

# The Regional Municipality of York

Committee of the Whole  
Environmental Services  
June 11, 2020

Report of the Commissioner of Environmental Services

## Water and Wastewater Communal Systems Status Report

### 1. Recommendations

The Regional Clerk circulate this report to the local municipalities and Ontario Minister of Environment, Conservation and Parks.

### 2. Summary

This report provides Council with an update on private communal systems in York Region and associated environmental and financial risks. It identifies the need for development of Regional Official Plan policy updates related to private communal water and wastewater systems. This policy work would be completed through the Municipal Comprehensive Review process.

Key Points:

- York Region supports the goal of a sustainable Region by directing the majority of growth to fully serviced Urban Areas
- Recent changes to the Provincial Policy Statement indicate that the province is supporting communal water and wastewater systems as an appropriate form of servicing
- Private communal systems may result in public health, environmental and financial risk if not properly maintained
- Review of existing private communal systems highlights a potential financial risk to the Region
- The Region's Official Plan only permits the application of private communal water and wastewater systems to service existing communities where public health issues exist
- It is recommended that as part of the Municipal Comprehensive Review process staff develop policy options for any required updates to the current use of communal systems in York Region

### 3. Background

#### **Water and wastewater communal systems are an alternative form of servicing**

A private communal water and wastewater system is a shared service owned by private landowners, typically through a condominium corporation, whereby an environmental approval is required to provide water and/or wastewater services for multiple lots/units. Under the Provincial Policy Statement, private communal water and wastewater services are permitted for permanent multi-lot residential developments of five or more lots where no municipal services exist. Developments proposing to use communal services are encouraged by the province to locate in municipalities where there are local public authorities to assume responsibility for these services and undertake remedial action in the case of default.

#### **Municipal Responsibility Agreements help protect the environment and public health while permitting future growth in certain areas without municipal servicing**

The *Planning Act* and *Municipal Act* provide municipalities with a framework and authority to enter into Municipal Responsibility Agreements with proponents for the provision of private communal water and wastewater services for residential developments. The regulatory framework governing private communal systems is summarized in Table 1.

**Table 1**  
**Private Communal Systems Regulatory Framework**

Authority - Instrument	Communal Systems Owner	Province	Local Municipality	York Region
<i>Ontario Water Resources Act</i> - Environmental Compliance Approval	✓	✓		
<i>Planning Act</i> - Site Plan Approval	✓		✓	Commenting Agency
<i>Municipal Act</i> - Municipal Responsibility Agreements	✓			✓

The province provides specific guidance to ensure these agreements outline operational monitoring and maintenance of these systems. More importantly, provisions in the agreement must specify assumption of the communal service by the municipality in the event

of default as well as identify financial securities to be established and used in the event of system failure.

### **Payments from the system owner to a reserve fund can be used to rectify non-performance**

Payments from the system owner are contributed to a Replacement Reserve which is established by the municipality. Funds in this reserve are held by the municipality and are intended for system capital repair and replacement. In the event the municipality assumes operation of the system, these funds would help rectify deficiencies, improve system performance and comply with Ministry orders. If the cost of remediation is greater than the funds available in the reserve, the municipality may need to contribute to funding the work.

The greatest risk to public health and the environment occurs when the communal water or wastewater system malfunctions due to poor management practices and there are limited funds to remediate problems. A Municipal Responsibility Agreement, along with adequate funds, is a condition of provincial and planning approval only where the municipality agrees to take on this responsibility. By entering into an Agreement, the municipality works to manage its financial and performance risks associated with non-performance of the system owner and operator. These arrangements help alleviate risk to the environment and public health.

### **Province controls and regulates water and wastewater systems**

Private communal systems for water and wastewater are regulated by the province. Communal wastewater systems are approved through an Environmental Compliance Approval, which is obtained before final municipal planning approval is granted for a proposed residential development. The province's approval role is to ensure that a communal system is designed and constructed to service a residential population without any adverse impact to the environment or public health. The province requires the proponent to show that a Municipal Responsibility Agreement is in place as part of the complete application for the Environmental Compliance Approval. Municipalities are generally not mandated to enter into Responsibility Agreements, however it is in their best interests to help reduce risk and allow growth. It is the responsibility of the system owner to provide proper long term operation and maintenance. Should the private system not meet regulatory requirements, the province can order the municipality to assume responsibility for the failing system.

## **1994 York Region Official Plan allowed resort-recreational developments to be serviced by private communal water and wastewater systems**

Historically, in York Region small permanent and seasonal residential developments were permitted as outlined in the 1994 Regional Official Plan. The objective was to enable resort/recreational developments in Rural Areas by integrating residential and recreational components. The total number of residential units permitted for each development was based on an assessment of the site's environmental constraints and capability, impact on surrounding community, financial and economic impacts as well as ability of the owner to provide financial securities. Financial, development and Responsibility Agreements were required to provide for the private servicing infrastructure. As outlined in the 1994 Official Plan, these requirements were to protect the health and safety of residents and mitigate financial risk to the Region.

In 2004, these policies were removed from the York Region Official Plan to conform to new provincial planning direction, which no longer allowed for residential developments outside of settlement areas. The Region's Official Plan now only permits the application of new private communal water and wastewater systems to service existing communities where health issues exist due to failed individual septic systems.

## **York Region has entered into five Municipal Responsibility Agreements for private communal water and wastewater systems to date**

Table 2 details the five Municipal Responsibility Agreements the Region has entered into over the past three decades. All of these Agreements are related to resort recreational developments and were filed under the 1994 Regional Official Plan policy framework. Depending on the servicing strategy for each development, the Agreements are for combined water and wastewater systems or single services for water or wastewater. Attachment 1 provides a location map of these private systems.

**Table 2**  
**Existing Municipal Responsibility Agreements**

Systems Servicing (System Owner)	Population Served	Water System	Wastewater System	Original Executed	Municipality
King Valley Golf Club, Administrative Office and 55 Condominium Units (ClubLink)	216	✓	✓	2001	King
Emerald Hill Golf Club and 80 Condominium Units (ClubLink)	315	✓	✓	2005	Stouffville
Ballantrae Golf Club and 885 Condominium Units (Schickedanz)	1,947		✓	1999 (Restated 2020)	Stouffville
Lebovic (formerly Westhill) Golf Club and 75 Condominium units (Lebovic)	246	✓	✓	2017	Aurora
Sutton by the Lake Adult Village with 206 homes (Lake Simcoe Parklands Limited)	412	✓		1987 (Amended 2005)	Georgina

**Regional Official Plan directs growth to Urban Areas where full municipal water and wastewater services are provided**

York Region delivers leading water and wastewater services to communities that are safe, meet or exceed regulatory compliance standards and ensure that the majority of growth can be directed to full serviced Urban Areas. Achieving complete communities on full municipal services supports the goal of a sustainable Region with careful coordination of infrastructure delivery, land use planning and financial planning. It also provides financial sustainability through a broad rate base to support adequate and ongoing investment in asset management for over \$6 billion in Regional water and wastewater infrastructure.

The 2010 [Regional Official Plan](#) provides direction on water and wastewater service delivery for development aligned with the Region’s Water and Wastewater Master Plan. When development is proposed, provisions in the Official Plan coordinate servicing with land use planning approvals. Full municipal water and wastewater servicing is to be provided to accommodate growth in Urban Areas to achieve greater economies of scale.

## **Changes to the Provincial Policy Statement for servicing non-urban areas could result in additional environmental and financial burden to the Region**

As reported to Council in October 2019 the province proposed changes to Provincial Policy Statement, 2014. In February 2020, the Provincial Policy Statement, 2020 was approved and continues to identify municipal services as the preferred form of servicing settlement areas to support environmental protection and public safety. The finalized policies have also been modified to give preference to communal systems to allow increased development outside of Urban Areas. These changes indicate that if there is not adequate existing or planned nearby full servicing for a proposed development, private communal servicing may be considered as a potential solution. This solution may be appropriate for rural communities in Ontario where there may be no prospects of building municipal services but this may not be feasible within a York Region context.

### **4. Analysis**

#### **Consistent performance of private communal systems is a challenge**

Owners are required to provide annual reports on the performance of their communal wastewater system to the Region, the Ministry of the Environment, Conservation and Parks as well as to the Medical Officer of Health, where applicable. Based on staff review of these annual reports and recent site inspections, there is inconsistent performance of communal wastewater systems in York Region.

In general, communal water systems in the Region have remained in compliance with most regulated parameters; any parameter exceedances have been reported with appropriate corrective action. Where possible, Region staff support these owners with technical advice and industry connections.

#### **Current Official Plan policy framework addressing private communal systems should be updated**

The current Regional Official Plan directs new development to Urban Areas on the basis of full municipal services. It enables private communal systems to be considered only for existing community areas and solely where a public health issue has been identified by the Medical Officer of Health and where full municipal services cannot be provided. Public health issues arise when individual septic systems fail to provide adequate wastewater treatment due to aged systems and/or poor drainage conditions. In areas without municipal services, new developments have typically proceeded through the use of individual well and septic systems. Advancements in septic system permitting and technology have improved treatment performance in recent years.

At present, a proposed communal system would be reviewed during the planning and approval process to manage health, administrative and financial risks to the public and the Region. Suitable administrative and financial arrangements to the satisfaction of the Region and province would also be required to mitigate these risks. Regional Official Plan policies

need to be updated to provide greater guidance as to where and when a private communal system would be considered by the Region to ensure financial viability, environmental sustainability and better align with current Provincial Policy direction.

### **Jurisdictional scan indicates that Ontario municipalities typically align with the Provincial Policy Statement for wastewater communal systems with few protocols**

Staff investigated several Ontario municipalities including Peel, Durham and Simcoe to assess their planning policies, protocols and/or practices for management of large wastewater communal systems. Based on this recent review, the majority of municipalities' official plan policies align with the Provincial Policy Statement, but have little guidance or direction in terms of protocols and practices for maintenance, remediation and study requirements to construct a communal system. Although private communal systems exist in jurisdictions throughout Ontario, of the nine municipalities surveyed, eight are not supportive of these systems due to potential public health, environmental and financial risks. In cases with no prospects of building municipal services rural municipalities outside of York Region are showing interest in pursuing private communal systems to service rural settlement areas including villages and hamlet.

### **York Region requires updated policies and protocols to consider private communal systems as an acceptable form of servicing**

Regional Official Plan Municipal Comprehensive Review process is currently underway. As part of this review, staff will be exploring a more rigorous policy framework for private communal systems. The purpose is to ensure associated health, environmental and financial risks are appropriately managed. Clear criteria will be established for suitable application of these systems as well as examination of financial, technical, operational and environmental impacts and long term suitability of these systems. Conditions for new Municipal Responsibility Agreements will be assessed (eg. protocols for effective long term operation). Clarity on the role for communal systems would be incorporated into the Municipal Comprehensive Review process to align population and employment population forecasts associated with provincial Growth Plan targets.

### **Analysis will identify appropriate use and location for private communal systems**

The 1994 Official Plan resort-recreational policies provide a starting point for new policy development in addition to jurisdictional scan results. Previous Official Plan policies contained servicing and financial details required in a servicing justification report and in a Municipal Responsibility Agreement. Asset management planning has been identified as one area needing improved measures in future Agreements. This material and other information will be considered in an effort to protect the environment, health and safety of residents and mitigate financial risk to the Region.

Limitations under Regional and Provincial Policy frameworks and many overlapping Provincial Policy regimes, including the *Oak Ridges Moraine Act*, *Greenbelt Act* and *Lake*

*Simcoe Protection Plan Act*, affect expansion of municipal services into rural areas or limit new wastewater treatment systems. In addition, 'urban-like' densities, with more than 50 persons and jobs per hectare, are generally not permissible in rural areas. This may constrain the financial sustainability of communal systems due to the small user rate base. While work will be done to update regional policies as part of the Municipal Comprehensive Review, it is anticipated that there will be limited areas for application of private communal systems.

### **Initiative supports strategic goal of Vision 2051 and Strategic Plan**

Official Plan updates will help to continue alignment of this work with Vision 2051 goals of complete communities and resilience of the natural environment, and the 2019 to 2023 Strategic Plan priority of building sustainable communities and protecting the environment.

## **5. Financial**

### **Existing Replacement Reserve Funds are currently held by the Region for most communal systems**

Capital Replacement Reserve Fund contributions are made by system owners based on lifecycle and condition assessments of the works captured under the Municipal Responsibility Agreement. These funds are intended to give assurance, should the Region be required to assume operation due to poor performance. Should remediation be required earlier than expected, there is risk to the Region. Preventative measures are necessary to ensure proper asset management and to reduce the likelihood of premature infrastructure failure. Reserve fund adequacy becomes increasingly concerning if remediation is required to meet compliance before anticipated end of life, resulting in a reserve fund shortfall.

Although Capital Replacement Reserve Funds were mandated for most of the Agreements, the Region is currently working with system owners to ensure contributions are made based on the terms of the Agreement.

### **Province ordered the Region to assume ownership of failed private communal water system in Ansnorveldt in 2000**

The province has previously exercised their authority to govern private communal systems. In 2000, the province ordered the Region to assume operation and control of the Ansnorveldt drinking water supply after the system owners were unable to rectify deficiencies, resulting in a boil water advisory. At the time, it was a privately owned communal water system serving approximately 50 homes, a church, library and a school. Land acquisition and remedial work amounted to approximately \$400,000. Subsequently these funds were recovered from the residents that benefited from the private water system in the Ansnorveldt community. The Region currently owns and operates the Ansnorveldt drinking water system and assumes financial liability through water rates.



This previous experience will help inform the framework for entering into any new agreement for Communal Systems along with suitable financial terms in the Municipal Responsibility Agreements. The cost to develop and bring forward new Official Plan policies on communal systems is included in existing budgets for Environmental Services and Corporate Planning.

## **6. Local Impact**

Local municipalities are the governing authority on the planning process enabling private communal systems for new residential developments outside of municipal servicing areas. Local municipal official plans and secondary plans provide detailed land use planning direction in accordance with the Regional Official Plan. Through the Regional Municipal Comprehensive Review, policy and protocol options for communal servicing will be undertaken in collaboration with local municipalities. Local official plans are required to be in conformity with the updated Regional Official Plan. Requirements for a developer to enter into a Municipal Responsibility Agreement with the Region would be administered through the local planning process as a condition of approval for the development. As the Region has responsibility for water production, treatment and storage, stipulated in the *Municipal Act*, the Region is responsible for the long term viability of these private communal systems through Regional oversight and preventative assurances through the Agreements.

## **7. Conclusion**

York Region supports the goal of a sustainable Region by directing the majority of growth to fully serviced Urban Areas. With recent changes to the Provincial Policy Statement to support private communal water and wastewater systems, there is an increased need to be clear on when the Region would enter into a Municipal Responsibility Agreement. Consideration for allowing private communal systems for new developments outside of Urban Areas would require proper oversight and controls to ensure public health, environmental protection, and effective risk management for the Region. Staff will be conducting a review of policy and protocol options to provide policy direction in the Regional Official Plan for clearer management of these systems. This work will be based on prior policies in a previous Regional Official Plan as well as a best practices jurisdictional scan.

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For more information on this report, please contact Wendy Kemp, Director (A) Infrastructure Asset Management at 1-877-464-9675 ext.75141 and Sandra Malcic, Director, Long Range Planning at 1-877-464-9675 ext.75274. Accessible formats or communication supports are available upon request.

Recommended by: **Erin Mahoney, M. Eng.**  
Commissioner of Environmental Services

Approved for Submission: **Bruce Macgregor**  
Chief Administrative Officer

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Attachments (1)  
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