
Report of the Commissioner of Public Works

Privately-Owned Water and Wastewater Communal Systems Status Report

1. Recommendations

1. Council endorse the Private Communal Water and Wastewater Systems Terms of Reference for proposed development applications considering privately-owned communal water and/or wastewater systems (Attachment 1).
2. The Regional Clerk forward this report to the local municipalities, Ontario Minister of Environment, Conservation and Parks and Minister of Municipal Affairs and Housing.

2. Purpose

This report updates Council on the performance of privately-owned communal water and wastewater systems in York Region and outlines current risks in accommodating this form of servicing to meet growth needs.

This report requests Council endorse the Private Communal Water and Wastewater Systems Terms of Reference (Attachment 1), which establishes criteria and an evaluation process for proposed development applications considering privately-owned communal water and/or wastewater systems.

Key Points:

- Municipal servicing continues to be the best option to deliver growth at the scale required to meet the intent of *More Homes Built Faster Act* (Bill 23) to build more homes and make housing more affordable for Ontario families
- Consistent with Provincial policy, privately-owned communal water and wastewater systems are permitted to service existing communities to address serious public health or environmental concerns where full municipal services cannot be provided and on an interim basis for employment areas waiting on municipal servicing

- Due to increased interest by development community, a Private Communal Water and Wastewater Systems Terms of Reference was developed to guide development applications proposing new privately-owned communal systems. Landowners of privately-owned communal systems are required to enter into Municipal Responsibility Agreements with the Region to mitigate risks should these systems fail
- Annual performance reports show inconsistent environmental compliance as privately-owned communal water and wastewater systems age and pose financial risk to the Region, and homeowners that rely on this service

3. Background

Privately-owned communal water and wastewater systems are one of three technical servicing options available to developments

Water and wastewater systems are fundamental building blocks for development, ensuring long-term viability and protection of the environment and human health. Municipalities plan for these services by providing full municipal services within settlement areas. In areas where municipal services are not available or feasible, private communal and individual on-site services can be considered where deemed appropriate.

A privately-owned communal water and wastewater system is a non-municipal system servicing six or more lots or private residences. The homes or units serviced are typically part of a condominium corporation. Environmental compliance approval issued by the Province is required to construct and operate communal wastewater systems. Communal water systems must register with the Ministry of Environment, Conservation and Parks (Ministry) and may be required to obtain a Permit to Take Water.

The Provincial Policy Statement, 2020 was modified to include private communal water and wastewater servicing as the preferred form of servicing for multi-unit/lot developments where municipal services are not available, planned, or feasible.

Province can order a municipality to assume ownership and operation of failing privately-owned communal system

The Province regulates privately-owned communal water and wastewater systems, ensuring system design, construction and operation have no adverse impact to the environment or public health. The Province has authority to order a municipality to take over a privately-owned communal system if the owner is unable to operate the system effectively.

In the early 2000s, the Province ordered the Region to assume ownership and operation of Ansnorveldt drinking water system and to rectify deficiencies after system owners failed to do so, resulting in a boil water advisory for the community. Cost to rectify deficiencies, as reported to Council in [September 2004](#), on the Region's portion totaled over \$950,000 in 2023 dollars, accounting for inflation. The majority of water system improvements were to be paid by 54

residents in Ansnorveldt community. Total cost recovered was approximately \$30,000 per household in 2023 dollars. Similar situations in Regions of Peel, Durham and Waterloo, and City of Hamilton have been reported whereby municipal assumption or operation of these systems was required due to system failure, operator default and/or public health emergencies.

Council Members would have statutory standard of care liability for privately-owned communal systems as municipal drinking water systems

The *Safe Drinking Water Act, 2002* statutory standard of care for drinking water systems would apply if the Region assumed a privately-owned communal water and wastewater system. Members of municipal council and any municipal officials with decision-making authority over a drinking water system can be held personally liable for negligence related to these communal systems.

Municipal Responsibility Agreements for residential privately-owned communal systems are required to mitigate risks and financial liabilities to the Region and Council Members

The *Planning Act* and *Municipal Act* provide municipalities with a framework and authority to enter into Municipal Responsibility Agreements with proponents proposing residential developments on privately-owned communal water and/or wastewater services. These agreements establish conditions for construction, operation and maintenance of a privately-owned communal water and wastewater system.

Municipal Responsibility Agreements require financial securities and annual contributions to an asset replacement reserve fund even before the municipality assumes ownership. The asset replacement reserve fund is held in trust by the Region within accounts specific to the privately-owned communal system. System owners formally request release of these funds to complete system repair and replacement.

Financial securities and reserve funds are available in the event the Region assumes operation of the system and needs to rectify deficiencies or non-compliance, improve system performance through repairs or replacements, or comply with Ministry orders. If reserves are not adequate to cover required costs, landowners would be required to pay the difference.

The Province requires a Municipal Responsibility Agreement between the developer and a municipality responsible for treatment under the *Municipal Act*, prior to issuing an environmental compliance approval for privately-owned communal wastewater systems servicing residential developments.

Directing growth to urban areas with full municipal servicing aligns with the goal of creating complete communities

It is a policy of Regional Council and local municipalities to direct growth to urban areas where full municipal water and wastewater services are provided. Achieving complete communities on full municipal services supports the goal of a sustainable Region and aligns land use planning,

financial planning, and infrastructure delivery. This approach provides a broad rate base to support adequate ongoing investment in asset management and financial sustainability.

Consistent with provincial policy, privately-owned communal systems are permitted in the following specific circumstances due to risks to the Region and its residents and is consistent with the Lake Simcoe Protection Plan:

1. On a permanent basis for residential developments to address serious public health concerns or environmental concerns and where full municipal services cannot be provided
2. On an interim basis for employment developments to areas where full municipal services are planned but not yet constructed

Since the 1980s, individual stand-alone wastewater systems in York Region have been replaced by centralized collection primarily through the York Durham Sewage System and treatment at Duffin Creek Plant

Prior to construction of the York Durham Sewage System (YDSS), wastewater services in York Region were provided by local wastewater plants servicing individual communities. These small plants could not service proposed growth and, in some cases, were overloaded and negatively impacting receiving streams and rivers.

The province constructed the YDSS and Duffin Creek Plant discharging to Lake Ontario as it was identified as the only practical permanent solution to allow large-scale growth, while protecting the environment and public health in a financially sustainable manner. In 1997, the Province downloaded ownership and operation of the YDSS and Duffin Creek plant to York Region.

York Region has five Municipal Responsibility Agreements for privately-owned communal systems

As reported to Council in [June 2020](#), small-scale residential developments as an accessory or secondary use to resort/recreational developments were permissible under the 1994 York Region Official Plan policy framework, which has been revoked to conform to the *Oak Ridges Moraine Conservation Act*.

These developments were in rural areas serviced by privately-owned communal water and wastewater systems. The Region entered into Municipal Responsibility Agreements as systems were approved under this policy framework. Municipal Responsibility Agreements the Region has entered are displayed in Table 1. A map showing the location of these communal systems is included in Appendix A.

Table 1
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 988 Condominium Units (Schickedanz)	2,296		✓	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

4. Analysis

Annual performance reports from private systems show varying environmental compliance

Municipal Responsibility Agreements, drinking water systems regulations and Provincial environmental compliance approvals require submission of annual system performance reports based on regulatory drinking water and effluent discharge criteria. Based on review of these reports and annual site visits, Region staff observed general compliance of communal water systems, but inconsistent performance of communal wastewater systems since last reported to Council in 2020. Further information on communal system compliance is contained in the Private Memorandum on this same Committee of Whole agenda.

Performance and maintenance of aging privately-owned communal systems is more challenging than Regional systems

Region staff held discussions with system owners, operators and the Ministry regarding compliance concerns and noted non-compliance was often caused by aging infrastructure and lack of redundancy in system design. Although the lifespan of a typical communal system is roughly 60 years, mechanical and process equipment need replacement much earlier, typically at the 20-year mark, which is the current age of most existing privately-owned communal systems in York Region.

Adequate system redundancy becomes extremely important to allow for one part of the system to be offline for maintenance and enable performance during significant weather events. This redundancy is incorporated into design of municipal systems within York Region and mitigates risks to the environment.

Privately-owned communal systems have reported events of non-compliance. A lengthy period of non-compliance was experienced at one of the privately-owned facilities when aging assets failed and remained offline until an adequate replacement asset could be procured. Access to spare parts has become increasingly problematic due to supply chain issues and limited inventory of spare parts, causing long events of non-compliance. Given the type of system and small market share, spare parts for these older systems are less readily available.

Unlike municipal systems subject to O. Reg. 588/17 Asset Management Planning For Municipal Infrastructure, asset management planning for private systems is less rigorous and typically left to operate until the asset fails. There is less attention to preventative maintenance and financial measures to maintain service levels over the lifetime of the asset. Robust planning, redundant systems and financial economies of scale are limited compared to Regional systems.

Municipal servicing remains the preferred long-term option to meet the objective of Bill 23, addressing housing affordability

Developers perceive communal servicing as a potentially faster and cheaper way of obtaining water and wastewater services, rather than the current lengthy municipal-provincial environmental assessment approval process.

In the last year, the Region has received increased inquiries from the development community considering privately-owned communal water and wastewater systems. Some proposals are quite large, servicing up to 6,000 residents, equivalent to the Region's Mount Albert Water Resource Recovery Facility in the Town of East Gwillimbury. Some proposals have been within the urban area, where municipal servicing is planned, although further out in the time horizon of their planned development.

In all cases, proposals do not meet the policy direction outlined in the 2022 York Region Official Plan and Local Municipal Official Plans. In 2022, the Province passed Bill 23, which proposed changes to the *Planning Act* that, when enacted, shifts planning responsibility from York Region to the local municipalities. Local municipalities will be responsible for *Planning Act* decisions

having regard for both the 2022 York Region Official Plan and the local Official Plan. Over time local municipal Official Plans will be updated to incorporate the York Region Official Plan policies, including privately-owned communal system policies. Amendments to these planning policies will be needed and may require provincial approval through Minister of Municipal Affairs and Housing.

If local municipal Official Plan updates provide more opportunities for privately-owned communal systems, it will impact financial viability of municipal infrastructure. Development charges for municipal water and wastewater are not collected when the development is privately serviced.

To build complete communities, municipal services continue to be the best option to deliver growth at the scale required to meet the intent of Bill 23. Municipal services can achieve better economies of scale with a larger ratepayer base and have more rigorous lifecycle management. This ensures residents can trust municipal services for their drinking water and wastewater while protecting the environment and public health.

New Terms of Reference directs developers through transparent planning process for new privately-owned communal systems

Municipal servicing remains the preferred servicing option, and communal servicing for residential development requires Official Plan Amendments. That said, communal systems may be considered in certain circumstances. Proposed communal systems are reviewed during the planning and approval process to manage public health, environmental and financial risks to the Region.

A Terms of Reference for applications contemplating use of privately-owned communal water and wastewater systems has been developed under the Collaborative Application Preparation (CAP) process as reported to Council in [April 2023](#) and is included as Attachment 1. It articulates how the Region will assess the administrative, environmental, engineering, and financial criteria when considering private communal systems. The Terms of Reference includes requirements such as:

- Establishing a condominium corporation; entering into a Municipal Responsibility Agreement with the Region
- Submission of a Private Communal System Report, which includes justification, as no other reasonable alternative, for a communal system
- Meeting the Region's Communal Water and Wastewater Design Standards, Appendix A to the Guideline and design for future connection to municipal services when available
- Complying with provincial requirements and obtaining necessary approvals
- Demonstrating financial viability of the systems over its lifetime

- Payment of fees, securities, and reserve fund contributions

Together the Terms of Reference are designed to help ensure safe, long-term operation of these systems and support development of Municipal Responsibility Agreements required between the Region and a proponent and are subject to approval by Regional Council.

5. Financial Considerations

Securities and annual asset contributions are required under Municipal Responsibility Agreements to mitigate financial risks to Region from failed systems

Privately-owned communal systems can be costly to operate and maintain in a state of good repair due to the low number of residents to financially support these services. In addition, water and wastewater fees are generally incorporated into annual condominium fees as most homes serviced by communal systems lack individual water billing meters.

Financial securities and replacement reserve funds can help limit the financial risk to the Region; however, if the Region is ordered to assume operation and control of a system, there can be a shortfall, as noted in the 2004 Ansnorvedt [report](#) and discussed in the background section of this report. Municipal Responsibility Agreements would include provisions transferring responsibility to the Condominium Corporation in the event the owner is unable to satisfy their financial obligations under the agreement.

Financial contributions to replacement reserve funds are up to date

A Capital Replacement Reserve Fund is mandated by all existing Municipal Responsibility Agreements, except for one grandfathered system. The Region has worked with system owners to ensure contributions were made annually and appropriate analysis to inform the annual contribution amount were completed as per the terms of respective Agreements.

Administration fee for engineering review of planning applications proposing private communal systems is being considered in Region's Fees and Charges Bylaw

Although there is an annual administrative fee for staff to review the Annual Performance Reports and ensure compliance with the terms and conditions of the Municipal Responsibility Agreements, there is no cost recovery for staff time during the plan review phase.

Costs to the Region for reviewing planning applications proposing private communal systems are difficult to recover as private servicing exempts developers from water and wastewater related development charges. These costs could be recovered if a fee were established during the planning phase through the Region's Fees and Charges Bylaw. Staff are exploring this option with Legal Services and will report back to Council should this option be recommended.

6. Local Impact

Residents in York Region expect to have the same high quality of water and wastewater services, regardless of ownership. Local municipalities will need to work closely with Ministry of Environment, Conservation and Parks and York Region to ensure privately-owned communal systems are implemented in a way that protects public health and safety, and the environment.

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 development approval. As the Region has responsibility for water production, treatment, and storage, as stipulated in the *Municipal Act*, the Region is responsible for long-term viability of these privately-owned communal systems through Regional oversight and preventative assurances through Agreements.

7. Conclusion

York Region supports the goal of a sustainable Region by directing the majority of growth to fully serviced Urban Areas. Privately-owned communal systems are one of three technical servicing options, which can be considered in specific circumstances. Robust financial and asset replacement for these aging systems needs to be in place to maintain high quality of services expected by residents.

With recent changes to Provincial Policy and the *Planning Act*, there is an increased need to be clear on when the Region would enter into a Municipal Responsibility Agreement. Supporting Terms of Reference, including guidelines, have been created to help all stakeholders understand obligations and requirements when considering communal systems as a servicing option to enable building homes faster.

For more information on this report, please contact Wendy Kemp, Director, Infrastructure Asset Management at 1-877-464-9675 ext. 75141. Accessible formats or communication supports are available upon request.

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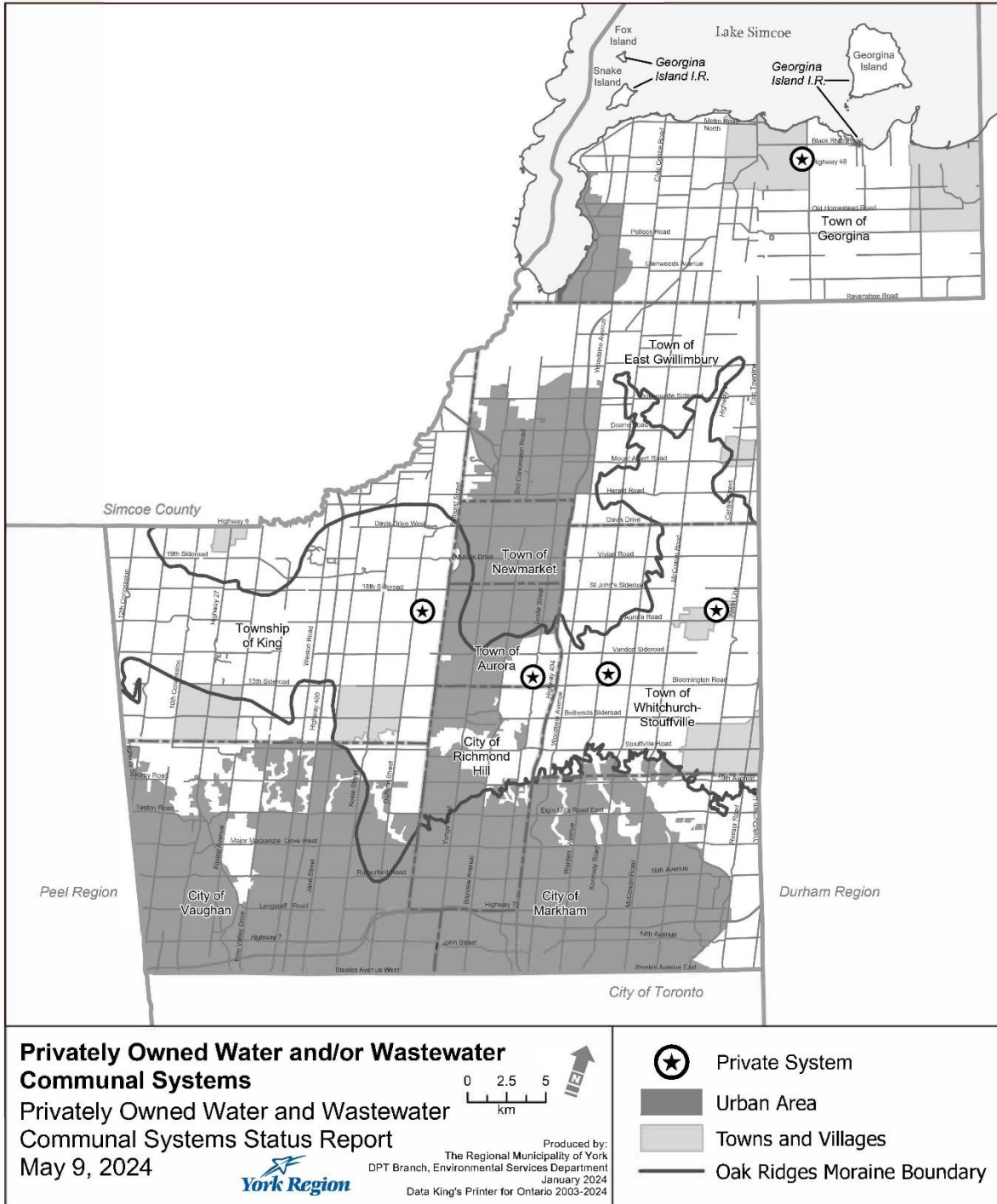
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Approved for Submission: **Erin Mahoney**
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Appendix A – Map of Privately owned Communal Systems
Attachment 1 - Private Communal Systems Terms of Reference (#16060773)



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