SV LAW
EXCELLENCE IN OUR COMMUNITY

June 23, 2025

Delivered by Email: Tanjot.Bal@caledon.ca

The Corporation of the Town of Caledon
Planning & Development Department
6311 Old Church Rd
Caledon, ON L7C 1J6
Attention: Tanjot Bal

SV File No.: 77685-0002

Dear Ms. Bal:

Re: Condominium Development – 14 Agnes Street, Alton – Sewage System Requirements

As you are aware, our office represents the developer, Normaple Development Limited, in the proposed development on 14 Agnes Street, Alton. This letter serves as a follow-up to our meeting on June 10, 2025, after which the Town of Caledon asked for us to formalize our discussion for proper review. In particular, the Town was interested in hearing further details about how the requirements and regulations within the *Condominium Act, 1998* (the "Act") might help the Town enforce certain nitrate level standards.

Based on our June 10th discussion, we understand the Town's primary concerns revolve around the lack of regulations regarding nitrates and the general fear of the sewage system failing. Ignoring for the moment the technical details of our client's proposed system, which drastically minimize the threat of failures, we want to highlight how the structure of the *Condominium Act* can more than adequately address these concerns.

To begin, it is worth briefly sketching the broader condominium context within Ontario. As of 2025, there are over 12,000 condominiums operating in Ontario, and that number is only expected to increase. These entities are responsible for significant assets, ranging from underground parking and 50-storey high-rise structures in urban settings to private roads and sewage treatment systems in rural locations. It is no exaggeration to say that, collectively, Ontario's condominiums manage billions of dollars in communalized assets, and they do this with essentially a zero percent failure rate.

In short, condominiums are a success, and this is possible because of the framework created by the Act.

The centerpiece of a condominium is its Declaration. The courts have frequently referred to this as the constitution of the resulting community, and like the constitution, it carries the force of law. Though the Act has numerous provisions concerning the Declaration, the most relevant for our purposes is section 17(3), which states that a condominium corporation has a duty to ensure that everyone complies with the Declaration. Stated differently, if there is a requirement in the Declaration, then the Corporation has a statutory duty to enforce it.

For the Town's concerns regarding the sewage systems, Section 17(3) represents the first pillar of the Act's protection. Under the Building Code, annual reports on biochemical oxygen demand (BOD) and suspended solids (SS) are already required. The Town, through conditions of draft approval, can mandate that nitrate levels be included in this list, and the first report could be due within six months (rather than the annual requirement under the Building Code). These provisions, which would be drafted to the Town's satisfaction, would compel the condominium to perform to the required level, and critically, this level can be independent of other statutory standards: the Ontario Building Code may have no requirements when it comes to nitrate levels, but that is irrelevant in terms of the Declaration's enforceability.

Once provisions are included in a Declaration, they are very difficult to change. Section 107(2) of the Act require a minimum of 80% of all unit owners to vote in favour of a declaratory amendment, and some amendments require 90% to consent. As many condominiums struggle to meet the 25% threshold for reaching quorum, it is no surprise that declaratory amendments are very rare in practice.

Nevertheless, if the Town is concerned about this remote possibility, then it may require our client to register a Development Agreement and/or a Condominium Agreement on title through the *Planning Act*. This would mimic the same wording to be inserted in the Declaration and would exist on title indefinitely, ensuring that the Town's requirements cannot be removed by future recalcitrant unit owners.

Apart from the Declaration, the overall framework of the Act represents the second pillar of protection. The Act mandates a comprehensive series of safeguards:

- **Section 93**: condominiums must maintain a reserve fund, with updated reserve fund studies due every three (3) years;
- **Section 67**: the condominium's finances are audited yearly;
- **Section 9.2**: condominiums must submit annual government-mandated reports to the Condominium Authority of Ontario;
- **Sections 89, 90 & 99**: condominiums have extensive obligations relating to maintenance and repair of the common elements, including the obligation to maintain insurance; and,
- **Sections 27 & 37**: condominiums are governed by an elected board of directors who, to meet the requisite standard of care, are incentivized to seek and follow the opinion of professionals such as lawyers and engineers.

All told, this framework attempts to ensure, as much as possible, that condominiums have the resources in place to effectively manage the shared infrastructure, including sewage systems. This minimizes the risks that repair, monitoring and replacement will lapse or otherwise be swept under the rug.

Finally, the third pillar of protection relates to finances. Condominiums can raise revenue in two ways: monthly common expenses or one-time special assessments. In either case, if an owner does not pay the levy, then this gives rise to a condominium lien. Section 86 describes this as a super-priority charge, one that outranks all but Crown claims and municipal taxes. If not paid, these liens can be enforced via power of sale, with the unit being sold to recoup the unpaid amount.

As a result, condominiums have effectively complete and total cost recovery. Should a major expense, such as urgent sewage repairs, become necessary, the condominium can raise the money with near certainty, with all costs borne by the unit owners. As there are 65 units in the proposed development, the strength in numbers allows these costs to be dissipated throughout the unit base.

Therefore, the Act provides three main pillars of protection for the Town: the provisions of the Declaration allow for expanded monitoring and reporting of the sewage systems, the governance framework ensures that audits and reports are maintained, and liens allow the condominium to ensure cost recovery. This combination likely obviates the need for our client to post any security relating to the sewage systems, or, at most, security should be for a limited time, perhaps one year. Once the condominium is up and running, the combination of reserve fund studies, maintenance & repair obligations and lien super-priority makes any additional security redundant.

This above analysis shows the strength of the Act in managing a communal resource, like the sewage system. Only one question remains: can a single condominium meet the definitions of an "on-site sewage system"? Further to our discussions on the June 10th meeting, we believe the answer is yes.

As a brief summary, section 53 of the *Ontario Water Resources Act* ("OWRA") states that sewage systems with a design capacity exceeding 10,000 litres per day require an Environmental Compliance Approval ("ECA") from the Ministry of the Environment, Conservation and Parks ("MECP"), which is issued under section 20.2 of the *Environmental Protection Act*. Section 53(6.1) of the OWRA requires that an ECA must be obtained if "More than one sewage works is located on a lot or parcel of land and they have, in total, a design capacity in excess of 10,000 litres per day."

By contrast, an individual on-site sewage system may be regulated under Part 8 of *Ontario Building Code*, which would require a design capacity of less than 10,000 litres per day and serves no more than five private residences.

In our client's proposed development scheme, each individual system would serve a maximum of five (5) units, and no individual system would exceed 10,000 litres per day. This meets the definition for "on-site sewage system," but, depending on the interpretation of "located on a lot or parcel or land" in the OWRA, it may be captured under that legislation. Out of an abundance of caution, our client originally proposed a complicated development structure involving fourteen (14) separate condominiums on fourteen (14) subdivision blocks, all linked together with a single "master" condominium underneath. This proposal guarantees compliance with the OWRA by separating the ownership of all of the sewage systems, though at the cost of extra complexity.

Based on the discussions during the June 10th meeting, we agreed to explore whether a less complex structure may satisfy these requirements. Fortunately, the Ontario Court of Appeal has recently interpreted the OWRA. In *Belwood Lake Cottagers Association Inc. v. Ontario (Environment and Climate Change)*, 2019 ONCA 70 (CanLII), the Court at para 58 stated that a "lot or parcel of land" in section 53 meant land "that is legally recognized for municipal and planning law purposes, and for which title can be conveyed from one party to another." In other words, the maximum of five (5) units and 10,000 litres per day calculation is limited to each conveyable parcel, not for the entire project lands.

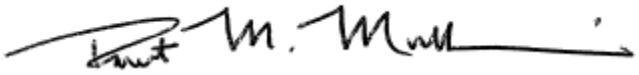
Our client's draft plan of subdivision will separate each of the individual sewage systems into fourteen (14) different blocks. Each block will have a maximum of five (5) residential units and no more than 10,000 litres per day. As each subdivision block is conveyable and "legally recognized for municipal and planning law purposes," as per the Court of Appeal, this project will not be captured by the OWRA. A single plan of condominium, along with the underlying plan of subdivision, can properly serve the site and will not run afoul of any of the statutory requirements.

The condominium framework, therefore, is ideally suited for dealing with the challenges and protections of a sensitive shared service, such as the proposed sewage systems, and a single condominium appears to meet all statutory requirements while avoiding the unnecessary complexity of alternative development proposals.

We hope the Town sees the practical utility of this approach and will approve this subdivision and re-zoning application on the basis that when it comes to the next step of dividing the blocks into units and common elements, that it be done as a single condominium. This approach could be included as an advisory "Note to Draft Approval" in the Subdivision Conditions.

If the Town has any further questions, please do not hesitate to contact the undersigned.

Yours Very Truly,
SMITHVALERIOTE LAW FIRM LLP



Robert Mullin, B.A. (Hons), LL.B., LL.M., A.C.C.I.(Law)
RMM\rk

direct line: 519-837-6926
email: rmullin@svlaw.ca
assistant email: rklingspohn@svlaw.ca