Appendix ‘B’: Detailed Planning Analysis:

Background: Merged Lots

The Planning Act generally prohibits a property owner from transferring a piece of property if they also own abutting lands. There are some exceptions, for example if the lots are in a plan of subdivision or when consent (often called a severance) is given by the Land Division Committee. To further complicate matters, original “Town Plot” lots are considered to be “subdivision” lots, however original “Township” lots are not.

Owners can preserve their ability to transfer adjacent lots independently by careful estate planning and seeking legal advice regarding who appears on title of the lots. This has not always happened and may continue to occur.

Issue #1 Requirements and Conditions for Severing Merged Lots that Conform to Policy

Sometimes lots that have merged on title will meet the lot area, frontage, density, and general consent policies to be eligible for severance. This is most commonly the case when an original Township lot merges with an adjacent Township lot. As the lots cannot be transferred independently, a consent is required.

Lot creation by consent requires the Planning Authority to review various matters (see Provincial Interests below), which can appear onerous to owners who are seeking to regain an ability that they formerly had - to transfer previously existing lots independently of each other.

Current Policy

General consents policies of the County Official Plan require that

“vii) “The severed and retained lot(s) shall: be of acceptable size and dimension for the intended use; have regard for the proper treatment and disposal of stormwater and proper lot grading; have safe and adequate access to the highway system; be consistent with the sewage and water servicing policies of Section 4.7.5 [Water and Sewer Services]; not be premature in regard to the public interest; have regard to the natural environment.”

“x) On the granting of a consent, conditions may be imposed on the severed and retained lot(s) to ensure the proper development of the severed and/or retained lots(s) including but not limited to the requirement for a stormwater management plan, lot grading plan, tree retention plan, parkland dedication, cash-in-lieu of parkland, roadway/highway widening dedication servicing requirements, etc.”

And also provide that:

“xiii) Nothing in this Plan shall prohibit the recreation of the original Township lot fabric provided both the severed and retained lots comply with the minimum lot area requirements of this Plan and both the severed and retained lots front onto, and have access to, an opened and maintained municipal road that is maintained on a year-round basis at the time of application.”

Analysis:

The Policy permitting re-creation of the original township lot fabric is intended to support a common size for parcels of land in the countryside and enable straightforward transfers of township lots that merge on title with only basic requirements for area, frontage and access on a road.
The Plan and local by-laws generally permit a range of uses in Rural/Agricultural areas which may not involve development or site alteration, and within which there may be many possible locations for development.

Policies (vii) and (x) permit the use of development agreements and other tools as conditions of consent approval. In some circumstances these conditions or agreements have been applied to consent applications on larger lots (not necessarily township lots) as a way of recognizing that

- Lot creation is development and enables further development;
- There are significant natural features or archaeological potential;
- A specific development site has not been identified; and
- Natural features may change

These conditions or agreements provide greater flexibility than a requirement to complete all studies prior to submitting an application to create a lot. Agreements also do not prohibit the creation of lots or re-creation of the original township lot fabric but do provide a means of ensuring that development of lots is consistent with Provincial interests and supports the goals and objectives of the Official Plan.

Through a recent application there appeared to be concern amongst Committee members regarding the use of conditions when dealing with former township lots. This report provides the committee with an opportunity to discuss in general terms the intent and application of these policies.

Options and Actions
Options and suggested actions to move them forward are outlined below:

<table>
<thead>
<tr>
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<th>Suggested Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>A - Status Quo</td>
<td>Leave policies as they are</td>
<td>No action required.</td>
</tr>
<tr>
<td>B - Treat as new lots</td>
<td>Amend Official Plan consents policies to clarify that all lot creation is subject to the goals and objectives of the official plan</td>
<td>Resolution to direct staff to Initiate County Plan Amendment</td>
</tr>
<tr>
<td>C - Do not treat as new lots</td>
<td>Amend Official Plan consents policies to clarify that township lot consents are not considered to be new lots or intended to be subject to information requirements or conditions related to future uses unless proposed by the application.</td>
<td>Resolution to direct staff to Initiate County Plan Amendment as attached</td>
</tr>
</tbody>
</table>

Staff recommends that option ‘C’ be pursued as a means of clarifying the Plan intent for these lots.

Issue 2: Severing undersized lots that have merged on title
Staff estimate there to be least 20 cases in Bruce County where two (or more) undersized adjacent lots with dwellings and septic systems have merged on title. In many cases, the owners did not intend to merge the lots and were not aware that the lots had merged until they attempted to sell one of them.

These lots are considered “undersized” if their ability to effectively dilute wastewater that is generated on the lot is unknown. Protection of ground and surface water from contamination is a major objective of land use planning. Concentration of nutrients in
human waste, for example due to many septic systems in a small geographic area, can cause health and environmental impacts. These impacts are different from biological contaminants (such as e.coli) which may be effectively managed through proper design and maintenance of a septic system.

When developed lots merge, the ‘extra’ development may not conform to the zoning by-law. If Legally established, it would be considered a legal non-conforming use. Owners of non-conforming dwellings may be able to get building permits to maintain their buildings, but may not be able to make the use “larger” (i.e. by way of an addition, by converting a room to a bedroom, or adding new plumbing fixtures, without a committee of adjustment approval or a zoning by-law amendment).

Current Policy
- The County Official Plan sets a 4047 square metre (1 acre) minimum lot area for lots with septic systems. The Plan requires groundwater quality impact studies that follow provincial guidelines where smaller lots are proposed. The studies must demonstrate that each new lot can effectively dilute nutrients to meet the Ontario drinking water standards. Policies do not recognize situations where undersized lots merge on title.
- Planning Act regulations require similar studies for applications on an existing lot when the design sewage flow rate would or could exceed 4500l/day.
- Some Local Official Plans set a maximum density for development on private or partial services.
- The Niagara Escarpment Plan (NEP) applies to some areas within the Municipality of Northern Bruce Peninsula and the Town of South Bruce Peninsula. Lot creation policies of the NEP outline criteria to be considered in this scenario:
  o neither the dwelling on the new lot nor the dwelling(s) to be retained were approved on the basis that they would be for temporary use or as a dwelling unit accessory to agriculture;
  o all the dwellings on the property are existing uses as defined in this plan and have received approval from the municipality;
  o both the dwelling on the new lot and the dwelling retained are of a reasonable standard for habitation and have been used as a dwelling unit within the year before making application to sever;
  o severance of the existing dwelling does not conflict with Part 2.4.18 below; and
  o a new lot is not to be created for a mobile or portable dwelling unit.

Analysis
Applications to re-sever undersized merged lots face a challenge because the groundwater quality impact study (noted above) is costly and in some cases the lots are so small that the study is unlikely to support lot creation.

To support ground and surface water quality, the Planning objective would be for “extra” dwelling(s) on undersized lots to be removed so that there is a lower density of development on septic systems and the nutrient impacts to groundwater are thus reduced.

However, removing extra dwelling(s) is a cost to owners who may have “legal non-conforming” or “grandfathered” rights; if the dwellings were legally established, they have a right to be there.

It is unlikely an owner would voluntarily remove a well-maintained dwelling. Removal of a dwelling would likely follow a period where it is poorly maintained and/or becomes derelict.
This could have adverse neighbourhood impacts and also removes housing stock from the community. Strong communities and providing housing are also planning objectives.

If it is unlikely that density will be reduced, the next-best thing from a groundwater quality perspective would be “don’t make it worse - avoid increasing nutrient contamination.” This objective can be met on merged lots where a committee of adjustment approval is required for the use to expand. If the lots were severed and number of dwellings / uses again conforms to the bylaw this opportunity to reviewing groundwater impacts would be lost.

A development agreement can be used to protect groundwater from impacts due to additional development. This approach has been proposed by a planning consultant acting for an applicant in a current consent proposal that is awaiting the Committee’s discussion.

It is important to note that this analysis applies only:

- Where the lots in question have existing development - creating vacant undersized lots with private services would not support the groundwater quality objective;
- Where it can be demonstrated that the existing development was legally established - if development was not legally established, it doesn’t have a right to be there;
- Where the multiple dwelling situation occurred as a result of lots merging on title; some zones permit more than one dwelling (example: for farm help on a farm) and do not intend for such dwellings to be subsequently severed;
- Where the proposed lots can accommodate their onsite services, especially the sewage disposal system, within the property. Although not preferred, existing shared wells may be appropriate. A new lot line may not need to follow the former lot line, if it helps to accommodate services or share land more evenly between lots.
- Where further groundwater impacts are avoided (i.e. through development agreement)

### Options and Actions

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<tr>
<td>A - Status Quo</td>
<td>Consider applications on a case-by-case basis where applicants complete studies or request exemption through OPA</td>
<td>No action required.</td>
</tr>
<tr>
<td>B - Do Not Support</td>
<td>Continue with multiple dwellings on a lot (refuse consent applications unless policy and study criteria are met); legal non-conforming status permits maintenance and prevents expansion of uses</td>
<td>Adopt Resolution that the County does not support severance of merged undersized lots</td>
</tr>
<tr>
<td>C - Support severance, manage future impacts</td>
<td>Permit developed lots to be severed, use conditions and/or restrictions on title to maintain or improve wastewater</td>
<td>Resolution to Initiate County Plan Amendment as attached</td>
</tr>
<tr>
<td>D Support severance</td>
<td>Permit dwellings to be severed with no specific limits on re-development or intensification</td>
<td>Resolution to Initiate County Plan Amendment to specifically consent in these circumstances</td>
</tr>
</tbody>
</table>

Staff recommend that option ‘C’ represents the best balance of public and private interests and have included this option in the attached amendment.
Issue 3: Lot Additions between undersized lots
Similar considerations apply when there are two adjacent undersized lots next to each other, and one owner wishes to obtain lands from their neighbour. This might be proposed to improve access, increase a yard setback, facilitate building an addition, or obtain land under an existing building. If both lots are legally existing separate lots, the density of development has been established. Making one lot a little smaller to make another lot a little bigger does not affect the density of dwellings and is unlikely to have a significant effect on the intensity of use. This approach would be appropriate to make lot areas more equal but should not result in a “retained” lot that is smaller than a newly enlarged lot. We have also had cases where a vacant undersized lot is split into two pieces and added to adjacent undersized parcels, creating two larger lots from three smaller lots.

Current Policy
Boundary adjustments/enlargements are not discussed in the general consents policies of the County Official Plan. The plan does specifically permit consents for boundary adjustments and lot enlargements (and establishes criteria for them) in the Agricultural and Rural designations, as below:

Section 6.5.3.3 Consents - Agricultural Areas:
- In no instance shall an original Crown surveyed lot be divided into more than two (2) parcels including the retained portion (unless divided for school, church, road widening, minor lot line adjustments)
- Lot adjustments for legal or technical reasons are permitted, limited to easements, correction of deeds, quit claims and minor boundary adjustments; all of which do not result in the creation of a new lot.
- Lot enlargements permitted for expansion of an existing Non-Farm Residential lot; limited in area to accommodate the residence, accessory buildings, a well and a sewage disposal system, while ensuring that as little acreage as possible is removed from the agricultural lands. The maximum lot size shall generally not exceed 0.81 hectares (2.0 ac.). As a condition of consent, the remnant parcel shall be rezoned for agricultural purposes only provided it is vacant.

Section 6.5.3.4 Consents - Rural Areas:
- Lot adjustments for legal or technical reasons permitted for easements, correction of deeds, quit claims and minor boundary adjustments; all of which do not result in the creation of a new lot.
- Lot enlargements for an existing Non-Farm Lot or Non-Farm Residential Lot criteria are:
  o maximum lot size 4 hectares, justification required for a proposed lot size over 0.81 hectares (2 acres);
  o Lot addition lands must be designated ‘R - Rural’ unless receiving lot is smaller than 0.4 hectares (1 acres) in size, wherein ‘A - Agricultural’ lands may be added to a maximum total lot area of 0.61 hectares (1.5 acres).
  o Designation beneath ‘Hazard’ land area applies
  o Retained parcel must be viable for its existing or proposed future use,
  o Frontage-to-depth ratio shall be a maximum of 1:3 and conform to the appropriate zoning requirements for lot frontage.
  o Must meet MDS I setbacks from surrounding livestock facilities
The PPS permits lot adjustments in prime agricultural areas for legal or technical reasons including purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.

**Analysis**

In practice, lot additions where the parcels meets all of the policies for severance are routinely processed.

Typically, however, lot additions are requested where lots are small and space is needed to permit a new building to be constructed or because existing development was located partly on another lot. This is most common in settlement areas and Rural Recreation areas.

Having no clear policy for lot additions where there are existing undersized lots leaves some uncertainty which could impact the consistency of review for these proposals.

The final sentence of the Agricultural consents policy for lot additions to undersized lots in the Agricultural designation appears intended to prevent dwellings from being constructed on a farm parcel that has granted a lot addition to a non-farm lot. However, it does not state this clearly. If this is the case, the effect on the retained lot is the same as if a surplus farm dwelling was severed, despite the application creating no new lot. Staff recommend that this policy be understood to describe what makes a boundary adjustment in favour of a non-farm lot “minor,” and that the statement regarding rezoning be deleted as being unclear, a deterrent to these boundary adjustments, and more restrictive than the Provincial Policy Statement.

**Options and Actions**

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</tr>
<tr>
<td>B - Do Not Support</td>
<td>Reserve the County consent certificate only for applications that yield lots that conform to current lot creation standards</td>
<td>Adopt Resolution which makes it clear to applicants that the County does not support lot additions from undersized lots</td>
</tr>
<tr>
<td>C - Clarify policies</td>
<td>Amend policies to clearly permit lot additions and boundary adjustments in all designations, including where required to improve existing deficiencies; remove rezoning requirement in Ag areas</td>
<td>Initiate County Plan Amendment as attached to specifically permit consents in these situations</td>
</tr>
</tbody>
</table>

Staff recommend Option C.
Provincial Interests relevant to all three Planning Issues:
Planning decisions are required to have regard for provincial interests outlined in Section (2) of the Planning Act, Land Division criteria in Section 51(24) of the Planning Act and be consistent with Provincial Policy Statements and conform to or not conflict with provincial plans that are in effect.

Planning Act:
The most relevant Section (2) interests include:
- the orderly development of safe and healthy communities,
- the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems; and
- the protection of public health and safety

Section 51(24) criteria include “the suitability of the land for the purposes for which it is to be subdivided”

Provincial Policy Statement (2014):
Direction for water is found in Section 2.2.

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;

Quality and quantity of water is measured by indicators associated with hydrologic function such as minimum base flow, depth to water table, aquifer pressure, oxygen levels, suspended solids, temperature, bacteria, nutrients and hazardous contaminants, and hydrologic regime.

Development means the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the Planning Act.

Direction for lot adjustments in prime agricultural areas is found in Section 2.3 - Agriculture:

2.3.4.2 Lot adjustments in prime agricultural areas may be permitted for legal or technical reasons.

“Legal or technical reasons”: means severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.

“Development:”
means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act, but does not include:
   a) activities that create or maintain infrastructure authorized under an environmental assessment process;
   b) works subject to the Drainage Act; or
   c) for the purposes of policy 2.1.4(a), underground or surface mining of minerals or advanced exploration on mining lands in significant areas of mineral potential in
Ecoregion 5E, where advanced exploration has the same meaning as under the Mining Act. Instead, those matters shall be subject to policy 2.1.5(a).

Comments on PPS:
Severance of lots qualifies as development, and is therefore required to meet the “protect, improve, or restore” direction. The PPS as a forward-looking statement of interests does not directly address legal non-conforming uses.

Staff contacted our Ministry of Municipal Affairs representative for assistance in a policy scan for merged undersized lots. It was noted that some jurisdictions in Eastern Ontario use a minor variance process to address lot area when re-severing inadvertently merged developed lots. This indicates that there is not a planning policy conflict.

Drinking Water Source Protection Plan
This plan has been approved under the Clean Water Act and identifies actions required to protect municipal drinking water supplies based on vulnerability to contamination.

The Source Protection Plan identifies Wellhead Protection Areas A and B and Intake Protection Zone 1 areas where there is a vulnerability score of “10” as areas where an onsite sewage disposal system or a sewage holding tank may be a significant threat. The Plan includes the following policy (02-05):

“New lots created either through severance or subdivision under the Planning Act shall only be permitted by the planning approval authority where the lots will be serviced by a municipal sewage system or where an on-site septic system could be located outside of a vulnerable area with a vulnerability score of 10.”

The Source protection plan also directs The Ministry of Municipal Affairs and Housing to consider changes to the Ontario Building Code and other such legislation to:

1. Set standards under the Ontario Building Code to define advanced systems, including, but not necessarily limited to, standards for Nitrate and Phosphorous levels in effluent; and
2. Require that advanced septic systems be required for new installations in vulnerable areas where an on-site sewage system is or would be a significant drinking water threat.

The Building Code now references the CAN-BNQ standard which can include nitrate and phosphorous reduction has but has not acted on the recommendation that these systems be required in all vulnerable areas.

These systems have also been required as part of the approval of new “infilling” lots within in areas of high-density development on private sewage disposal systems and could also be used to support groundwater quality improvements where merged lots are proposed to be re-severed.

Background work on the source protection plan also identified vulnerable surface and groundwater features which may warrant advanced systems. The Source Protection plan did not provide policies on these areas as it is focused on municipal drinking water systems.