU;

- Implementing a soil and groundwater management plan during any intrusive activities undertaken on the Property potentially in contact with COCs in soil and groundwater that have been identified in the RA at concentrations that exceed the Applicable Site Condition standards as per Section 4.2 (p) of this CPU.
- Implementing a health and safety plan during any intrusive activities undertaken on the Property potentially in contact with COCs in soil and groundwater that have been identified in the RA at concentrations that exceed the applicable site condition standards as specified in Section 4.2 (q) of this CPU;
- Prohibiting the planting of fruit and vegetables for consumption, other than those planted in above ground containers such that they are isolated from the subsurface conditions as per Section 4.2 (r) of this CPU;
- Prohibiting the use of groundwater in on or under the Property as per Section 4.3 of this CPU; and,
- Registering a certificate on the Property title in accordance with Section 197 of the Environmental Protection Act and that before dealing with the Property in any way, a copy of the CPU is to be given to any person who will acquire an interest in the Property as per Sections 4.6, 4.7 and 4.8 of this CPU.

Part 1: Interpretation

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

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

- (a) impairment of the quality of the natural environment for any use that can be made of it,
- (b) injury or damage to property or to plant or animal life,
- (c) harm or material discomfort to any person,
- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of property, and
- (h) interference with the normal conduct of business;

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

“Applicable Site Condition Standards” and “ASCS” means soil and groundwater that meets the soil or groundwater criteria identified in **Table 2: Full Depth Generic Site Condition Standards in a Potable Ground Water Condition (coarse textured soils)** 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;

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

“Building Code” means Ontario Regulation 332/12 (Building Code) as amended to January 1, 2015, made under the *Building Code Act*, 1992, S.O. 1992, c. 23;

“Capping Soil” means soil that meets the soil criteria identified in Table 2: Full Depth Generic Site Condition Standards in a Potable Groundwater Condition (coarse textured soils) 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;

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

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

“CPU” means this Certificate of Property Use Number No. **7882-BM5LHV01** as may be amended from time to time;

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

"EBR" means the *Environmental Bill of Rights, 1993*, S.O. 1993, c.28;

"Environmental Compliance Approval" has the same meaning as set out in the Act;

"Licensed Professional Engineer" means a person who holds a licence, limited licence or temporary licence under the *Professional Engineers Act*, R.R.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 **1028888 Ontario Inc.**, the current owner of the Property, and any subsequent Property Owner (s);

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

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

"Property Specific Standards" and "PSS" means the property specific standards established for the Contaminants of Concern set out in the Risk Assessment and in Section 3.2 of the CPU;

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

"Qualified Person" means a person who meets the qualifications prescribed in O. Reg. 153/04;

"Risk Assessment" and "RA" means the Risk Assessment No. **4237-8E4SD6** accepted by the Director on **November 25, 2019** and set out in the following final documents:

- Risk Assessment, 851 King Street East, 432 Charles Street East and 5 Stirling Avenue South, Kitchener, Ontario. Prepared by Conestoga-Rovers & Associates, dated May 2014;
- Risk Assessment, 851 King Street East, 432 Charles Street East and 5 Stirling Avenue South, Kitchener, Ontario. Prepared by Conestoga-Rovers & Associates, dated January 2015;
- Risk Assessment, 851 King Street East, 432 Charles Street East and 5 Stirling Avenue South, Kitchener, Ontario. Prepared by Conestoga-Rovers & Associates (GHD Limited), dated November 12, 2015;
- Risk Assessment, 851 King Street East, 432 Charles Street East, and 5 Stirling Avenue South, Kitchener, Ontario. Prepared by Conestoga-Rovers & Associates (GHD Limited), dated July 2016;
- Risk Assessment Report for 432 Charles Street East, 851 King Street East and 5 Sterling Avenue South, Kitchener, Ontario. Prepared by Conestoga-Rovers & Associates (GHD Limited), dated October 18, 2018; and,
- Risk Assessment, 851 King Street East, 432 Charles Street East, and 5 Stirling Avenue South, Kitchener, Ontario. Prepared by Conestoga-Rovers & Associates (GHD Limited), dated July 2019.

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

“Risk Management Plan” and “RMP” means the risk management plan detailed in the Memorandum: Final Risk Management Plan for Risk Assessment - 851 King Street East, 432 Charles Street East and 5 Sterling Avenue South, Kitchener prepared by GHD dated April 13, 2020 along with Appendix L: Soil Cover RMM and Appendix K: Soil Vapour Mitigation RMM which are attached to the Risk Assessment; and,

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

Part 2: Legal Authority

- 2.1 Section 19 of the Act states that a certificate of property use is binding on the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.
- 2.2 Subsection 132(1.1) of the Act states that the Director may include in a certificate of property use a requirement that the person to whom the certificate is issued provide financial assurance to the Crown in right of Ontario for any one or more of,
 - 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 Subsection 168.6 (1) of the Act states that if the Director accepts a risk assessment relating to a property, he or she may, when giving notice under clause 168.5 (1)(a), issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
 1. Take any action specified in the certificate that, in the Director’s opinion, is necessary to prevent, eliminate or ameliorate any adverse effect on the property, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
 2. Refrain from using the property for any use specified in the certificate or from constructing any Building specified in the certificate on the property.
- 2.4 Subsection 168.6(2) of the Act states that a certificate of property use shall not require an owner of the property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.
- 2.5 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate has been issued under subsection 168.6(1),
 - a. alter any terms and conditions in the certificate or impose new terms and conditions; or
 - b. revoke the certificate.
- 2.6 Subsection 168.6(4) of the Act states that if a certificate of property use contains a provision requiring the owner of the property to refrain from using the property for a specified use or from constructing a specified Building on the property,
 - a. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
 - b. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
 - c. the owner of the property shall ensure that every occupant of the property complies with the provision.

- 2.7 Subsection 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 (RA) was undertaken for the Property to establish the risks that the Contaminants identified in the RA may pose to future users and to identify appropriate Risk Management Measures (RMMs) to be implemented to ensure that the Property is suitable for the intended use: **commercial, community, residential and/or institutional use** as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in, or under the Property that are present either above **Table 2: Full Depth Generic Site Condition Standards in a Potable Ground Water Condition (coarse textured soils)** for Use under Part XV.1 of the Act published by the Ministry and dated April 15, 2011 or for which there are no such standards, are set out in the RA (Contaminants of Concern). The Property Specific Standards for these Contaminants of Concern are set out in **Table 1A and Table 1B of Schedule 'A'** which is attached to and forms part of the CPU.
- 3.3 I am of the opinion, for the reasons set out in the RA that the RMMs described therein and outlined 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 RA.
- 3.4 The RA indicates the presence of Contaminants of Concern in soil and groundwater which requires on-going restriction of land use and pathway elimination. As such, it is necessary to restrict the use of the Property and impose Building restrictions and implement RMMs as set out in the RA and in Part 4 of the CPU.
- 3.5 I believe for the reasons set out in the RA 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 section 197 order requirements in Section 4.6, Section 4.7 and Section 4.8 of this CPU.

Part 4: Director Requirements

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

Risk Management Measures

- 4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures.

4.2 Without restricting the generality of the foregoing in Section 4.1, carry out or cause to be carried out the following key elements of the RMMs:

Hard Cap, Fill Cap and/or Shallow Soil Cap Barriers:

- a) Hard cap, fill cap, or shallow soil cap barriers are required to be installed on the Property, in the areas of the Property specified in **Figure 2**, and are required to be inspected and maintained in these areas of the Property so as to prevent exposure to the COCs on the Property and shall be maintained for as long as the COCs are present on the Property at concentrations that exceed the Applicable Site Condition Standards for soil. The hard cap, fill cap and shallow soil cap barriers shall be installed in accordance with Section 7.3.3 and Appendix L of the RMP and shall consist of the following, at minimum:
 - i. The hard cap barrier (s) shall consist of: Granular 'A' or equivalent material overlain by a cover of asphalt, concrete (including Building foundation/floor slab), pavers or aggregate/stone with a combined minimum thickness of 225 millimeters (mm);
 - ii. The fill cap barrier (s) shall consist of a minimum of 1.0 m thick cover, consisting of at least 0.5 m of Capping Soil underlain by a geotextile marker layer, and may also include up to 0.5 m of non-soil surface treatment such as asphalt, concrete, pavers or aggregate/stone; and or,
 - iii. The shallow soil cap barrier (s) shall consist of a minimum of 0.5 m thick cover, consisting of at least 0.5 m of Capping Soil underlain by a geotextile marker layer that sits immediately above the impacted soil.
- b) Within 90 days of completion of the installation of any hard cap, fill cap and or shallow soil cap barriers on the Property in the areas specified in **Figure 2**, and upon issuance of this CPU, the Owner shall submit to the Director written confirmation signed by a qualified Licensed Professional Engineer that the barriers have been installed in accordance with the requirements of Section 7.3.3 & Appendix L of the RMP and Section 4.2(a)(i), 4.2 (a)(ii) and or Section 4.2(a)(iii) of this CPU along with final design specifications/drawings and or as built drawings.
- c) Within 90 days of completion of the installation of any hard cap, fill cap and or shallow soil cap barriers on the Property in the areas as specified in **Figure 2**, and upon issuance of this CPU, the Owner shall submit to the Director a site plan that clearly identifies the final location of each of the different barriers.
- d) In relation to Section 4.2 (a) of this CPU, areas of the Property as specified in **Figure 2** that are *not in use* or *not under development*, hard cap, fill cap and or shallow soil cap barriers are not required as long as exposure to the COCs at concentrations that exceed the Applicable Site Condition Standard is prevented by a fence barrier that restricts access to those areas of the Property and a dust control plan is implemented, or an alternative cover (i.e. a vegetative cover or suitable alternative) preventing exposure to the COC in soil is applied.
- e) An inspection and maintenance program shall be implemented to ensure the continuing integrity of the hard cap, fill cap and shallow soil cap barriers, as long as the COCs are present on the Property at concentrations that exceed the Applicable Site Condition Standards in the areas specified in **Figure 2**. The inspection program shall include semi-annual (spring and fall) inspections of the barrier's integrity in accordance with the inspection and maintenance program as detailed in Section 7.5.2 and Appendix L of the RMP. Any barrier deficiencies shall be repaired within a reasonable period of time in accordance with Section 7.5.2 and Appendix L of the RMP. If cracks, breeches or any loss of integrity in the barriers cannot be repaired or addressed in a timely manner, contingency measures shall be implemented to ensure no exposure to the COCs that have been observed on the Property. The restoration of any damaged portions of the barriers shall meet the design specifications, at minimum, as detailed in Section 7.3.3 and Appendix L of the RMP along with Section 4.2 (a)(i), 4.2(a)(ii) and or 4.2(a)(iii) of this CPU. The Owner shall submit to the Director written confirmation prepared and signed by a qualified Licensed Professional Engineer that the barriers have been repaired in accordance with the applicable requirements of this CPU. The written confirmation shall also include a description of any contingency measures put in place and shall be submitted to the

Director within 30 days of the completion of any barrier repairs and/or restorations. The Owner shall keep records of the inspections and maintenance and make them available for review by the Ministry upon request.

Restrictions on any New Enclosed Building(s):

- f) The Owner shall refrain from constructing any **new Building(s)** on, in or under the Property unless:
 - i. the use of the ground floor of the Building (s) is restricted to commercial and or community use. The use of the ground floor of any new building for residential use is prohibited unless it is constructed as specified in subsection ii or iii, below;
 - ii. the new Building(s) includes, and is constructed with a storage garage, as specified in Section 7.2 of RMP, along with Section 4.2 (g) of this CPU; or
 - iii. the new Building(s) includes, and is constructed with, a vapour mitigation system as specified in Section 7.2 and Appendix K of the RMP, along with Section 4.2 (h) of this CPU.
- g) The construction of any **new Building(s)** on the Property that includes a storage garage, as defined the Building Code, shall meet the following key requirements:
 - i. The storage garage is constructed with at least one level at or below existing ground surface;
 - ii. The storage garage area covers the entire Building area at ground surface;
 - iii. The storage garage complies with all applicable requirements of the Building Code, such as provisions governing:
 - a. 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;
 - b. interconnection of air duct systems as set out in Division B, Sentence (2) of Article 6.2.3.9. (Interconnection of Systems) of the Building Code; and
 - c. 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, during operating hours 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 or be activated on an as-needed basis by carbon monoxide or nitrogen dioxide monitoring devices is required by the Building Code.
- h) The construction of any **new Building(s)**, other than that identified in Section 4.2 (f)(i) and 4.2 (f)(ii) of this CPU, is permitted on the Property provided that the new Building includes, and is constructed with, a vapour mitigation system, as identified in Section 7.3.1 and Appendix K of the RMP, has been incorporated into the design of, and installed in, any new Building(s) to be constructed on the Property or portions of the Property. The vapour mitigation system shall be designed by an appropriately qualified Licensed Professional Engineer in consultation with a Qualified Person in accordance with the conceptual design detailed in Appendix K of the RMP and shall also include the following components:
 - a) The Owner shall obtain an Environmental Compliance Approval, as necessary, and any other permits or approvals as may be required;
 - b) The installation of the vapour mitigation system shall be completed under the supervision of an appropriately qualified Licensed Professional Engineer and a Qualified Person;
 - c) The passive vapour mitigation system detailed in Section 7.3.1 and Appendix K of the RMP shall be designed and constructed such that the passive venting system can easily be converted to an active venting system with all applicable approvals and permits as may be necessary;
 - d) 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 an appropriately qualified Licensed Professional Engineer and Qualified Person.
- i) Within 90 calendar days of the completion of the construction of **new Building(s)** as specified in Section 4.2 (h) of this CPU and prior to first occupancy, the Owner shall submit to the Director as-built drawings and detailed design specifications of the vapour mitigation including any verification and QA/QC reports prepared by the qualified Licensed Professional Engineer along with a statement from the qualified

Licensed Professional Engineer that the vapour mitigation system has been installed in accordance with the original design specifications and that it has been designed to meet the requirements and objectives specified in Section 7.2 of the RMP along with Section 4.2 (h) of this CPU.

- j) The vapour mitigation system detailed in Appendix K of the RMP and 4.2 (h) of this CPU shall be operated, monitored and maintained by the Owner for as long as the COCs are present on the Property. As detailed in Appendix K of the RMP, the qualified Licensed Professional Engineer that designed the vapour mitigation system shall prepare an operation, inspection, monitoring, and maintenance program, including a contingency plan, that is to be implemented by the Owner, prior to first occupancy, and shall be made available by the Owner to the Ministry upon request.
- k) An operation, inspection, monitoring and maintenance program specified in Appendix K of the RMP and Section 4.2 (j) of this CPU shall be implemented to ensure the continued integrity of the Building floor slab and vapour mitigation system for as long as the COCs are present on the Property. The inspection program shall include, at minimum, semi-annual inspections of the integrity of the Building floor slab and monitoring of the vapour mitigation system in accordance with the monitoring and maintenance program specified in Section 4.2 (j) of this CPU. Any cracks, breaches or loss of integrity observed in the Building floor slab or any observed deficiencies or necessary maintenance requirements with the vapour mitigation system shall be repaired forthwith to the original design specification, at minimum. Repairs or maintenance shall be made by an appropriately qualified contractor, under the supervision of a qualified Licensed Professional Engineer as necessary. If repairs to the Building floor slab or the vapour mitigation system cannot be completed in a timely manner, the Owner shall ensure that the contingency measures prepared by a qualified Professional Engineer, as specified in Section 4.2 (j) of this CPU, are implemented. All repairs are to be inspected by an appropriately qualified Licensed Professional Engineer and signed documentation shall be provided to the Owner that states that the repairs meet the original design specifications, at minimum. The Owner shall submit to the Director the written confirmation, prepared and signed by a qualified Licensed Professional Engineer, that the vapour mitigation system has been repaired to meet the original design specifications, at minimum. The written confirmation shall also include a description of any contingency measures that were put in place and shall be submitted to the Director within 30 days of the completion of any repairs to the vapour mitigation system. The Owner shall keep records of the inspections, monitoring and maintenance program, along with documentation of all repairs that were required to be undertaken and these records shall be made available by the Owner to the Ministry for review upon request.
- l) The Owner shall ensure that all individuals/contractors intending to undertake work which could potentially come into contact with or interfere with the vapour mitigation system as specified in Appendix K along with Section 4.2 (h) of this CPU are made aware of the presence of the vapour mitigation system and the need to take appropriate precautions to ensure the integrity of the vapour mitigation system at all times. If the vapour barrier is damaged at any time, the Owner shall ensure that it is repaired forthwith by a qualified contractor, under the supervision of a qualified Licensed Professional Engineer as necessary, to the original design specifications, at minimum. If repairs to the vapour mitigation system cannot be completed in a timely manner, the Owner shall ensure that the contingency measures prepared by a qualified Professional Engineer are implemented. All repairs to the vapour mitigation system are to be inspected by a qualified Licensed Professional Engineer and signed documentation shall be provided to the Owner that states that the repairs meet the original design specifications, at minimum. The Owner shall submit to the Director the written confirmation, prepared and signed by a qualified Licensed Professional Engineer, that the vapour mitigation system has been repaired to meet the original design specifications, at minimum. The written confirmation shall also include a description of any contingency measures that were put in place and shall be submitted to the Director within 30 calendar days of the completion of any repairs to the vapour mitigation system. The Owner shall maintain records of all activities and repairs in relation to the vapour mitigation system and these records shall be made available by the Owner to the Ministry for review upon request.
- m) Once the final design of the vapour mitigation system is completed as specified in Section 4.2 (h) of this CPU, the Owner shall submit to the Director, for review and approval, a performance monitoring program. The performance monitoring program shall be prepared by a qualified Licensed Professional Engineer in consultation with an appropriately Qualified Person, that consists of sub slab vapour monitoring as detailed

in Section 3.0, Appendix K of the RMP.

Specifically, the performance monitoring program shall include the following key components:

- i. Be overseen by a qualified Licensed Professional Engineer.
 - ii. The collection of sub slab from an appropriate number of representative locations, including QA/QC samples, that is adequate for the size and configuration of any new Building(s) and as determined by the qualified Licensed Professional Engineer at the following frequency (at minimum):
 1. Prior to first occupancy;
 2. Quarterly (spring, summer, fall and winter) for the first year, and,
 3. Semi-annually (summer and winter) thereafter, until written approval to discontinue the sub slab vapour monitoring as part of the performance monitoring program by the Director is received by the Owner.
 - iii. The sub slab vapour samples shall be sent to an accredited laboratory and analyzed for the Target Analytes listed in **Table 1C** of Schedule 'A' (**Table 1C**), which is attached to and forms part of this CPU.
 - iv. An annual report documenting the performance monitoring program shall be prepared by a qualified Licensed Professional Engineer and submitted to the Director on or before **March 31st** following each year of monitoring for a minimum of two years and until written approval to discontinue the program is received by the Owner from the Director. The annual report shall include, but not be limited to:
 1. Laboratory results and laboratory certificates of analysis;
 2. Field logs, leak testing (as necessary) and documentation of QA/QC;
 3. Discussion and interpretation of the results in comparison to the respective Target Sub Slab Vapour Concentrations as listed in **Table 1C**; and,
 4. Conclusions and recommendations with respect to the need for additional and or continued monitoring as may be warranted.
- n) Upon completion of the installation of the vapour mitigation system as specified in Section 4.2 (h) of this CPU, and prior to first occupancy, the Owner shall implement the performance monitoring program, that has been approved in writing by the Director, as required by Section 4.2 (m) of this CPU and detailed in Section 3.0, Appendix K of the RMP for a minimum of two years and until the Owner receives written approval from the Director to discontinue the program. Any changes to the performance monitoring program that has been approved by the Director, as required by Section 4.2 (m) of this CPU, (i.e. sampling frequency, locations, methodology etc.) must be requested in writing by an appropriately qualified Licensed Professional Engineer and these changes shall only be implemented upon the Owner receiving written approval from the Director.
- o) In the event that the performance monitoring program detailed in Section 4.2 (m) of this CPU identifies one or more of the Target Analytes at concentrations above the Target Sub Slab Concentrations specified in **Table 1C** the Owner shall implement the contingency measures detailed in Section 4.0, Appendix K of the RMP, and as follows:
- i. Written notice shall be submitted to the Director by the Owner within 7 calendar days of the Owner's receipt of the laboratory analysis. This written notice shall include the sub slab vapour sampling results, the laboratory certificates of analysis and the anticipated timeline for the implementation of the confirmatory sampling program along with any additional work as may be deemed necessary by a qualified Licensed Professional Engineer. Confirmatory sampling shall occur within 15 calendar days from the date of the Owner's receipt of the laboratory analysis and be completed by a qualified Licensed Professional Engineer.
 - ii. In the event that the sub slab vapour air sampling program verifies the exceedances of one or more of the Target Analytes concentrations above the Target Sub Slab Concentrations specified in **Table 1C** and where the concentrations of the observed Target Analytes are determined by the qualified Licensed Professional Engineer to be a result of soil vapour intrusion, the Owner shall:

1. Submit written notice to the Director within 15 calendar days of the Owner's receipt of the laboratory analysis. This written notice shall include the sub slab vapour results, the laboratory certificates of analysis and the details of, and the anticipated timeline to implement contingency measures consistent with Appendix K of the RMP. The implementation of contingency measures, that may include converting the passive vapour mitigation system to an active system, along with the implementation of a confirmatory sampling program (that is to include indoor air sampling) shall occur within 30 calendar days of the Owner's submission of the written notice of the exceedance to the Director;
2. Within 30 calendar days of the implementation of the contingency measures, the Owner shall submit to the Director a report prepared by a qualified Licensed Professional Engineer documenting the implementation of contingency measures, results of the implementation of the confirmatory sampling program along with the details and timelines for the implementation of a performance indoor air monitoring program as necessary. The report shall include, but not be limited to:
 - a) Laboratory results and laboratory certificates of analysis;
 - b) Field logs, leak testing (as necessary), and documentation of QA/QC;
 - c) Discussion and interpretation of the results in comparison to the respective Target Indoor Air Concentrations as listed in **Table 1C**; and,
 - d) Conclusions and recommendations with respect to the performance of the Building's vapour mitigation system along with the need for additional work and/or continued monitoring as may be deemed warranted.

Soil and Groundwater Management Plan:

p) The property specific soil and groundwater management Plan (Plan) shall be developed for the Property and implemented during all intrusive activities potentially in contact with or exposing COCs in soil or groundwater on the Property as detailed in Section 7.3.5 of the RMP. A copy of the Plan shall be maintained on the Property for the duration of all planned intrusive activities. Any short-term intrusive activities required for the purposes of emergency repairs (i.e. for repairs to underground utilities etc.) will not require the submission of the Plan prior to undertaking the short-term emergency repairs. For planned intrusive activities, this Plan shall be submitted to the Director by the Owner at least 14 calendar days prior to any such intrusive activities being undertaken and shall be consistent with the measures specified in Section 7.3.5 of the RMP. The Plan shall include, but not be limited to, the following key components as deemed necessary by a Qualified Person:

- (i) oversight by a Qualified Person;
- (ii) include dust control measures and prevention of soils tracking by vehicles and personnel from the Property;
- (iii) management of excavated soils including cleaning equipment, placement of materials for stockpiling on designated areas lined and covered with polyethylene sheeting, bermed and fenced to prevent access, runoff control to minimize contact and provisions for discharge to sanitary sewers or other approved treatment;
- (iv) storm water management measures to control the potential transport of COCs off-site during on-site construction/redevelopment activities. This shall include, but to not be limited to, silt fences and filter socks on catch-basins and utility covers as necessary;
- (v) characterization of excavated excess soils to determine if the excavated excess soils exceed the Property Specific Standards listed in Table 1A of Schedule "A" attached to this CPU (Table 1A) and/or the Applicable Site Condition Standards for parameters other than those identified in Table 1A and require off-site

disposal in accordance with the provisions of Ontario Regulation 347, as amended, made under the Act;

- (vi) characterization and management of groundwater as a result of dewatering activities. This shall include the management of and proper characterization of groundwater prior to and during any dewatering activities to ensure proper disposal of the groundwater in accordance with all applicable acts, regulations, permits and approvals;
- (vii) record keeping. Record keeping is to include, but not to be limited to, dates and duration of work, weather and site conditions, location and depth of excavation activities/dewatering activities, dust control measures, stockpile management and drainage, all soil and groundwater characterization results obtained as part of the soil and groundwater management plan, names of the Qualified Persons, contractors, haulers and receiving sites for any excavated excess soils, and groundwater, as a result of dewatering activities, removed from the property and any complaints received relating to site activities; and,
- (viii) copy of the Plan and any amendments and the records kept thereunder shall be made available for review by the Ministry upon request.

Health and Safety Plan:

- q) A property specific health and safety plan (plan) shall be developed for the Property and implemented during all planned intrusive activities undertaken potentially in contact with COCs in soil and groundwater that have been identified in the RA at concentrations that exceed the Applicable Site Condition Standard for both soil and groundwater as detailed in Section 7.3.4 of the RMP. A copy of the plan shall be maintained on the Property for the duration of all intrusive activities. The Owner shall ensure that the plan takes into account the presence of the COCs and is implemented prior to any intrusive activities being undertaken on the Property or portion (s) of the Property in order to protect workers from exposure to the COCs. The plan shall be prepared in accordance with applicable Ministry of Labour health and safety regulations, along with all potential risks identified in the RA and include, but not limited to, occupational hygiene requirements, personal protective equipment, contingency plans and contact information. Prior to initiation of any Project (on the Property or portion (s) of the Property), the local Ministry of Labour office shall be notified, where so prescribed under the OHSA, of the proposed activities and that COCs have been identified in soils and or groundwater on the Property. The plan shall be overseen by a Competent Person 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 to be available for review by the Ministry upon request.

Prohibition of Planting of Fruit and Vegetables for Consumption:

- r) The Owner shall refrain from planting fruit and vegetables for consumption on the Property unless planted in above ground containers such that they plants are isolated from the subsurface conditions. The planting of fruit and vegetables for consumption on the Property is prohibited for as long and the COCs in soil remain present.

Prohibition of potable groundwater wells:

4.3 The Owner shall,

- a. refrain from using groundwater in or under the Property as a source of water;
- b. properly abandon any wells on the Property, as defined in section 35. (1) of O. Reg. 153/04, according to R.R.O. 1990, Regulation 903 (Wells), made under the OWRA; and
- c. refrain from constructing on the Property any wells as defined in section 35. (1) of O. Reg. 153/04.

Site Changes

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

Reports

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

Property Requirement

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

Certificate of Requirement

- 4.7 Within fifteen (15) calendar days from the date of receipt of a certificate of requirement, issued under subsection 197(2) of the Act, completed as outlined in Schedule 'B', register the certificate of requirement on title to the Property in the appropriate land registry office.
- 4.8 Within five (5) calendar days after registering of the certificate of requirement, provide to the Director a copy of the registered certificate and of the parcel register (s) for the Property confirming that the certificate of requirement has been registered on title to the Property.

Owner Change

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

Financial Assurance

- 4.10 In the event that **Residential and or Intuition Use** Building(s), or Building(s) that include first-storey **Residential and/or Institutional Use**, are constructed on the Property or portions of the Property and the enclosed Building(s) is constructed as detailed in Section 4.2 (h) of this CPU (i.e. a vapour mitigation system has been incorporated into the design the Building), prior to occupancy and prior to the implementation of the performance monitoring program as required by Section 4.2 (m) of this CPU, the Owner shall submit to the Director, a detailed written cost estimate, prepared by a Qualified Person, to complete the approved performance monitoring program as required by Section 4.2 (m) for a period of two years.
- 4.11 Within 15 days of the Owner's receipt of written approval from the Director of the acceptance of the cost estimate amount specified in Section 4.10 of this CPU, the Owner shall provide financial assurance to the Crown in the right of Ontario in the same amount that was approved by the Director. The financial

assurance shall be in the form of a certified cheque payable to the Ontario Minister of Finance or an irrevocable letter of credit issued by a Canadian Chartered Bank as outlined in the Ministry's *Financial Assurance Guideline F-15*. This amount is to cover the costs associated with the performance monitoring program as detailed in in Section 3.0, Appendix K of the RMP and as required by Section 4.2 (m) of this CPU.

- 4.12 The amount of financial assurance required in Section 4.11 of this CPU shall be reviewed every **two years**, for as long as the performance monitoring program is required, by a Qualified Person, for the Owner, and an updated cost estimate shall be included in the annual monitoring report as required by Section 4.2 (m) of this CPU.

Part 5: General

- 5.1 The requirements of the CPU are severable. If any requirement of the CPU or the application of any requirement to any circumstance is held invalid, such finding does not invalidate or render unenforceable the requirement in other circumstances nor does it invalidate or render unenforceable the other requirements of the CPU.
- 5.2 An application under sub section 168.6(3) of the Act to,
- a) alter any terms and conditions in the CPU or impose new terms and conditions; or
 - b) revoke the CPU;
- shall be made in writing to the Director, with reasons for the request.
- 5.3 The Director may amend the CPU under subsections 132(2) or (3) of the Act to change a requirement as to financial assurance, including that the financial assurance may be increased or provided, reduced or released in stages. The total financial assurance required may be reduced from time to time or released by an order issued by the Director under section 134 of the Act upon request and submission of such supporting documentation as required by the Director.
- 5.4 Subsection 186(3) of the Act provides that failure to comply with a requirement of the CPU constitutes an offence.
- 5.5 The requirements of the CPU are minimum requirements only and do not relieve you from,
- a) complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or
 - b) obtaining any approvals or consents not specified in the CPU.
- 5.6 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require.
- 5.7 In the event that any person is, in the opinion of the Director, rendered unable to comply with any requirements in the CPU because of,
- a) natural phenomena of an inevitable or irresistible nature, or insurrections,
 - b) strikes, lockouts or other labour disturbances,
 - c) inability to obtain materials or equipment for reasons beyond your control, or
 - d) any other cause whether similar to or different from the foregoing beyond your control,

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

- 5.8 Failure to comply with a requirement of the CPU by the date specified does not relieve the Owner(s) from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.

- 5.9 In the event that the Owner complies with provisions of Sections 4.7 and 4.8 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 may be carried out and satisfied by the condominium corporation by and on behalf of the new Owners of the Property.

Part 6: Hearing before the Environmental Review Tribunal

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

The Secretary

Environmental Review Tribunal

655 Bay Street, Suite 1500
Toronto, ON, M5G 1E5

Fax: (416) 326-5370
Fax Toll Free: 1(844) 213-3474
Email: ERTTribunalSecretary@ontario.ca

and

Amy Shaw, Director

Ministry of the Environment, Conservation and Parks
1 Stone Rd. West, 4th Floor
Guelph, ON
N1G 4Y2

Fax: 519-826-4286
Email: amy.shaw@ontario.ca

- 6.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.
- 6.5 If you commence an appeal before the Tribunal, under section 47 of the EBR, you must give notice to the public in the Environmental Registry of Ontario ("ERO"). 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 (Ministry) who will place it on the ERO. The notice must be delivered to the Minister at 777 Bay Street, 5th Floor, Toronto, Ontario M7A 2J3 by the earlier of:

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

Further information on the requirements of the Tribunal regarding an appeal can be obtained directly from the Tribunal at:

Tel: (416) 212-6349, Fax: (416) 326-5371, www.elto.gov.on.ca

Issued at Guelph this **10** day of **June 2020**.

Amy Shaw,
Director, section 168.6 of the Act

LEGEND

- PROPERTY BOUNDARY
- LOTLINE
- BUILDING
- FORMER RAILWAY
- CITY OF KITCHENER EASEMENT
- FENCE
- FORMER BUILDING
- HISTORICAL TANK

figure 1

SITE PLAN

851 KING STREET EAST

Kitchener, Ontario

GRASS

ASPHALT

H

CITY OF KITCHENER EASEMENT (FORMER ROADWAY - KENT STREET)

KING STREET EAST

0 3 6 9m

SOURCE: AGS SURVEY CONSULTANTS SURVEY DATED JULY 11, 2006.
J DOUGLAS ANLEY SURVEY DATED NOVEMBER 17, 1977.

GHD

[illegible]

Schedule 'A': Table 1A - Property Specific Standards (PSS) - Soil

<i>Soil Contaminant of Concern (COC)</i>	<i>PSS (µg/g)</i>
Acenaphthene	0.6
Acenaphthylene	0.6
Benzo(a)anthracene	1.3
Benzo(a)pyrene	1.2
Benzo(b)fluoranthene	1.0
Benzo(g,h,i)perylene	1.0
Benzo(k)fluoranthene	0.78
Chrysene	1.1
Dibenzo(a,h)anthracene	0.6
Fluoranthene	2.3
Indeno(1,2,3-cd) pyrene	0.81
Pyrene	2.0
Lead	274
Zinc	490
Petroleum Hydrocarbon Fraction 1 (PHC F1) (C6-C10)	88
PHC F2 (C10-C16)	185
PHC F3 (C16-C34)	1,105
PHC F4 (C34-C50)	5,292

Schedule 'A': Table 1B - Property Specific Standards (PSS) - Groundwater

<i>Groundwater Contaminant of Concern (COC)</i>	<i>PSS (µg/L)</i>
1,2-Dibromoethane	0.5
Benzene	222
cis-1,2-Dichloroethene	0.6
Ethylbenzene	476
Methyl Tert Butyl Ether	1,070
Toluene	1,236
Trichloroethylene	2.9
Vinyl Chloride	0.8
Xylenes (total)	3,144
1-/2-Methylnaphthalene	52
Acenaphthene	4.1
Acenaphthylene	1.0
Benzo(a)anthracene	0.48
Benzo(a)pyrene	0.12
Benzo(b)fluoranthene	0.48
Benzo(g,h,i)perylene	0.48
Benzo(k)fluoranthene	0.48
Chrysene	0.48
Dibenzo(a,h)anthracene	0.48
Fluoranthene	0.48
Indeno(1,2,3-cd)pyrene	0.48
Naphthalene	112
Pyrene	0.48
Cobalt	19
PHC F1 (C6-C10)	6,108
PHC F2 (C10-C16)	11,640
PHC F3 (C16-C34)	660
Formaldehyde	8.8

Schedule 'A': Table 1C: Target Air Concentrations

<i>Target Analyte</i>	<i>Residential Target Indoor Air Concentrations ($\mu\text{g}/\text{m}^3$)</i>	<i>Residential Target Sub-Slab Vapour Concentration ($\mu\text{g}/\text{m}^3$)</i>
Methyl tert butyl ether	4.3	214

SCHEDULE 'B'

CERTIFICATE OF REQUIREMENT

s.197(2)

Environmental Protection Act

This is to certify that pursuant to Section 4.6 of Certificate of Property Use number **7882-BM5LHV01** issued by Amy Shaw, Director of the Ministry of Environment, Conservation and Parks under subsections 168.6(1) and 197(1) of the Environmental Protection Act, dated **June 10, 2020**, being a Certificate of Property Use and order under section 197(1) of the Environmental Protection Act relating to the property municipally known as **851 King Street East, Kitchener, Ontario being all of PIN 22506-0006 (LT)** (the “**Property**”) with respect to a Risk Assessment and Risk Management Measures and other preventive measure requirements

1028888 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.