



Committee Report

To: Warden Mitch Twolan
Members of the Planning and Development Committee

From: Kara Van Myall
Director of Planning and Development

Date: June 20, 2019

Re: Consent Application B-84-16.84

Recommendation:

That Consent Application B-84-16.84 be approved subject to the attached conditions recommended by staff.

Executive Summary:

The application proposes to sever a 149 hectare lot to yield a 72 hectare lot and retain a 77 hectare lot. The owner's son is acquiring the severed lands with plans to replace one or more farm buildings.

The subject lands are located north of Highway 6 in the Municipality of Northern Bruce Peninsula and consist of most of 4 original Township lots.

A number of planning issues identified through the application led to it taking significantly longer than a routine approval. These include:

- Municipality obtaining ownership of Hidden Valley Road (currently a trespass road) and an easement to access the McVicar Cemetery
- Natural heritage features (significant woodlands)
- Protection of groundwater in a karst area
- Archaeological Potential
- Appropriate tools to ensure studies are completed at the right time and whether conditions can apply to 'retained' lands

The remaining issue to be resolved by the Land Division Committee is karst and archaeological potential. Staff recommends that this be addressed through a development agreement condition for specific types of future development on the severed and retained lots.

Background:

Staff received the application in 2016. One of the more complex issues that needed to be resolved is the Municipal interest in obtaining title to Hidden Valley Road. Progress on the application was placed on hold during preliminary negotiations with the owner and agent.

Planning staff review identified Archaeological potential related to Hidden Valley Road (early transportation route from Lions Head to Tobermory); McVicar Cemetery; McVicar Sawmill; and the Crane River (primary water source).

Further, the Grey Sauble Conservation Authority identified karst and significant woodlands as key natural heritage features. Through several rounds of correspondence staff worked to provide flexibility and a focused scope for studies that may be required if development occurs within areas of archaeological potential or involves a sewage disposal system, livestock facility, or manure storage facility in areas mapped as karst.

The Archaeological potential and karst hazard are the two outstanding elements of the application that remain unresolved.

Staff proposed a development agreement, registered on title as part of the consent process, to address these matters. Cuesta had no objection to the agreement being applied on the severed lands, and Cuesta and Municipal staff acknowledged that final details could be worked out pending conditional approval. As of February 2019, Planning staff understood the only issue to be related to applying the condition to the retained lot.

Since this consensus was reached, the applicant through their agent now objects to any conditions being applied to the application which is a deviation from the application as it was originally received. We reviewed the change with the SON who recommend that the condition remain.

Northern Bruce Peninsula Council received a delegation from Cuesta on May 27, 2019 (attached, including the legal opinion). The delegation requested that the karst assessment and archaeological assessment requirements be removed entirely and that Council advise the Land Division Committee that the only conditions required by the Municipality relate to obtaining title to the road. Northern Bruce Peninsula Council passed a resolution to this effect (attached).

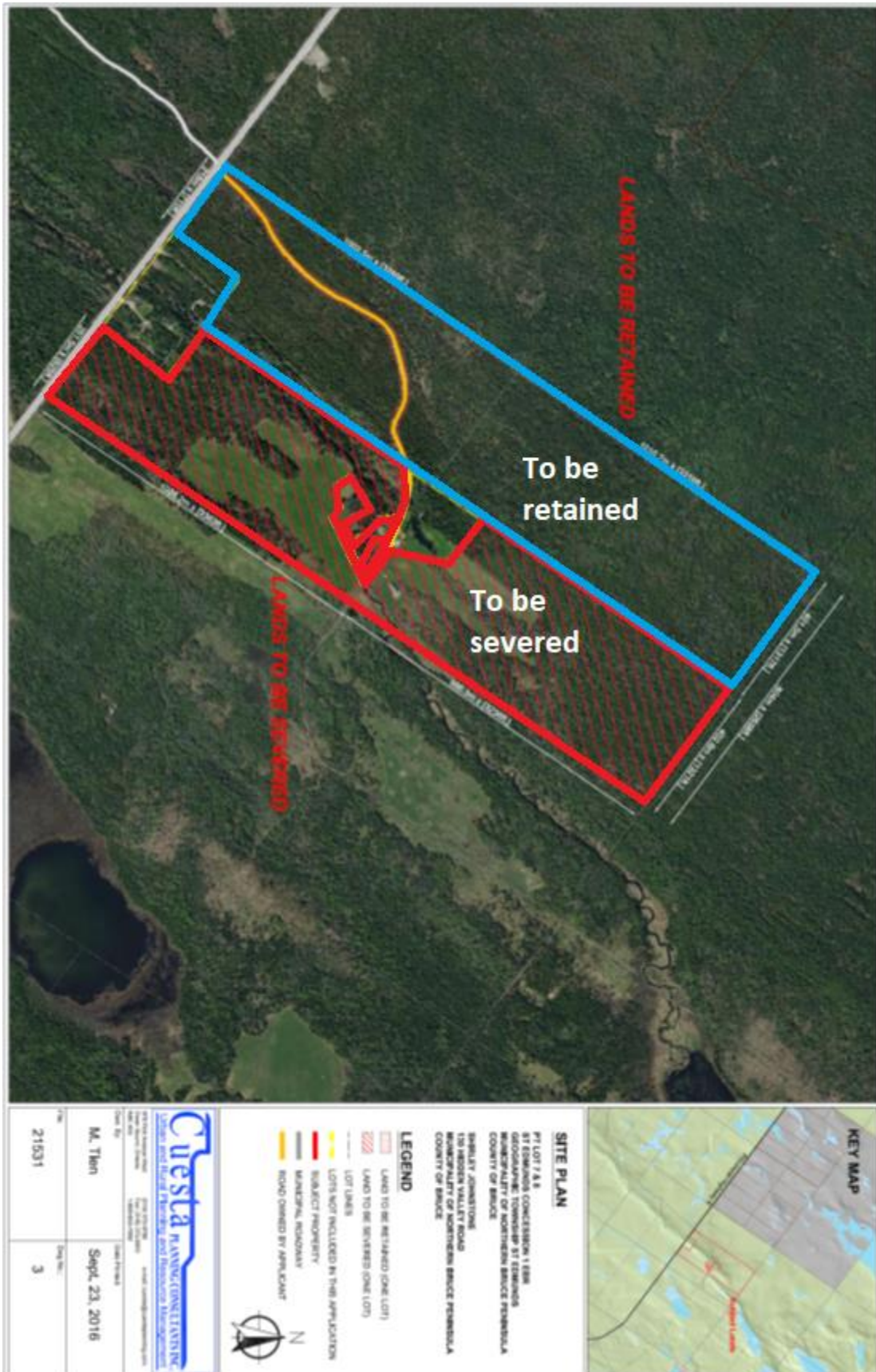
Bruce County is the approval authority for consents. Staff can approve consents when there are no issues with approval. The consent is before the Land Division Committee for decision on the development agreement condition related to karst and archaeological potential.

Description of Proposal

The application proposes to sever Concession 1 EBR Part Lot 8, and Part of Concession 2 EBR Lot 8 and Part Lot 7 EBR.

A tourist facility, single detached dwelling, municipal cemetery, and part of the Crane River Park have been previously severed from Lot 7, Concession 1 EBR and Lot 7 Concession 2 EBR.

Airphoto / Site Plan



Provincial Interests

See Appendix '1.' Decisions must be consistent with the Provincial Policy Statement.

In this application, relevant interests from the Provincial Policy Statement are:

Water:

2.2.1 Planning authorities shall protect, improve or restore the quality and quantity of water by:

- e. implementing necessary restrictions on development and site alteration to:
 - 1. protect all municipal drinking water supplies and designated vulnerable areas; and
 - 2. protect, improve or restore vulnerable surface and ground water, sensitive surface water features and sensitive ground water features, and their hydrologic functions;

Sensitive [...] ground water features, means areas that are particularly susceptible to impacts from activities or events including, but not limited to, water withdrawals, and additions of pollutants.

Hazardous sites: means property or lands that could be unsafe for development and site alteration due to naturally occurring hazards. These may include unstable soils (sensitive marine clays [leda], organic soils) or unstable bedrock (karst topography).

Comment: Staff propose a development agreement, registered on title, that requires for a Karst Hazard assessment prior to issuance of building permit for new development of a sewage disposal system, livestock facility, or manure storage facility.

Cultural heritage and archaeology

2.6.2 Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.

Areas of archaeological potential: means areas with the likelihood to contain *archaeological resources*. Methods to identify archaeological potential are established by the Province, but municipal approaches which achieve the same objectives may also be used. The *Ontario Heritage Act* requires archaeological potential to be confirmed through archaeological fieldwork.

Comment: Staff identified archaeological potential using the Ministry of Tourism Culture and Sport (MTCS) [Checklist for identifying archaeological potential](#). A consent is Development under the *Planning Act* and enables further development as there is an additional lot. As there is no site alteration proposed at this time, staff propose that the Development Agreement noted above require assessment within areas of potential, except for replacement of existing buildings. This is similar to "Holding" provisions used for zoning by-law amendments and is proposed in this case as a zoning by-law amendment is not required for the consent to proceed.

The proposed Development Agreement condition addresses risks associated with the development permitted as a result of the consent and is consistent with the Provincial Policy Statement.

County Official Plan

The application meets general consent policies and the severance meets lot creation policies for the applicable designations.

The County Official Plan is also concerned with karst, as an area where fractured and dissolved limestone makes groundwater vulnerable to impacts from surface water. The primary concern relates to groundwater quality impacts arising from manure and/or sewage.

The Plan notes:

4.3.2.11 Karst

The Bruce-Grey Regional Groundwater Study identifies areas of karst topography. This mapping is at a regional scale and therefore all areas may not be adequately shown. Development or site alteration in areas having karst topography shall not proceed in the absence of a detailed evaluation. The evaluation shall investigate the potential threat of the proposed development or site alteration on groundwater resources and shall be completed by an individual who specializes in karst topography. Development shall be prohibited unless it can be shown that these threats can be overcome through mitigation resources.

Areas identified in the Bruce County Official Plan 'Constraints' Schedule as karst topography are shown in yellow on the map below.

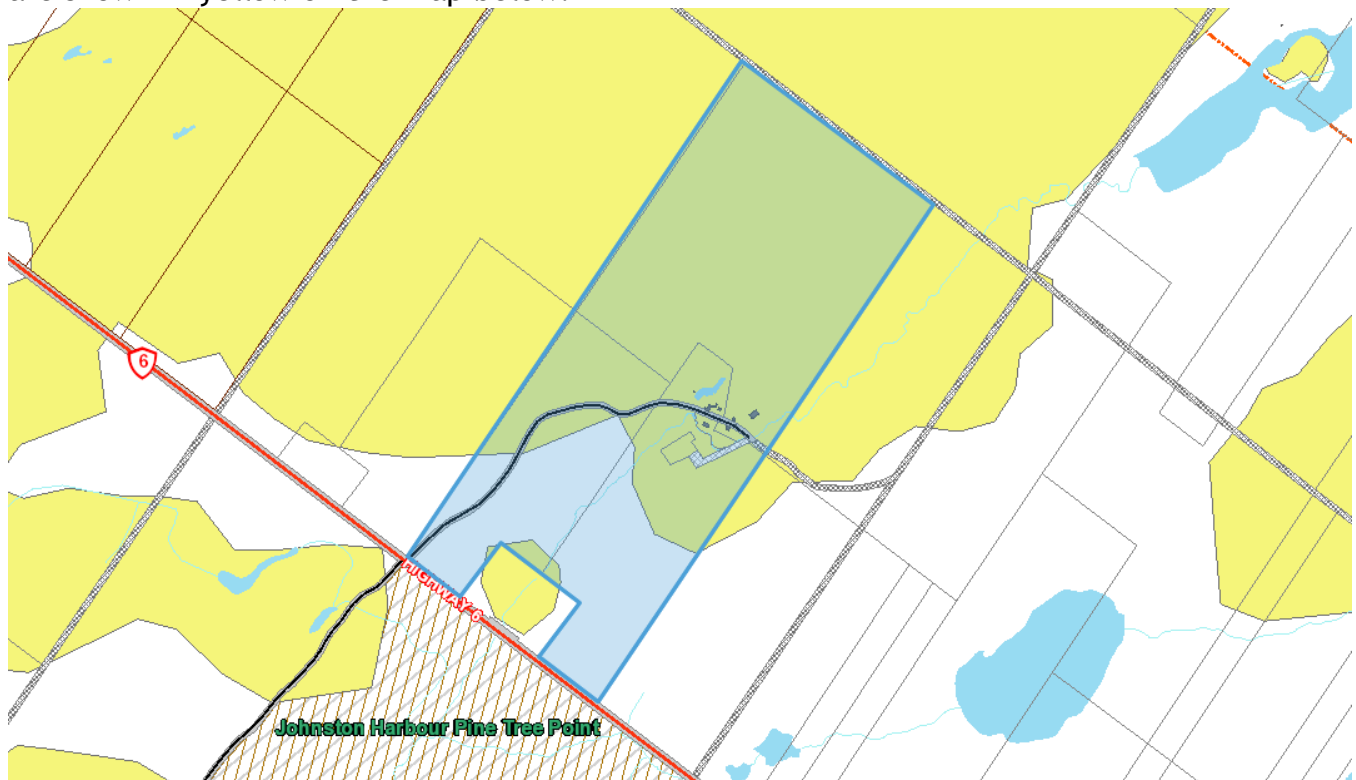


Figure 1: Karst areas (yellow) from Bruce County Official Plan Schedule 'C' under general subject lands (blue)

Zoning by-law

The proposed consent conforms to the applicable zoning by-law.

Additional lots will be created by the dedication of Hidden Valley Road to the Municipality. The resulting lots are exempt from conformity with the lot area requirements of the by-law by a provision that addresses expropriations and road widenings.

Agency Comments

MTO: No concerns or objections

Eastlink: Not affected by application

GSCA: Initially recommended EIS for significant woodlands and a karst hazard assessment prior to future development. Upon further discussion noted that the Bruce County Forest Conservation by-law can address woodlands in this circumstance and karst hazard assessment could be limited to pathogen risks associated with sewage disposal system, livestock facility, or manure storage facility.

MTCS: Does not want a Restrictive Covenant related to archaeological potential, recommends addressing potential through site plan control.

Municipality: Reviewed conditions several times; verified proposed conditions including the site plan / development agreement condition, Council subsequently resolved that the condition is not a requirement of the Municipality.

Saugeen Ojibway Nation: Did not comment on the initial circulation that included a condition proposing an agreement. Staff notified SON of the request that the condition be removed. SON Comments: "After reviewing the materials, comments and application, SON agrees and supports a condition requiring karst and archeological assessment for consent of the said property. These conditions are consistent with SONs principles for the protection of water and cultural resources."

Public Comments

No comments were received at the time of writing this report.

Planning Analysis and Comments:

Karst features and archaeological potential exist across the subject lands and in the broader area. Cuesta noted in its delegation that Northern Bruce Peninsula should address these features throughout the Municipality using the comprehensive zoning by-law, rather than applying them only for applications under the *Planning Act*. This may be appropriate. However, it is not in place at this time, and the absence of a zoning-based approach does not mean that we should ignore these features as they are identified through planning applications. It also does not mean that we should address features only on half of the subject lands (the severed portion) of the application.

The legal opinion that is the basis of the argument for not using a **development agreement** for this application notes that conditions can be applied to severed and the retained lands.

The legal opinion also states that conditions must be related to the application and be relevant. It suggests that site plan control is not appropriate because:

1. It is not related to the application (ie Council has to pass a separate by-law)
2. The Assessments noted may be beyond the scope of Site Plan Control as outlined in the Planning Act and the County's Official Plan
3. May not be relevant to the application as there is no development proposal and these assessments could be required as a condition of any future development application(s) if/when made, so no need for the by-law.

Points 1 and 2 are addressed by using a **Development Agreement** under Section 51(24) (25) as a condition of the consent approval.

Staff disagree with point 3 as the consent is development and enables further development. Staff also disagree with the assertion that the assessments could be required as a condition of any further development application(s). Absent an agreement, the Municipality does not have the means to require a karst assessment or archaeological assessment when someone comes in for a building permit. These are triggered only when development requires a *Planning Act* approval, for example a minor variance, zoning by-law amendment, or consent.

While the Building Code requires depth to groundwater or bedrock for sewage disposal systems, typical information submitted for permits to establish sewage disposal systems do not investigate the condition of the bedrock underlying the sewage disposal system.

The new owner of the severed lot may wish to replace an existing building. We have worked to accommodate this interest, with no additional steps required, in the consent condition.

The current owner may have no intentions for the retained lot. The delegation to North Bruce Peninsula Council noted that the retained lot contains lands that are not particularly suitable for development. If so, a development agreement presents no burden to the owner.

As a result, staff recommends that the condition that requires a development agreement regarding completion of a karst assessment and archaeological assessment where applicable be applied to the consent, and that the condition be applied to both the severed and retained lots. The Municipality has the capacity to implement the agreement, has done so with several similar applications, and previously verified conditions for this application including a registered agreement.

Financial/Staffing/Legal/IT Considerations:

Potential Appeal to Local Planning Appeals Tribunal

Written by:

Jakob Van Dorp RPP,
Senior Planner, Planning and Development

Appendix 1 - Provincial Policy Statement 2014

Applies?	Section	Policy	Comment
	1.0	Building Strong Communities	
	1.1	Managing & Directing Land Use To Achieve Efficient Development & Land Use Patterns	
	1.1.3	Settlement Areas	
x	1.1.4	Rural Areas in Municipalities	
	1.2	Coordination	
	1.3	Employment Areas	
	1.4	Housing	
	1.5	Public Spaces, Parks and Open Space	
	1.6	Infrastructure and Public Service Facilities	
	1.6.4	Sewage and Water	
	1.6.5	Transportation Systems	
x	1.6.6	Transportation and Infrastructure Corridors	No objection from MTO
	1.6.7	Airports	
	1.6.8	Waste Management	
	1.7	Long-Term Economic Prosperity	
	1.8	Energy and Air Quality	
	2.0	Wise Use and Management of Resources	
x	2.1	Natural Heritage	Significant Woodlands-covered by Forest Conservation By-law
x	2.2	Water	Proposed condition re: karst assessment for future development
x	2.3	Agriculture	
	2.3.3	Permitted Uses	
x	2.3.4	Lot Creation and Lot Adjustments	Meets policies
	2.3.5	Removal of Land from Prime Agricultural Areas	
	2.4	Minerals and Petroleum	
	2.4.2	Protection of Long-Term Resource Supply	
	2.4.3	Rehabilitation	
	2.4.4	Extraction in Prime Agricultural Areas	
	2.5	Mineral Aggregate Resources	
	2.5.2	Protection of Long-Term Resource Supply	
	2.5.3	Rehabilitation	
	2.5.4	Extraction in Prime Agricultural Areas	
	2.5.5	Wayside Pits/Quarries, Portable Asphalt Plants / Concrete Plants	
x	2.6	Cultural Heritage and Archaeology	Archaeological Potential

	3.0	Protecting Public Health and Safety	
x	3.1	Natural Hazards	Mapped karst hazards
	3.2	Human-made Hazards	