



A Case Study on the Role of the Municipal Responsibility Agreement

The Role of the Municipal Responsibility Agreement in a Decentralized Residential Development

PROJECT OVERVIEW

Location: Otonabee-South Monaghan, Ontario
Challenge: The site, located in a rural municipality, was in an un-serviced area with no “reasonable expectation” for future municipal servicing. To construct housing the developer required decentralized water and wastewater facilities, leading to the requirement for a Municipal Responsibility Agreement (MRA).

SOLUTION

Due to the complexity of the site and working with a municipality and a developer new to decentralized operations, communication and consultation were absolutely critical. Our recommendation going forward is to have these consultations early and update progress often to make sure any potential questions are addressed and all parties thoroughly understand what is to be constructed and, ultimately, managed in accordance with the conditions set out in the MRA.

BOTTOM LINE

The MRA was a key document for this development, as well as many others, where decentralized servicing was required. The site plan, condominium plan, reserve fund studies, and the Environmental Compliance Approval (ECA) are all tied to the MRA. Before any site permissions can be obtained, it is required that a draft MRA is reviewed by all parties.

BACKGROUND

The site, located south of Peterborough, ON, is an undeveloped residential property of 21 hectares area abutting the west side of the Otonabee River in an un-serviced area with no “reasonable expectation” for future municipal servicing.

To harmonize the growing community that rests among trails, lakes, and cottage country, the developer proposed constructing a single-family detached residential development with a rural feel close to urban areas.

Clearford as Operating Authority

With a concept in place, the developer originally teamed up with the now subcontracted Operating Authority, Clearford (formerly ASI Water), in 2008/2009. Clearford’s involvement at that time was to prepare the technical evaluation for servicing options including the on-site Water (W) and Wastewater (WW) treatment systems. This work included preparing the Functional Servicing Report (FSR) which formed part of the Schedule B Class Environmental Assessment (Class EA) for the proposed development.

Drawing heavily on decentralized water and wastewater experience, Clearford helped to develop the path forward.



Decentralized Development Debut

On-site servicing was a new opportunity for both the municipality and the developer. Previous to the proposed development, the rural municipality typically relied on individual wells and septic systems.

Early education

Throughout the various consultations, frequent communications, and open-house presentations, the municipality and developer soon became well versed on the processes and approvals involved in constructing decentralized systems.

The early education went beyond ‘Decentralized 101’, and brought perspective, exhibiting examples of similar developments to the project site, including condominium developments in other municipalities, operational data, culminating with construction cost estimates and designs.

“Routine consultations with the municipality and the developer enhanced the ability to arrive at a very clear, succinct MRA.”

– John Levie,
Vice President, Engineering

SHIFT IN AUTHORITIES

Adaptability is key

Changes at approval authorities and staffing resulted in revisiting, and often revising, the site plans and servicing designs. To do so, all aspects of development, execution, maintenance, and finance, were considered. As a result, the draft MRA was revised to reflect the latest designs and changes.

Municipal Responsibility Agreement

The MRA is a legal agreement between a number of parties: the municipality; the developer or site owner/the board of directors; and often the operating authority.

The MRA has legal authority under several pieces of legislation and is a requirement to obtain an ECA. The MRA provides for oversight at the municipal level for the construction, operation, and management of communal and private water and wastewater servicing.

MRA Objective

A well-crafted MRA clearly delineates the responsibilities and obligations for the site owner, the municipality, and the operating authority. This delegation of responsibility

assures the proper management, operation, and maintenance of the systems for problem-free communal and decentralized servicing.

MRA Requirement

The requirement for an MRA will be identified during the municipal consultation, typically early in the planning process. Only on-site wastewater systems that exceed 10m³/d, will involve an MRA subsequent to an ECA.

MRA Process

The process involved to draft and review the agreement is an iterative approach between the municipality and the owner to develop a reasonable framework or expectation. The most commonly applied approach is to use similar files or developments as examples to shape the foundation of the proposed MRA and servicing.

The consultation process is primarily between the developer and its counsel, and the municipality and their counsel. Other parties—the operating authority, municipal engineer, third-party financial review, facility management firms, various consultants and planners—may be brought into the discussions to produce a well-reasoned and sound agreement.

Reserve Fund Studies

For both the water and wastewater systems, reserve fund studies are often required as part of the MRA. Although the water and wastewater systems were on the same site, it

was critical the systems were maintained separately per the agreement funded by the owner.

The MRA established a routine financial review. The review period is most often from five years to ten years; however, the project site was ordered a more frequent financial review of three years as a result of it being the first encountered for the municipality.



Consequence of Failure

Historic servicing failures of communal systems were found to have a similar cause: a lack of sufficient funds. In these cases, user rates had to increase to compensate for additional service and upgrades to address the failures.

Untenable servicing for the residences can skew the financials plan, resulting in high fees to manage the sites properly. When adjusting the user rates, the parties are to remain mindful to ensure user rates are not unbearable.

An unfeasible financial plan may lead to permanent residents forced to move from their homes, stemming from unsustainable operations of the systems and a risk of environmental impairment.

In these unfortunate situations, the MRA is a reliable enforcement document used to ensure adequate funding is set out initially, a plan is in place to maintain funding for the life of the assets, and if there are heightened costs, identify who, out of the parties, are responsible for covering those expenses.

Viability to Verification

To show the viability from a financial perspective, Clearford put together basic reserve fund studies that provided both capital and operating cost estimates for the water and wastewater systems.

These financial considerations were then:

1. **Reworked** into the condominium plan revisions;
2. **Added** to the condominium fees by the minimum management firm; and,
3. **Viability** reviewed by the municipality to make sure it met the expectations and will be financially viable.
4. **Verified** financials.

The end result was a scaled to accommodate a phased development, where the homes are to be built out in three phases and the water and wastewater servicing to be completed in two phases.

Streamlined Review Process

The Ministry of Environment, Conservation and Parks (MECP) has recognized the shift in development, with dedicated review streams for private wastewater systems and a move to standardized templates for small wastewater treatment systems. The shift in dedicated staff and reduced haggling over terms and conditions has produced a shorter turn around time for approvals and less uncertainty over the content and monitoring requirements for these systems.

“Over the past 10-20 years, discussions between private operations companies and regulatory agencies have evolved significantly.

What used to have close to zero interest, decentralized systems are now viewed as a viable option for un-serviced areas.”

- John Levie,
Vice President, Engineering

Conclusion

Within the past couple of years, there has been a big awakening in areas un-serviced by municipal infrastructure. Although the concept of communal, decentralized servicing is still foreign to some, it is

highly achievable with the right team.

Innovative technologies and concentrated water and wastewater expertise have fostered a steady growth in decentralized systems. However, since the COVID-19 pandemic and with many choosing to relocate from dense urban centres to rural locations, there has been an increase in the demand for housing in traditionally un-serviced area.

With substantial growth in decentralized systems ahead, Municipal Responsibility Agreements will remain key documents to ensure the proper manufacturing, maintenance, and operation of water and wastewater facilities.

CLEARFORD WATER SYSTEMS INC.

ABOUT

Clearford Water Systems Inc. (Clearford) is a provider of unified water management and sanitation systems with full solutions design, deployment, operations, and project finance services. With almost 200 systems under management, we are the largest operator of privately owned communal water and wastewater treatment systems in Ontario. For more information, visit www.clearford.com.

CONTACT

John Levie
V.P., Engineering
Clearford Water Systems Inc.
Email: jlevie@clearford.com
Phone: 289 241 7435

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