



Greater Miramichi
Service Commission

Commission de services
du Grand Miramichi

Planning Review and Adjustment Committee (PRAC) By-law
Greater Miramichi Regional Service Commission

Date Approved: January 29, 2025

Date Revised: January 24, 2025

Chairpersons: _____

Chief Executive Officer: _____



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1. General Purpose:

The purpose of this by-law is to set out the structure and operating procedures for the Planning Review and Adjustment Committees (PRACs) of the Greater Miramichi Regional Service Commission. These Committees carry out the necessary advisory and decision-making functions as specified in the Regional Services Delivery Act and the *Community Planning Act*, as outlined in Appendix A of this by-law.

2. Definitions:

Regional Service Commission (hereinafter referred to as the RSC): Greater Miramichi Regional Service Commission established per Regulation under the *Regional Service Delivery Act*.

RSC Board: The Board of Directors of the Greater Miramichi Regional Service Commission.

Community Planning Act: Community Planning Act S.N.B. 2017, c.19 and amendments thereto.

Regional Service Delivery Act: Statutes of New Brunswick, 2012, Chapter 37.

Application: Refers to an application submitted for the decision of the Planning Review and Adjustment Committee, pursuant to the provisions of the *Community Planning Act*.

Member: Unless otherwise specified, reference to a member in this by-law shall mean a member of the Regional Service Commission's Planning Review and Adjustment Committee.

Director: Refers to the Planning Director appointed by the Commission pursuant to the Regional Services Delivery Act.

3. Establishment:

The RSC Board shall be responsible for establishing two Planning Review and Adjustment Committees: one for the City of Miramichi and one Regional PRAC, covering all other communities within the Greater Miramichi Regional Service Commission's jurisdiction.

4. Number of Planning Review and Adjustment Committees:

There shall be two Planning Review and Adjustment Committees:

1. City of Miramichi PRAC: This committee will review and make decisions on applications specific to the City of Miramichi.
2. Regional PRAC: This committee will review and make decisions on applications from all other communities within the Greater Miramichi Regional Service Commission's jurisdiction receiving the land use planning service.

Appendix B includes maps and listings of communities served by each PRAC, with the City of Miramichi designated separately from the other communities.

5. Composition and Appointments:

5.1 The following specific requirements apply to the City of Miramichi PRAC:

1. The City of Miramichi PRAC shall consist of no fewer than five (5) and no greater than eight (8) members.
2. All members of the City of Miramichi PRAC must reside within the City of Miramichi.
3. Members of City Council and the RSC Board are not eligible to serve on the City of Miramichi PRAC.
4. Committee members will be appointed by the Board of the Regional Service Commission from a list of candidates submitted by City Council.
5. Members named to the Planning Review and Adjustment Committee must be eligible to vote under the Municipal Elections Act.

5.2 The following specific requirements apply to the Regional PRAC:

1. The Planning Review and Adjustment Committee shall consist of no fewer than five (5) and no greater than eight (8) members.
2. The Board of the Regional Service Commission shall appoint individuals to the Regional PRAC
3. Members must reside in a community that is receiving local planning services from the Regional Service Commission, excluding the City of Miramichi.
4. No more than 50% of the Regional PRAC membership shall be made up of local government council members and rural district advisory committee members.
5. At least one (1) member of the Regional PRAC shall be a Board member of the Regional Service Commission.
6. Membership on the Regional PRAC should take into account, as much as possible, representation on a geographic basis.
7. Committee members should have some basic knowledge of the land development trends, practices and issues and local government functions as well as experience on volunteer-based committees. In addition, the RSC, in establishing the Committee membership should seek a diversity of interests and backgrounds.
8. Members named to the Planning Review and Adjustment Committee must be eligible to vote under the Municipal Elections Act.
9. The members appointed to the Planning Review and Adjustment Committee, are to be considered as “at-large” members who are participating in decision-making and advisory services for the whole area covered by the Planning Review and Adjustment Committee. They are not to be seen as representing the specific community from which they were appointed even though it is expected that they will bring greater understanding and knowledge of their area.

- 5.3** The names of the individuals on each Planning Review and Adjustment Committee shall be posted on the RSC's web site and the Chairperson and Vice-Chairperson of each Committee shall also be identified.

6. Terms of Office

- 6.1** The regular term of office for members of each Planning Review and Adjustment Committee shall be four years unless otherwise stated in appointments by the Board.
- 6.2** Planning Review and Adjustment Committee members may be reappointed for two additional four-year terms, following their initial appointments.
- 6.3** If the Commission fails to appoint a successor for a member of the PRAC whose term of office has expired, the member continues to hold office until the member's successor is appointed, and when appointed, the successor holds office until the day the successor's term would have expired if the successor had been appointed at the appropriate time.

7. Operating Procedures

Each Planning Review and Adjustment Committee shall generally conduct its business in accordance with the guidelines as set out in Appendix C.

Appendix A – Role of the Planning Review and Adjustment Committee of an RSC

Each Planning Review and Adjustment Committee of the RSC performs both a decision-making (quasi-judicial) and an advisory role on behalf of communities. The role of a Planning Review and Adjustment Committee is critical to the ongoing administration of land use plans (municipal and rural) and of zoning by-laws and the decisions made by this Committee can have significant impacts on how development occurs within a community. As such, the role and proper functioning of a Planning Review and Adjustment Committee must be given due care and attention in both its establishment and in its ongoing work. The functions of this type of committee are identified in the Regional Services Delivery Act, which references various sections of the *Community Planning Act*. The following table highlights these functions and the corresponding references to the *Community Planning Act*. Note that the specific functions have been summarized and that the precise legal wording is found in the Community Planning Act per the provision references noted in the second column.

Functions	Reference to CPA
▪ to advise and make recommendations to the council or rural community council on any matter relating to community planning;	4(b)
▪ Make recommendations to Council on the laying out of public or future streets	77 (1)(g)
▪ Provide an opinion as to whether a site is unsuitable for a proposed purpose by virtue of its soil or topography	53(2)(h)
▪ Permit a prohibited development for a temporary period	53(2)(h)(i)
▪ Impose terms & conditions for a particular purpose if permitted by the zoning by-law	53(3)(c)(i) and (ii)
▪ Permit, subject to terms & conditions, a proposed use if such use is sufficiently similar to or compatible with a permitted use	55(1)(a)
▪ Permit such reasonable variance from the requirements of the zoning by-law	55(1)(b)

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Responsibility	Reference to CPA
▪ Permit a non-conforming use to continue beyond the ten month period	60(2)(a)
▪ Permit a structure to be repaired or restored if it has non-conforming rights and destroyed more than 50%	60(2)(b)
▪ Provide consent for a non-conforming use to extend into a portion of a structure that was constructed after the by-law is in effect	60(3)
▪ Provide consent for a non-conforming use to be changed to a similar non-conforming use	60(4)
▪ Approve such access other than a public street that they feel is advisable for the development of land	75(1)(c)(ii)
▪ Provide an opinion whether land is suited for the purpose intended	75(1)(k)(i)
▪ Provide their opinion as to whether a proposed manner of subdividing prejudices the convenient subdivision of adjoining land	75(1)(k)(ii)
▪ Approval of the naming of streets if given authority in the subdivision by-law	75(1)(l)
▪ Permit such reasonable variance from the requirements of the subdivision by-law	78(1)
▪ May give notice to owners of land in the neighborhood of the proposed subdivision in which a variance has been requested	78(3)
▪ Refuse to grant an exemption from subdivision by-law	80(2)
▪ Consultation on the approval of the names of streets in a subdivision	84(7)
▪ Recommend the location of public streets or lands for public purposes shown in a subdivision plan	88(4)
▪ Provide its views on any proposed by-law if not previously given	110(1)

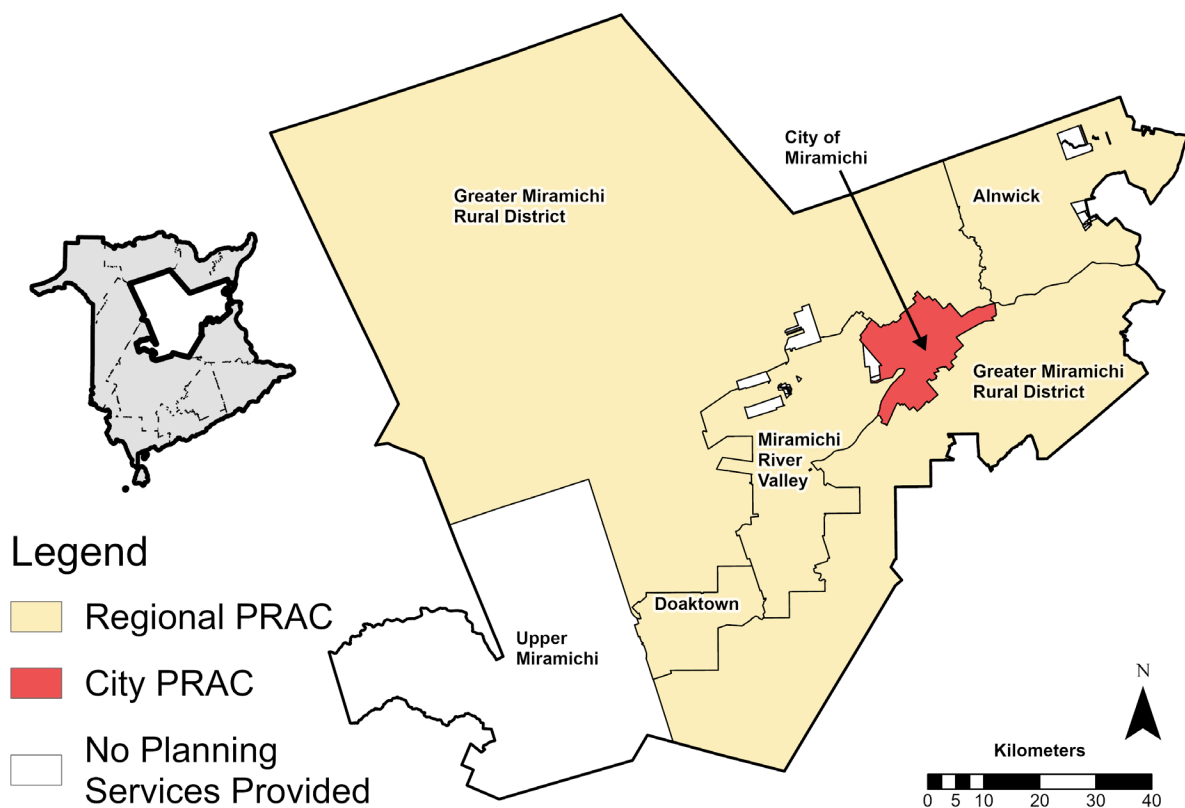
Appendix B – Map and Listing of Communities Covered by PRACs

■ City of Miramichi PRAC

Dedicated exclusively to the City of Miramichi.

■ Regional PRAC (Alnwick, Miramichi River Valley, Doaktown, and Greater Miramichi Rural District)

All communities within the Greater Miramichi Regional Service Commission that receive land use planning services, except for the City of Miramichi.



Appendix C – Operating Guidelines

1. Selection of Chairperson and Vice-Chairperson:

- 1.1** The Chairperson and Vice-Chairperson for each Planning Review and Adjustment Committee shall be selected by and from the members of each Planning Review and Adjustment Committee at the first meeting of the applicable calendar year.
- 1.2** Nominations shall be made from the members and election of the Chairperson and Vice-Chairperson shall follow immediately thereafter.
- 1.3** A candidate receiving the most votes from among the membership shall be declared elected and shall serve for two years or until a successor is elected.
- 1.4** Vacancies for Chairperson and Vice-Chairperson shall be filled immediately by the election procedure outlined herein.

2. Chairperson Duties and Replacement

- 2.1** The Chairperson shall chair or preside at all meetings of their respective Planning Review and Adjustment Committee and otherwise carry out the duties and responsibilities of the office.
- 2.2** The Vice-Chairperson shall act as Chairperson in the absence of the Chairperson.
- 2.3** In the absence of the Chairperson and Vice-Chairperson, a Chairperson for that meeting shall be named through a vote of the members present.

3. Regular Meetings:

- 3.1** Regular meetings of a Planning Review and Adjustment Committee shall normally be held monthly on the third Tuesday of every month. Each PRAC may hold meetings by teleconference or by other electronic means that permit members to communicate adequately with each other. The meeting schedule along with the deadline date for acceptance of applications for each meeting will be posted on the Commission's website.

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- 3.2** If the Planning Director (or designate) in consultation with a PRAC Chair determines that the volume of agenda items necessitates the scheduling of an additional meeting to deal with the Planning Review and Adjustment Committee's business in a timely manner, such a meeting shall be held at a time determined by the Chairperson. If the Planning Director (or designate), in consultation with the Chairperson, determines that the volume of agenda items does not warrant the holding of a regular meeting, the Chair shall cancel the meeting and appropriate notice of the meeting cancellation shall be provided to the members of the Committee.
- 3.3** All regular and additional meetings of a Planning Review and Adjustment Committee will begin at such time as determined by the Committee and will be held at a location determined by the Chair.
- 3.4** Special meetings may be called by the Chairperson. It shall also be the duty of the Chair to call a special meeting when requested to do so by a majority of the members of a Planning Review and Adjustment Committee.
- 3.5** Notice of special meetings shall be given by mail (or email) to the members. However, such notice may be given by phone when a Chairperson deems it urgent to meet within a period insufficient for the giving of notice by mail or email.
- 3.6** Except as may otherwise be provided under this part, the Rules of Procedure for regular meetings shall also apply to special meetings.
- 3.7** All meetings of a Planning Review and Adjustment Committee including both discussions and voting, shall be open to the public, except in circumstances where legal advice or instructions are being provided.
- 3.8** A quorum for a Planning Review and Adjustment Committee shall be a simple majority of the entire membership of this Committee and quorum must be achieved before a meeting of the Planning Review and Adjustment Committee begins.
- 3.9** Unless otherwise specified, ***Roberts Rules of Order-Revised*** shall govern the proceedings of meetings of the Planning Review and Adjustment Committee.

4. Agenda Establishment and Decision-Making

- 4.1** RSC planning staff shall prepare the agenda for a Planning Review and Adjustment Committee. The deadline for determining the items to be included on the regular meeting agenda of a Planning Review and Adjustment Committee shall normally be four weeks prior to the scheduled meeting but in any case the rule will be established by each PRAC for the year and published on the Commission Website.
- 4.2** The order of business shall be set out in the agenda, which shall be sent to the members of a Planning Review and Adjustment Committee one week prior to the meeting. Members shall also be provided with the necessary staff reports relating to each item on the agenda. A Planning Review and Adjustment Committee may change the order of agenda items, but only by majority vote of the members present.
- 4.3** The agenda will be posted on the RSC's website once it is sent to the Planning Review and Adjustment Committee members and will also be available for the public at RSC offices. Staff reports associated with each agenda item shall also be available to the public.
- 4.4** Remarks by the members shall be addressed through the Chairperson and not more than one member shall speak at any one time.
- 4.5** The Chairperson shall adhere to the following process for each application to be reviewed by the Planning Review and Adjustment Committee:
- i) The Chairperson will call the agenda item by identifying the name of the applicant and the address of the subject property.
 - ii) RSC planning staff will provide a brief overview of the application including a summary of the staff recommendation.
 - iii) The Chairperson shall invite the applicant to make a presentation to the Planning Review and Adjustment Committee in support of their application.

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- iv) The Chairperson will then invite others present in the room (other than members of the Planning Review and Adjustment Committee and RSC planning staff) to speak in support of the application, although a group spokesperson is also considered appropriate..
 - v) Any person wishing to speak in opposition to an application will be given an opportunity to address the Planning Review and Adjustment Committee although a group spokesperson is also considered appropriate.
 - vi) The Chairperson will provide the applicant with an opportunity to respond to the issues raised by those speaking against the application.
- 4.6** The applicant as well as anyone wishing to speak either in support or in opposition to the application may be asked to limit their presentation to a specific time frame. No additional time shall be provided unless approved by a majority vote of the Planning Review and Adjustment Committee members present.
- 4.7** Planning Review and Adjustment Committee members may question any person addressing the Committee.
- 4.8** Decisions on all items on the agenda of the Planning Review and Adjustment Committee shall be made by motion in open session and with the exception of the approval of the agenda and the minutes of the meetings, shall include reasons for the decisions.
- 4.9** All members shall vote on motions (other than those members who determine they are in a conflict of interest), including the Chairperson. In the case of a tie vote, the motion is lost.
- 4.10** The Planning Director shall designate an individual of his or her staff to serve as recording secretary of the Planning Review and Adjustment Committee.
- 4.11** The recording secretary shall keep notes on the Planning Review and Adjustment Committee's proceedings and record all motions and include movers, seconders and the disposition of each motion including the reasons provided by the Planning Review and Adjustment Committee for its decision.

- 4.12** All decisions / advice shall be sent to the applicant in writing within five working days (time frame to send applicant the decision / advice) of the meeting of the Planning Review and Adjustment Committee. As well, members of the public in attendance at the meeting or who have submitted written comments shall also be sent the decision within this same time frame.
- 4.13** The minutes are to be made available to the public after they are approved by the Planning Review and Adjustment Committee.
- 4.14** Draft minutes are to be signed by the Director of Planning (or designate) and the recording secretary. Approved minutes of the Planning Review and Adjustment Committee meetings are to be signed by the Chairperson.

5. Applications to Planning Review and Adjustment Committees

- 5.1** Planning Review and Adjustment Committee will only consider applications that are fully completed including any supporting documentation, to the satisfaction of the Planning Director (or designate).
- 5.2** The applications within the jurisdiction of the Planning Review and Adjustment Committee received by the Greater Miramichi Regional Service Commission – Development Services shall be placed on the agenda with a report prepared under the direction of the Planning Director, with a recommendation.
- 5.3** The applicant will be advised of the date proposed for the Planning Review and Adjustment Committee meeting and the availability of a staff report no later than two working days prior to the meeting.
- 5.4** Where notice is given to neighbouring properties, they shall be provided notice of the availability of the staff report in accordance with 5.3 above.
- 5.5** An application that has been submitted to Greater Miramichi Regional Service Commission – Planning Services may be withdrawn at any time prior to the agenda being finalized.

- 5.6** After the agenda has been finalized, a request to withdraw an item submitted to the PRAC shall be made by the person(s) making the original application (i.e., the proponent) in writing or in person to the Planning Director (or designate) and the item shall be removed from the agenda. Application fees are non refundable at this time.
- 5.7** An application which has been referred to the Planning Review and Adjustment Committee by a Council can be withdrawn by the applicant, normally in writing to the Planning Director or designate. The Planning Director or designate, at his or her discretion may accept a verbal request to withdraw.
- 5.8** When an application has been received which seeks approval of a matter which has been denied by the Planning Review and Adjustment Committee within the last year, it will not be reconsidered by the Planning Review and Adjustment Committee unless the Planning Review and Adjustment Committee is of the opinion that there is new evidence or a change in conditions.

6. Notice Requirements for Affected Property Owners

- 6.1** Property owners within 30 metres of a property boundary in an incorporated area which is the subject of an application shall be notified by mail or personal delivery, of the meeting time, date, location of the meeting and nature of the application that will be considered. At the discretion of the Director, a wider range of notification may be undertaken if the application is considered to present conditions or ramifications which requires different notification.
- 6.2** Property owners within 100 metres of a property boundary in an unincorporated area which is the subject of an application shall be notified by mail or personal delivery, of the meeting time, date, location of the meeting and nature of the application that will be considered. At the discretion of the Director, a wider range of notification may be undertaken if

the application is considered to present conditions or ramifications which requires different notification.

- 6.3** The notice will indicate that their view can be made by any means of correspondence or in person before the Planning Review and Adjustment Committee at the meeting. All correspondence received will be public documents and they must be signed. The Planning Review and Adjustment Committee will not accept any unsigned letters.
- 6.4** The notice will be mailed at least 10 days or delivered at least one week prior to the meeting date.
- 6.5** The notice will indicate that a staff report will be available and where it can be viewed or obtained.
- 6.6** For all planning variance applications to the PRAC, a general sign shall be posted on the subject property which is the subject of an application, notifying the public of an application and providing instructions for how to receive more information on the meeting time, date, location of the meeting and nature of the application that will be considered. This sign shall be posted by GMSC Development Services staff within five business days of receiving a complete application and shall remain posted until the meeting occurs. The use, placement, location, quantity, size, materials and content of such sign may be altered at the discretion of the Planning Director.

7. Reporting Requirements

- 7.1** Copies of the approved minutes of the meetings of the Planning Review and Adjustment Committee shall be provided to the RSC for information purposes and shall be posted on the RSC or other web site.
- 7.2** Chief Administrative Officers and Rural District Managers shall be supplied with the decisions made by the Planning Review and Adjustment Committee that affect their respective communities, within five business days of the meeting at which such decisions were made. The Planning Director or his or her designate shall sign notice of such decisions.

- 7.3** Annually, the Planning Review and Adjustment Committee shall submit a report to the RSC Board which shall provide information regarding the applications it has reviewed and other advisory activities it has undertaken. This report shall be prepared by RSC planning staff Director or his or her designate and shall be signed by the PRAC Chairperson.

8. Member Attendance

- 8.1** In the event that a member of the Planning Review and Adjustment Committee is unable to attend a regular meeting of the Planning Review and Adjustment Committee, he or she shall notify the Planning Director (or designate) or the Chairperson.
- 8.2** Where a member misses three consecutive regular meetings of the Planning Review and Adjustment Committee, the PRAC Chairperson shall advise the RSC Board and the RSC Board shall assess the situation and determine if appropriate steps need to be taken with respect to this member's continued membership the Planning Review and Adjustment Committee.

9. Amendments to the Regional Planning Advisory Review Committee By-law

- 9.1** The Planning Review and Adjustment Committee and Director may make recommendations to the RSC Board for amendments to the Planning Review and Adjustment Committee By-law.
- 9.2** The RSC Board shall determine, in consultation with the Director and the Planning Review and Adjustment Committee members, the changes to be made to this by-law.

10. Expenses and Per diems

- 10.1** The members shall be reimbursed for mileage and meals related to the attendance at Commission or committee meetings or otherwise in respect of the performance by them of their duties. The rate for reimbursement shall

be at the rates established from time to time by the Province of New Brunswick.

- 10.2** Members will be paid a per diem of \$75 for attendance at a regular, additional or special meeting of the Planning Review and Adjustment Committee.
- 10.3** The Chairperson of the Planning Review and Adjustment Committee shall receive a per diem of \$100 for attendance at a regular, additional or special meeting of the Planning Review and Adjustment Committee.
- 10.4** Should the Commission's board request Committee members or its chairperson to attend other meetings or sessions in the performance of their duties, they shall be paid in accordance with sections 10.2 and 10.3.

11. Conflict of Interest

- 11.1** In the event that a member of the Planning Review and Adjustment Committee finds himself or herself in a conflict of interest (as defined under Part 9 of the Local Governance Act as pertaining to members of a Committee), he or she shall not participate in the discussions or decisions relating to the matter at hand and shall leave the meeting room for the period of time during which this matter is being addressed.
- 11.2** If at all possible, conflicts of interest shall be declared at the beginning of the Planning Review and Adjustment Committee meetings. The agenda for the Planning Review and Adjustment Committee shall have this included as a standard item.
- 11.3** A member who has declared an interest relative to an aspect of the agenda of the Committee shall vacate the meeting room for any and all consideration of that matter.
- 11.4** In the event that quorum will be lost if a certain number of members declare a conflict of interest on a matter before the Planning Review and Adjustment Committee, the remaining members will be deemed to be sufficient in

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number to comprise a quorum, as long as the number of remaining members does not fall below three.

Appendix D – Special Policies

1. Water Supply Assessment Guidelines for Subdivision Serviced by Individual Private Well
2. Flag Lots – A Guide for the Review of Subdivision Applications under the Community Planning Act
3. Guideline on Private Access and Private Roads

GREATER MIRAMICHI PLANNING SERVICES
PLANNING REVIEW AND ADJUSTMENT COMMITTEE

Water Supply Assessment Guidelines
for Subdivision Serviced by Individual Private Wells

Adopted:
April 16th, 2013

Preamble:

Water supply assessments are necessary to ensure that future owners of homes and lots have a high probability of obtaining water suitable for domestic consumptions. To be suitable the water resources must be acceptable quality and in adequate quantities in both the short and long term. The Canadian Drinking Water Quality Guidelines (CDWQG) will be used as the standard for assessing drinking water quality.

This document is intended to assist the Planning Review and Assessment Committee (PRAC) in the review of subdivision plans. It was prepared in consultation with the Departments of Environment (DOE), Health and Community Services (DHCS), and Municipalities and Housing (DMH), and reviewed by three New Brunswick Consulting firms.

Legislative Authority:

The legislative authority for policies regarding water supply is found in the Community Planning Act (CPA) and the provincial Subdivision Regulation. Section 49(2)(g) of the CPA states:

49(2) Subject to paragraph 44(1)(c), a tentative plan shall be marked "Tentative Plan" and shall show...

(g) the availability and nature of domestic water supplies;

Section 7 of the provincial Subdivision Regulation, which deals with the approval of a subdivision plan, list matters for consideration in the review of a subdivision plan.

7(2) The development officer shall not approve a subdivision plan if, in his/her opinion and in the opinion of the PRAC,

(g) the land is not reasonably suited or cannot be economically suited to the purpose for which it is intended or may not reasonably be expected to be used for that purpose within a reasonable time after the plan is approved.

* Please note: This document is based on a document prepared by the Rural Planning District Commission and has not been modified by the MPDC since February 2000 and has been adopted by the PRAC on March 18th, 2013 with the permission of the RPDC.

Objectives:

The objectives of this guideline are as follows:

- To provide administrative and technical guidance to developers applying for subdivision approval;
- To outline DOE, DHCS and DMH policies on individual private well water supplies;
- To ensure consistency in the review of development proposals with regard to water supply assessments; and
- To ensure that development proposals are submitted with the required technical support.

Policies:

To satisfy the above objectives, it is a policy of the Greater Miramichi Regional Service Commission (RSC5):

1. A water supply assessment report shall be submitted with a subdivision plan, in accordance with policy 3 and 4 below.
2. Subdivision plans that are serviced by a municipal or communal water supply system shall be exempt from policies in this document.
3. Two types of water supply assessments shall be required, according to the scale and location of the development proposed. Accordingly:
 - a) An abbreviated water supply assessment report shall be completed for a subdivision plan which:
 - i) would create 10 or more lots, including the remnant; or
 - ii) is in an area with documented drinking water quality or quantity problems; or
 - iii) would create a cumulative total of 10 or more lots from an original lot, as defined in Regulation 80-159, in existence as of March 1st, 2000.
 - b) A comprehensive water supply assessment report shall be completed for subdivision plans which:

- i) had an abbreviated water supply assessment report completed that recommends that the subdivision plan be subject to a comprehensive water supply assessment; or
 - ii) would create 25 or more lots, including the remnant; or
 - iii) would create a cumulative of 25 or more lots from an original lot, as defined in Regulation 80-159, in existence as of March 1st, 2000.
4. Abbreviated and comprehensive water supply assessment reports shall be completed by qualified hydro-geologist or qualified professional engineer with training in ground water science, in accordance with the guidelines establishes in Appendix 1.

Implementation:

A completed water supply assessment shall be submitted with the tentative subdivision plan. PRAC staff, in consultation with the DOE and DHCS, will check the report for conformity with requirements set out in this document and other applicable legislation and regulations.

Where the report indicates the water supply is unsuitable for normal domestic uses, the DOE and DHCS may be asked to assess and review the consultant's report regarding such matters as modifications to the subdivision plan, restrictions placed on the water uses (e.g. groundwater heat pumps), and/or measures for satisfying health and aesthetic criteria. If such recommendations are not included, the DOE and DHCS may outline to the PRAC deficiencies in the report and recommend that approval be denied or deferred, pending further investigation.

To reduce costs and promote coordinated investigations, development proponents should be encouraged to undertake water supply assessment reports jointly with other proponents.

Appendix 1 – Guidelines for Completing Water Supply Assessment Reports

Abbreviated Water Supply Assessment Reports:

Abbreviated investigations will generally involve the collection and interpretation of available information. Recommendations in the consultant's report should be based on the following:

- i) a site visit;
- ii) discussions of the proposal with local well contractors;
- iii) review of DOE publications on groundwater potential (e.g. existing yield test studies produced by the Province);
- iv) assess local geology and soils information;
- v) develop property maps for lands considered to be within the influence area or supplied with water from the same groundwater resource;
- vi) determine if there are, or have been, uses in the assumed groundwater influence area that may contaminate groundwater resources.
- vii) determine if there are uses in the assumed groundwater influence area that draw large quantities of water;
- viii) examine nearby water wells and DOE water well records for water quality or quantity concerns; and for well design or construction abnormalities (well depth, casing length, low static water level, etc.)
- ix) examine available groundwater studies and/or literature on the area; and
- x) consultants own familiarity with the area.

The consultant's report will typically result in one of three conclusions: 1. water supply is not a concern, 2. water supply may be a concern, therefore a comprehensive investigation is recommended, or 3. the development should not proceed, as submitted. It is anticipated the third conclusion will result only in extreme circumstances. The rationale for each conclusion must be provided.

Comprehensive Water Supply Assessment Reports¹

General:

The comprehensive report must address concerns relative to the following:

- There must be a high probability that future residents will be provided with water for domestic consumption that is of acceptable quality and in adequate quantities over the long term.
- Appropriate well construction techniques must be employed in order to minimize the possibility of well water quality degradation.
- There must be a minimal probability that well water in the subdivision will be affected by sources of contamination on site or on adjoining lands, or that there will be water use conflicts between users in the subdivision and users on adjoining lands.

With respect to quantity, each future domestic well must provide sufficient water for normal domestic purposes. If groundwater heat pumps (i.e. heat pumps which extract groundwater from the subsurface) are to be used in the subdivision now or at any future time, the study must show that there will be sufficient water for normal domestic supply as well as for the heat pumps for all the residences in the subdivision. Where treatment systems which require significant additional amounts of water are employed, these amounts must be added to the yield required of the wells.

With respect to quality, each future domestic well must provide water that is safe and aesthetically suitable for human consumption. Water samples must be obtained from test wells and analyzed against the CDWQG. The suitability of the water for domestic use is determined by comparing the analytical results with relevant drinking water quality objectives.

After its initial review of a comprehensive water supply assessment report, the PRAC, in consultation with DOE and DHCS, may request additional information or recommendations from the consultant or proponent. Delivery of requested information does not necessarily guarantee approval to the project. Ultimately, it is

¹ The procedures described for completing comprehensive water supply assessment reports were adopted from relevant sections of the Ontario Ministry Environment and Energy's *Technical Guidelines for Water Supply Assessment for Subdivisions Developments on Individual Private Wells*, July 1992, with modifications to suit the New Brunswick context.

the hydrogeology of the site itself which will determine whether or not a proposal is acceptable.

(NOTE: PRAC will return to the proponent or consultant incomplete reports.)

Test Well Requirements:

Test well requirements must be determined on a site-specific basis. The following are recommended:

- i) a minimum of three test wells or of one test well located on each 5-hectare portion of the site, whichever is greater (except where existing wells on adjacent property are used as test well- see below); In areas where groundwater quantity or quality are considered marginal with respect to domestic requirements , as many as one test well per lot may be required;
- ii) the areal distribution of test wells must be such that hydrogeological conditions across the site are adequately represented; depending on the areal configuration and hydrogeological complexity of the site, more than the minimum number referred to in section i) may be required; where past or present land uses on or adjacent to the site may affect water quantity or quality, test wells must be strategically located in order to address their impact, and the impact of these land uses must be addressed in the assessment.
- iii) the test wells must be located and constructed in such a way to permit the prediction of the quantity and quality of groundwater supplies which domestic wells will supply in the future; accordingly, the construction of these wells must be typical of wells which will be used in the subdivision in the future and must comply with the Water Well Regulation under the Clean Water Act, with other jurisdictions' requirements and with any additional specifications recommended by the consultant and the PRAC.

Existing water wells located on site or on property immediately adjacent to the site may be used as test wells. However, these wells must fulfill requirements ii) and iii) above and must be fully incorporated into the well water quantity or quality testing programs described in the sections below. The use of existing wells and of the data obtained from them must be justified in the report as being technically appropriate. However, there must be at least one test well, new or existing, located on site.

If the consultant properly locates and constructs the test wells, or if there are acceptable existing wells on the property, the developer may use them later as domestic water wells. They must, however, yield potable water and meet the construction requirements indicated under the Water Well Regulation, including being tagged for identification purposes, If any such wells are not to be maintained for future use, they must be properly abandoned as required by the Water Well

Regulation; abandonment must be recommended in the comprehensive water supply assessments report and must be implemented by the developer.

Well Water Quantity Testing:

At least one of the test wells must be subjected to a pumping test with the other wells used as observation wells. If static water level in an observation well is not affected by the testing of the pumped well, then pumped tests must also be carried out on that well. In cases where the number of tests wells is greater than three, pump tests must be conducted on at least one in three wells, with the other wells used as observation wells. Test wells and observation wells must be appropriately grouped.

The report must contain all well logs, water well records, pumping test data and graphs and must discuss the suitability of domestic well yields, the potential for supply interference and site aquifer characteristics such as hydraulic gradient, transmissivity and boundary conditions. (Note that, in most cases where septic systems are proposed, the impact assessment requires a determination of hydraulic gradient.

The following pumping test procedure is recommended:

- the test wells must be adequately developed prior to the pumping test
- the pumping test must begin with a static water level and must be performed at the calculated rate (+5%) for a minimum period of six hours² (longer where supplementary storage systems are necessary); water levels must be monitored in the test wells and observation wells; water must be discharged at an appropriate distance from the test wells to ensure that artificial recharge does not occur.
- Immediately following the pumping test, water level recovery must be monitored in the test wells until 90% recovery occurs or for 24 hours, whichever is less; where sufficient recovery does not occur, the issue of the long-term safe yield of the aquifer is especially significant.

The particular rate and yield required for a particular subdivision must be calculated as follows:

The per-person requirement shall be 450 liters per day. Peak demand occurs for a period of 120 minutes each day. This is equivalent to a peak demand rate of 3.75 liters/minute for each person. The basic minimum pumping test

² The Minimum duration of six continuous hours incorporates safety factors with respect to seasonal variables.

rate is this rate multiplied by the “likely number of persons per well” which, for a single family residence, shall be the number of bedrooms plus one.

If the groundwater heat pumps are to be allowed in the subdivision, the higher of their maximum cold or hot weather rates must be added to the rate determined above. Similarly, if treatment systems or other water uses which require additional amounts of water for their operation are to be used, those rates must be added.

Consultants must address the issue of whether the groundwater withdrawals in the proposed development and other existing or planned developments in the area will exceed the long term safe yield of the aquifer or significantly decrease base flow to sensitive watercourses (trout streams, etc.)

Where there are established subdivisions in the vicinity, information from residents and other sources regarding well yield problems (water shortages, replacement well, etc.) and any sensitive watercourses should be obtained.

Consultants must provide a statement indicating that, in their professional opinion, the probable well yields determined on the basis of their investigations are representative of the yields which residents of the subdivision are likely to obtain from their wells in the long-term.

Well Water Quality Training:

Raw Water Quality:

At least one set of samples must be obtained from the pumped well and each observation well near the end of each pumping test and analyzed in order to determine the chemical and bacteriological quality of the water. The results of chlorine residual tests performed at the well head at the same time that bacteriological samples are obtained must be reported. The consultant should obtain earlier samples and have them analyzed in the event that information on trends in water quality is required.

Where there are established subdivisions, other major water users, or potential contaminant sources in the vicinity, information from residents and other sources regarding water quality problems should be obtained. If individual septic systems are proposed and there are existing down-gradient wells near the property boundary, sampling and analysis for the nitrogen cycle may be required for the purposes of the impact assessment.

Consultants must provide a statement indicating that, in their professional opinion, the water quality determined on the basis of their investigations is representative of

the quality of the water which residents of the subdivision are likely to obtain from their wells in the long-term.

The minimum suite of parameters for which analyses must be performed, along with their drinking water quality limits, are listed in the CDWQG. If conditions specific to the site or its surrounding area suggest that other parameters may be relevant (heavy metals, pesticides, etc.), these other parameters must be added to the list. The report must evaluate whether the list of parameters examined in the study is sufficiently comprehensive to fully characterize groundwater quality for the particular site or area. Complete documentation of sampling times, of any on-site analytical methods and of all analytical results must also be included in the report.

Treatment Systems:

For some aesthetic and health related parameters, the drinking water quality limit may be exceeded provided that domestic treatment systems are available which can adequately remove these parameters from the entire water supply entering the residences to a level below the relevant drinking water quality limits.

If the raw water from the wells exhibits values for aesthetics and health related parameters that are above the drinking water quality limits but below the treatment limits, or if supplemental storage systems are proposed which require special treatment systems, the DOE and DHCS shall be consulted regarding the appropriateness of development based on treatment systems.

Some criteria which should be considered in determined whether a water treatment system represents a reasonable alternative include the following:

- capital and maintenance coats should be reasonable;
- there should be no excessive space requirement for the equipment;
- there should be no excessive demand for water to operate the system, such as for back-washing;
- there should be no excessive requirement for the monitoring of water quality or system maintenance; and
- the system should be in relatively common and widespread use.

Where treatment for more than one parameter is required, the systems suggested may not be appropriate due to treatment process interferences. In this case, the consultant should obtain and document a professional opinion regarding the type of system required.

In all cases, the water supply entering the residence must be treated to satisfy all drinking water quality objectives.

(Note: Where health-related water quality limits or treatment limits have been exceeded, the areas which the relevant test wells represent may have to be excluded from the proposed development site; in this case a justification for the selection of the boundary of the site is required.)

Well Construction:

Construction specifications for future domestic wells in the subdivision must be addressed by the consultant in the comprehensive water supply assessment report. Minimally, the construction of both the test wells and future domestic wells must comply strictly with Water Well Regulation under the Clean Water Act. Where septic systems are proposed, or where they already exist on an adjacent property, protection of the wells from contamination by effluent must be addressed.

The consultant may wish to recommend additional site-specific construction criteria. In studies where consultants' initial findings show that water quality or quantity standards cannot be met without special well construction specifications, the initial data which led to these conclusions must be included in the report. The structure of the test wells on which the final quantity and quality data are based must meet these specifications and the wells must be tested according to the procedures stipulated in this Guideline in order for the data to be deemed representative.

Land and Water Use Conflicts:

Land uses on or within 500 meters of the site must be described and illustrated on a map at 1:10,000 scale or larger. Where there have been, are, or may in the foreseeable future be significant potential sources of groundwater contamination (old, operating or proposed waste disposal sites, road salt storage facilities, farming activities, locations of contaminant spills, etc.) or potential causes of quantity interference with groundwater resources or well water supplies (municipal wells, dewatering activities, etc.) on or within 500 meters of the site, the potential for an impact on the subdivision must be addressed. The issue of whether additional water quality parameters should be included in the testing must be addressed.

Phased Development:

Where a subdivision application relates to an additional phase of a phased development, even though previous phases may already have been approved on the basis of a previous abbreviated or comprehensive water supply assessment report

which encompassed those phases or the entire site, a supplementary study and report is required. Water samples from wells that are located on nearby development lots in previous phases and that are in use must be analyzed for the required parameters and the well owners must be interviewed regarding their experience of their well water quantity and quality. This information, as well as the water well records and a map showing the locations of all wells in previous phases, must be provided. The original report must be re-assessed in light of the new information obtained and according to any new criteria or guidelines which may not have been in effect at the time of the original study.

Where well water quality or well yield in the previous phases are not comparable to that found in the original test wells or predicted by the original water supply assessment, the new study should investigate and explain the causes and provide new recommendations based on a re-assessment of the original report. Where new guidelines require information which is not included in the original report, the new report must provide it.

If the new phase does not contain test wells from the original study, new ones must be installed. Where additional study involving new test wells is necessary, most or all of the criteria set forth in this Guideline will apply. Consultants should discuss these issues with DOE and DHCS staff before proceeding.

Conclusions:

A comprehensive assessment may 1. conclude that the development will not aggravate existing, or create new water supply problem, 2. recommend modifications to the plan of subdivision to address identified water supply concerns and/or restrict water dependent uses, or, 3. state that the development should not proceed due to extreme water supply constraints.

Appendix 2 – Water Quality Parameters³

Microbiology Section:

Codes:

Results:

- P – Presence of bacteria in sample
- A – Absence of bacteria in sample

Units:

- # - Number of colonies detected
- NA – Not applicable

Sample Containers:

- B – 100 or 250 ml sterile plastic bottle containing a pill or powder respectively.
- C – Sterile Whirlpak bag capable of holding 10 grams of sample.

General Sampling Instructions – Microbiology:

1. Don't rinse sample containers prior to filling.
2. Fill sample container to the mark indicated on the bottle.
3. Keep the samples cool during transport.
4. Samples must be analyzed within 30 hours of sampling.

*For more detailed sampling instructions please contact the laboratory.

³ Reference: Laboratory Reference Guide
Analytical Services, New Brunswick Department of Environment, 2/12/96 no. 1, 28p

Parameter	Units Reported	Limit of Quantitation	Health Advisory	Container/ Handling
Coliform bacteria, water: <ul style="list-style-type: none"> Qualitative analysis, treated and untreated potable water Quantitative analysis, treated and untreated potable water 	P or A	1/100 ml	NA	B
	#/100 ml	1/100ml	Contact Dept. of Health	B
Faecal coliform bacteria, water: <ul style="list-style-type: none"> Qualitative analysis treated and untreated potable water Quantitative analysis, treated and untreated potable water 	P or A	1/100ml	NA	B
	#/100ml	1/100ml	Zero/100ml	B
Total coliform bacteria: (see coliform bacteria water)				
Total faecal coliform bacteria (see faecal coliform bacteria water)				
Heterotrophic Plate Counts (HPC)				

Inorganic Sections:

Codes:

Units:

mg	Milligram	10 ³ gram
ug	Microgram	10 ⁶ gram
mL	Milliliter	10 ³ liter
L	Liter	
Kg	Kilogram	10 ³ gram
uSie/cm	Micro Siemen/centimeter	

HAL:

Health Advisory Levels are listed where available.

Aq – applicable to aquatic life forms only.

Sample Container:

- A – 1L plastic
- B – 500mL plastic
- C – 125 (or 250 mL plastic)
- F – 500mL mason jar
- J – 125mL pre-cleaned glass
- K – 125mL glass

Sample Handling:

- a – Room temperature – no preservatives
 - b – Room temperature – 0.5mL concentrated HNO₃/250mL sample
 - c – Cool – no preservatives
 - d – Cool – 1mL 25% H₂SO₄/500mL sample
 - e – 5mL 7:1 HNO₃:H₂SO₄ + 0.1mL 5% potassium permanganate/125 mL sample
 - f – Freeze – no preservative
 - h – Cool – avoid rocks
 - g – Cool – no headspace – deliver ASAP to laboratory
 - i – Cool – Protect from light – deliver ASAP to laboratory
- Highly colored or turbid samples not suitable for this parameter.

Report:

A – Approximate value
F – Result to follow
I – Interferences present
M – Missing
N – No sample bottle received in the laboratory
Q – Result not quality assured
T – Detected at a level below our Limit of Quantitation
U – Undefined
V – Insufficient volume to perform analysis
E – Sample expired
L – Result less than

Parameters Extensions:**Method Related:**

AIC – Air Ion Chromatography
D – Dissolved
G – Grans
GAL – Grans Alkalinity
P – Phenol
T – Total
PP – Pulp and Paper

Method and Detection Limit Related:

H – High level
L – Low level
V – Vegetation
X – Extractable, Atomic Absorption or Inductively Coupled Plasma
XGF – Extractable, Graphite Furnace

Total and Dissolved Parameters:

A number of the procedures listed herein are also available in the total acid extractable or dissolved phase. For information on these parameters contact the laboratory.

General Sampling Instructions – Inorganic:

1. Let cold water run for 5 minutes
2. Rinse container twice with cold water
3. Fill the container to the shoulder and close tightly
4. Keep the samples cool during transport.

*For more detailed instructions contact the laboratory.

Parameter	Units Reported	Limit of Quantitation	Health Advisory Level	Container/ Handling
Acidity: -G -P -T	mg/L as CaCO ₃			Aa Aa Aa
Alkalinity: -G -P -T	mg/L as CaCO ₃			Aa Aa Aa
Aluminum: -X -XGF	mg/L	0.100 0.002	Under review aq-varies based on other parameters	Cb Cb
Ammonia: -T	mg/L as N	Clean: 0.1 Industrial: 1.0 Rain: 0.01	aq – 1.37 – 0.20 mg/L pH temperature dependent	* Bd Bd Bc
Antimony: -XGF	mg/L	0.001	0.006 mg/L	Cb
Arsenic: -XGF	mg/L	0.001	0.025 mg/L aq – 0.050 mg/L	Cb
Barium: -X	mg/L	0.050	1.0 mg/L	Cb
Boron:	mg/L	0.20	5.0mg/L	Cb
Bromide:	mg/L	0.100		Aa
Cadmium: -X -XGF	mg/L	0.010 0.0001	0.005 mg/L aq – 0.0002-0-0018 mg/L based on hardness	Cb Cb
Calcium: -X	mg/L	0.05	200mg/L	Cb
Chloride, Water: -colorimetric -IC	mg/L	5.00 0.05	250 mg/L	Aa Aa
Chromium: -X -XGF	mg/L	0.020 0.0005	0.050 mg/L aq.0.002 mg/L	Cb Cb
Conductivity	uSIE/cm			Aa

Parameter	Units Reported	Limit of Quantitation	Health Advisory Level	Container/ Handling
Copper: -X -XGF	mg/L	0.010 0.0005	1.0 mg/L aq- 0.002-0.004 mg/L based on hardness	Cb Cb
Fluoride:	mg/L	0.10	1.5 mg/L	Aa Note: type C bottle sufficient for Fluoride only.
Hardness:			200 mg/L	Cb
Iron: -X	mg/L		0.3 mg/L aq- 0.3 mg/L	Cb
Lead: -X -XGF	mg/L	0.060 0.001	0.10 mg/L aq - 0.001-0.007 mg/L based on hardness	Cb Cb
Magnesium: -X	mg/L	0.05	150 mg/L	Cb
Manganese: -X	mg/L	0.010		Cb
Nitrate/Nitrite:	mg/L as N	0.05	10.0 mg/L	Aa*
Nitrite:	mg/L as N	0.05	aq - 0.06 mg/L	Aa
pH:	pH		6.5-8.5 aq- 6.5-9.0	Aa
Potassium:	mg/L	0.05		Cb
Selenium:	mg/L	0.001	0.01	Cb
Sodium:	mg/L	0.05	270 mg/L (20 mg/L for Na reduced diets)	Cb
Sulfate, Water: -colorimetric -IC	mg/L	5.00 0.05		Aa Aa
Thallium: -XGF	mg/L	0.0001	Under review	Cb
Turbidity:	NTU	0.	Less than 5 NTU (1.0 chlorinated sources)	Aa
Zinc: -X	mg/L	0.010	5.0 mg/L aq - 0.030 mg/L	Cb

GREATER MIRAMICHI REGIONAL SERVICE COMMISSION



COMMISSION DE SERVICES RÉGIONAUX DU GRAND MIRAMICHI

**PLANNING REVIEW AND ADJUSTMENT COMMITTEE
(PRAC)**

Flag Lots

**A Guide for the Review of Subdivision Applications
under the *Community Planning Act***

PRAC Policy #1

Adopted April 16th, 2013

If you have any questions please contact:

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Policy Adopted by the Planning Adjustment and Review Committee (PRAC) on April 16th,
2013

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1.0 Introduction

The purpose of this document is to provide guidance and ensure consistency in the review of subdivision applications which involve the creation of flag lots.

A “flag lot” is a lot with the majority of its area separated from the street by another lot or lots and gains access to the street by a narrow corridor of property.¹ The narrow stretch of land that provides access from the street to the remainder of the lot is part of the subject property and not a separate parcel or an easement across an adjoining property. This narrow corridor of land is referred to as the “access strip” and the portion of the lot that contains a suitable building envelope to accommodate development and any associated on-site services is referred to as the “building area”. Typically, flag lots do not have the required lot width at the applicable point of setback.

The creation of flag lots involve a variety of planning concerns. In some situations flag lots may create problems which do not typically occur with standard rectangular lots. However, in other instances topographic constraints or unusual existing lot lines make this type of lot arrangement the best option for the development of land. Potential problems associated with flag lots can also be mitigated through applying standards as set out in Section 4 of this document.

1.(1) Planning Considerations for Flag Lots: Potential Problems and Benefits

Efficient Land Development

Flag lots are often used for infill development and may be the only feasible way to subdivide some irregular shaped properties.

Flag lots are sometimes used by land-owners as a means to create an extra building lot without having to build a public street. In some situations the location and configuration of these lots may prejudice the efficient future development of land.

Providing Emergency Services

Residential dwellings constructed on flag lots may be less visible from a public road and therefore more difficult for emergency vehicles to locate. This problem has recently been reduced through the Province’s new 911 addressing system. Lengthy, sub-standard driveways may cause difficulties for emergency vehicles attempting to reach the main portion of the parcel. Access may also be impeded if a gate is constructed at the entrance of the private lane. Furthermore, emergency vehicles may run into difficulties turning around if the access strip is too narrow and a suitable turning area is not constructed.

¹ See Figure 1 on page 10 for an example of a flag lot.

Utilities

Flag lot configurations may result in an increased cost in providing utilities. In an attempt to recover costs, NB Power has started to charge customers an extra fee to supply power to residences which are in excess of 90 meters from a roadway.

Privacy

In areas with heavy tree coverage, flag lots can serve as a means to increase privacy for large estates through reducing visibility if a property from a public road.

Flag lot configurations often result in one home owner's backyard adjoining another's front yard which in some circumstances may detract from residential amenities and reduce privacy.

Residential Character

In some situations flag lots may enhance the rural-residential character of an area and may be more suited to the natural terrain than the traditional grid pattern of subdivision.

In many established residential subdivisions, flag lots may not be visually compatible with the alignment of neighboring properties.

Commercial Properties

Flag lots increase development potential for long narrow lots, without requiring a public street and intensify existing commercial properties.

Access to a property and delineation of ownership and use of properties may not be clear to the public.

Traffic

In certain circumstances, flag lots may be used to increase the number of lots along a cul-de-sac and reduce the number of lots created along arterial or collector roads as well as other undesirable accessories.

The creation of flag lots may increase the number of access points onto a roadway which could lead to possible safety hazards.

Septic Systems

Flag lots configurations may result in houses located in closer proximity to each other and should not be created without taking into account where wells would be placed with regards to on-site septic systems.

Storm Water Management

Depending on topography, additional measures may be required to deal with storm water management.

Development Constraints

Flag lots may be used to overcome development obstacles due to topography, or serve as a means to avoid environmentally sensitive features.

PART A: BACKGROUD & RATIONAL

2.0 Legislative Environment

Typically, flag lots require a variance as they do not meet the minimum lot width requirements at the applicable point of setback. Under the Provincial Subdivision Regulation the width requirement for a lot which is not to be serviced by a sewer system for public use is found in Section 6.

6(4) Where a proposed subdivision is not to be serviced by a sewer system for public use, every lot or other parcel of land therein shall have and contain

- (a) a width of at least fifty-four metres,
- (b) a depth of at least thirty-eight metres, and
- (c) an area of at least four thousand square metres.

In relation to Subsection 6(4)(a), “width” means

- (a) where the side lot lines are parallel, the distance measured across the lot at right angles to such lines, or
- (b) where the side lot lines are not parallel, the distance measured across the lot along a line parallel to a line joining the points at which the side lot lines intersect the limits of the abutting street, such parallel line being drawn through the point at which the line of minimum setback, required by by-law of regulation, intersects a line from the midpoint of and perpendicular to the line to which it is parallel.

The above mentioned requirements arise from health standards for on-site septic disposal systems. Although these requirements are applied throughout the Province, the standards cannot cover all the distinctive situations that may affect each parcel of land. There may be unusual conditions of topography, size, shape, and location that affects the development of a parcel in the manner not envisioned in the regulations. In these circumstances, lot width requirements at the minimum line of

setback may restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district. To prevent situations of special hardships, planning legislation allows for variances in certain circumstances. The legislative authority to grant a variance is found under Section 46 of the *Community Planning Act*.

46(1) An advisory committee of commission may

- (a) subject to such terms and conditions as it considers fit, permit such reasonable variance from the requirements of the subdivision by-law as, in its opinion, is desirable for the development of land in accord with the general intent of the by-law and any plan, statement or scheme hereunder affecting the land;

Therefore, provided a flag lot has a sufficient building envelope to safely accommodate the proposed development and an associated on-site septic disposal system, a considerable variance in width at the minimum setback would not undermine the intent of the Provincial Subdivision Regulation. However, it is also the responsibility of those granting a variance to determine that relaxing the standards will not adversely affect surrounding properties and convey no special advantage for the applicant.

3.0 Permitted Flag Lots

This guide applies to lots which are not intended to be serviced by a sewer system for public use and meet all regulatory requirements for approval with the exception of lot width.

- 3.(1)** Section 3.(2) to 4.(4) apply to flag lots with a depth less than 108 metres. For flag lots with a depth greater than 108 metres refer to section 5.

“Depth” shall be measured as the distance from the front property line to the back property line. In the case of flag lots, the front property line is the property line shared with the frontage property that is the closest and most nearly parallel to the street right-of-way line.

- 3.(2)** Flag lots may be permitted in situations where it is not possible to satisfy lot width requirements in a manner suited to the proposed use and the creation of a flag lot is reasonable for the logical division of land. These situations fall under the categories listed in section (a) to (d).

(a) Flag lots may be used to either access or avoid the degradation of environmentally sensitive areas and resource lands.

Environmentally sensitive areas and resource lands may, but are not limited to the generality of the foregoing, include areas such as wetlands, watercourses, floodplains, environmentally significant areas (ESAs), productive agricultural land or sites containing significant aggregates deposits.

(b) Flag lots may be used to overcome development obstacles due to topography.

Hillside terrain may render a portion of a property either inaccessible or unsuitable for residential development. In areas with steep slopes, subdivision designs which follow the natural contours of the land may result in better building sites.

(c) Flag lots may be utilized to subdivide existing irregularly shaped properties which preclude efficient and logical subdivision in accordance with normally applicable width requirements.

(d) Flag lots may be utilized to prevent unnecessary or undesirable accesses to collector or arterial roads.

The intent of this subsection is to curb ribbon development and avoid safety hazards associated with excessive numbers of private driveways along highways. For the purpose of this policy, arterial and collector roads generally include all highways assigned a route number from 1 to 199 and have a speed limit equal to or greater than 80 kilometers per hour.

PART B: THE POLICY

4.0 Policy for Flag Lots

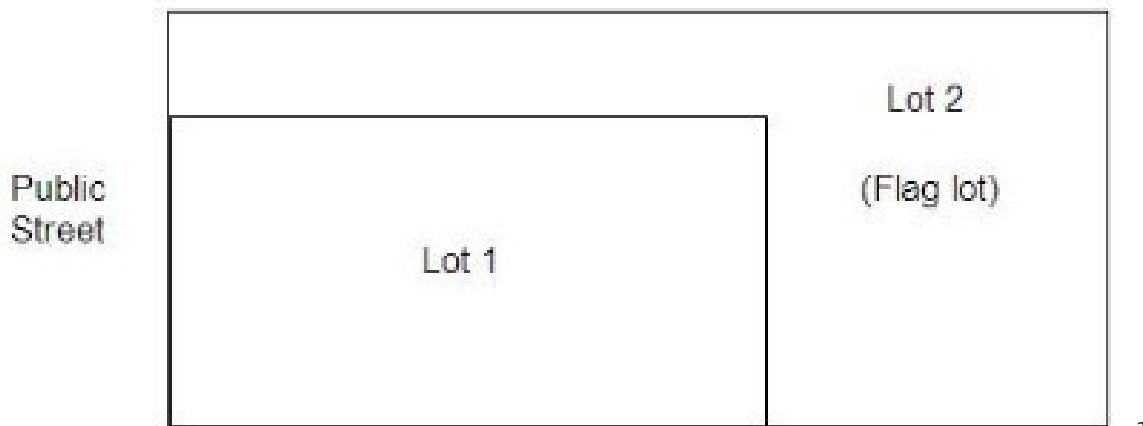
- 4.(1) The access strip or private lane portion of the flag lot must have a minimum width of 9 metres throughout its length.
- 4.(2) The building area of a flag lot, excluding the access strip, must be at least equal in size to the applicable required lot area and shall be capable of containing a circle whose diameter is equal to or greater than the required width at minimum line of setback.
- 4.(3) No flag lot should abut another flag lot.
- 4.(4) There should be a minimum of 20 metres, center to center between the access point of a flag lot and the adjacent property's access point.
- 4.(5) The access point of a flag lot should be at least 20 metres from the edge of the right-of-way of an intersecting street.
- 4.(6) Flag lots shall not access a private access nor shall they contain any portion of a private access.
- 4.(7) The property lines of the access portion of a flag lot should be as straight as possible and should not contain curves or other changes of direction. Ideally the property lines associated with the access point should be parallel.
- 4.(8) The maximum length of the access strip shall be 100 metres.
- 4.(9) Consideration should be given to require the following terms and conditions:
 - (a) No building or structure shall be placed on any portion of a flag lot having less than the required minimum width.
 - (b) To ensure privacy, buffering shall be provided between the flag lot and the frontage property.
 - (c) No vehicle shall be parked at any time on that portion of the flag lot used as a private lane.
 - (d) The access strip shall have adequate drainage as to prevent damage or hazard to abutting properties or public streets, and shall not exceed a grade of 18%.
 - (e) The minimum building setback from the property lines of the flag lot shall be modified to provide the maximum privacy to surrounding residential structures.

5.0 Permitted Variances in Width for Large Parcels

- 5.(1)** Sections 5.(2) through 5.(12) apply to parcels with a depth of 108 metres or greater.
- 5.(2)** The access strip or pole portion of the parcel must have a minimum width of 20 metres throughout its length.
- 5.(3)** The access strip should be located at a location that meets the requirements for the siting of a future street.
- 5.(4)** Minimum width of 9 metres throughout its length.
- 5.(5)** The building area of the flag lot, excluding the access strip, must be at least equal in size to the applicable required lot area and shall be capable of containing a circle whose diameter is equal to or greater than required width at the minimum line of setback.
- 5.(6)** No flag lot should abut another flag lot.
- 5.(7)** There should be a minimum of 20 metres, center to center, between the access point of a flag lot and the adjacent property's access points.
- 5.(8)** The access point of a flag lot should be at least 20 metres from the edge of the right-of-way of an intersecting street.
- 5.(9)** Flag lots shall not access a private access nor shall they contain any portion of private access.
- 5.(10)** The property lines of the access portion of a flag lot should be as straight as possible and should not contain curves or other changes of direction. Ideally the property lines associated with the access point should be parallel.
- 5.(11)** The maximum length of the access strip shall be 100 metres.
- 5.(12)** Consideration should be given to require the following terms and conditions:
- (a) No building or structure shall be placed on any portion of a flag lot having less than the required minimum width.
 - (b) To ensure privacy, buffering shall be provided between the flag lot and the frontage property.

- (c) No vehicle shall be parked at any time on that portion of the flag lot used as a private lane.
- (d) The access strip shall have adequate drainage as to prevent damage or hazard to abutting properties or public streets, and shall not exceed a grade of 18%.
- (e) The minimum building setback from the property lines of the flag lot shall be modified to provide the maximum privacy to surrounding residential structures.

Figure 1 – Flag Lot Example



² 2013. *Flag Lot*. [Diagram]. Retrieved from <http://www.nolensvilletn.gov/content/departments/planning/572-zoningordinancearticle1.html>

Figure courtesy of The Town of Nolensville.

**Greater Miramichi Regional Service
Commission**

**Planning Review and Adjustment Committee
(PRAC)**

Policy for Private Accesses

Adopted May 21st, 2013

If you have any questions please contact:

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Policy Adopted by the Planning Adjustment and Review Committee (PRAC)
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William Treadwell, Chair

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Introduction

The manner to which access is gained to property is a land use planning decision. There are various means to have legal access to property. In the rural areas there is a particular need to have access to property other than a public road. The increasing private accesses are being requested in the rural unincorporated area of the planning district.

(Please note, this Policy is based on the document prepared by the NB Planning Directors “Policy on Private Access, November 2000”, a report prepared by the Rural Planning District Commission “Guidelines for Lot Creation on Private Roads, January 2000,” and the MPDC Policy, November 2004, entitled Policy for Private Accesses and Private Roads”.)

This Policy applies to the incorporated area served by Greater Miramichi Regional Service Commission.

PART A: BACKGROUND & RATIONALE

1.0 Background

There is currently no standard provincial policy on private accesses. Each PRAC in the province has or are developing a policy for the consideration and approval of the private accesses within their respective jurisdictions.

These accesses provide access to lots (property) that may not necessarily require a public road or the services associated with them. Private accesses receive minimal services and the benefits of these accesses is that if designed and located correctly can minimize environmental impacts. Also private accesses reduce public cost of servicing by placing the burden of maintenance and upgrading in the hands of the users. An issue is the type, condition, location and design of a private accesses given number of lots that they provide access to. A related issue is that increasingly the owners of lots/homes on private access make requests to the Province to provide services, such as school bussing, winter snow plowing and seasonal maintenance. In some instances the ability to provide any form of public services is limited due to the condition of the access. Constraints such as width of access, type of road surface, encroachment by trees and brush may limit the ability to safely and efficiently provide services to properties served by a private access.

2.0 Relevant Legislation – Community Planning Act and Provincial Subdivision Regulation

The legislative authority for the policy concerning lot creation on private accesses is found in the *Community Planning Act* (CPA) and the Provincial Subdivision Regulation (No. 80-159).

2.1 Community Planning Act:

Section 49 (2) (c) of the CPA states:

49(2) Subject to paragraph 44(1)(c), a tentative plan shall be marked “Tentative Plan” and shall show...

(c) the locations, widths and names of existing streets on which the proposed subdivision abuts, and the locations, widths and proposed names of the proposed streets therein;

2.2 Subdivision Regulation (NB Regulation No. 80-159):

The Provincial Subdivision Regulation considers the issue of proposed streets. Section 5 outlines the issues that should be considered when rendering a decision/recommendation on the location of public streets in a proposed subdivision. It is assumed that these criteria could be applied to private streets as well.

5(4) In arriving at a decision regarding a recommendation with respect to the location of streets in a proposed subdivision, the commission shall give consideration to;

- (a) The topography of the land
- (b) The provision of lots suitable for the intended use
- (c) Street intersections and interceptions being as nearly as possible as right angles
- (d) The provision of convenient access to the proposed subdivision and to lots within it, and
- (e) The convenient further subdividing of the land or adjoining land.

The PRAC is given the authority to consider lots on private accesses by virtue of Section 6 (1) of the Provincial Subdivision Regulation.

6(1) Every lot, block and other parcel of land in a proposed subdivision shall abut

- (a) A street owned by the crown, or
- (b) Such other access as may be approved by the commission as being advisable for the development of land.

Specifically, Section 6(1), provides the PRAC with the authority to consider private accesses. It is through this provision that the PRAC must determine if the method of access to a lot is appropriate and advisable for the development of the property. In the absence of any direction and administering a variety of approval on this matter, PRAC are developing and administering a variety of approval policies. This has led to a lack of consistency and a certain amount of frustration on the part of surveyors and the general public.

3.0 Potential Liability Issues

The approval authority granted to the PRAC also exposes it to potential sources of legal authority.

Three potential sources of liability may result for the Regional Service Commission 5 by approving private accesses:

1. Emergency Vehicles – The Commission could be subject to liability if an emergency vehicle (fire-truck, ambulance or police vehicle) is unable to get to a property because the private access road is inadequate.
2. Motor Vehicle Accident – The Commission could be subject to liability for property damage or personal injury resulting from a car accident. The person suffering the loss would have to prove that the commission approved a private access road which was improperly designed or constructed and that the improper design or construction caused the accident.
3. Frustrated owners – Another possible source of liability is the purchaser of a lot in a subdivision serviced by the private access road. The purchaser may not realize the difference between a public access road. The purchaser may not know, for example, that no one is responsible for constructing and maintaining the road, that it is not plowed in the winter and that it is impassable in the spring. The owner might sue the Commission for approving the road.

The critical ingredient in fulfilling the PRAC responsibilities while avoiding or at least limiting exposure to liability for any potential legal problems is in providing due diligence and establishing and following administrative procedures. To this end, the PRAC must establish a policy guideline and a procedure that can be used by Planning Services staff when making recommendations to the PRAC and used by the members of the PRAC when rendering a decision on requests involving a private access.

4.0 Current Consultation Practice

A licensed land surveyor provides input regarding the location of the proposed access when it connects to a provincial highway or road. The surveyor provides a sight distance report that comments on the suitability of the access from a safety perspective.

Planning Services staff also visits the location of the proposed subdivision. The comments provided by the surveyor and the Planning Services staff's impression of the suitability of the subdivision is reflected in the recommendation presented to the PRAC.

If Planning Services staffs are recommending the location of the private access, they ask the surveyor to place the following note on the final subdivision plans:

"The "Private Access" shown on this plan is not suitable for Public Street. The department of Transportation and Infrastructure will not upgrade or maintain this "Private Access" in the future. All maintenance services and improvements to the "Private Access" are the responsibility of the property owners"

New Brunswick Department of Transportation and Infrastructure (DTI) (formerly DOT) does provide sight distance and access permits for single lots being developed on a provincial hwy, or road. New Brunswick Department of Transportation and Infrastructure (DTI) are no longer involved in the approval of private accesses.

The PRAC also retains the authority to not approve a subdivision plan under the following circumstances:

- 7(2) The development officer shall not approve a subdivision plan if, in his/her opinion and in the opinion of the commission,
 - (a) The land is not reasonably suited or cannot be economically suited to the purpose for which it is intended or may not reasonably be expected to be used for that purpose within a reasonable time after the plan is approved,

5.0 Access Standards for Private Accesses

There is very little information on accepted standards for private accesses. Each PRAC in New Brunswick that has a policy on private accesses has developed varying standards for the design and construction of the travel portion. In most case, the DTI standard for roads is used. The National Building Code provides some basic design criteria for emergency response vehicle access.

5.1 National Building Code of Canada 2005 (NBC)

The NBC provides some guidance relating to access to property relating to the suitability of the access for emergency (fire services) vehicles.

Section 3.2.5.6 of the NBC deals with access route design and specifically addresses the issue of fire services. It states:

“A portion of the roadway or yard provided as a required access route for the fire department use shall:

- a) have a clear width of not less than 6 metres, unless it can be shown that lesser widths are satisfactory;
- b) have a centerline radius not less than 12 metres;
- c) have an overhead clearance not less than 5 metres;
- d) have a change in gradient not more than 1m in 12.5m over a minimum distance of 15 metres.
- e) be designed to support the expected loads imposed by firefighting equipment and be surfaced with concrete, asphalt or other material designed to permit accessibility under all climatic conditions;
- f) have turnaround facilities for any dead-end portion of the access route more than 90 metres long; and
- g) be connected with a public thoroughfare.

The issue of standards for private accesses will be examined further. It should be noted that depending on the purpose of the lot being created, the standards for the private road or private access would vary.

6.0 Operating Principles

The following are operating principles that form the basis for a “Guideline on Private Access and Private Roads”, These principles form the foundation of the guideline.

1. Generally, a public year-round road is the best means of providing public access, public services (e.g. garbage collection, school bussing), private services (i.e. septic tank maintenance), and emergency services (e.g. ambulance, police and fire) to individual properties.
2. Subdivision plans in areas with a high probability of being predominantly composed of year-round residential development should be serviced by an adequate public road system.
3. Private roads are an acceptable means of access to resources and seasonal use lots.
4. Private roads may have a benefit of retaining scenic quality and may limit environmental disruption.
5. Public services, such as school bussing, garbage collection, maintenance and snow removal, should not be expected on private roads. The protection of human life and property through the provisions of access for emergency response vehicles should be of utmost importance.
6. Private roads should generally remain in private ownership. Where government ownership and maintenance of the road is desired, the road must first be improved to satisfy minimum New Brunswick Department of Transportation and Infrastructure (DTI) standards for a public road.
7. New private roads and subsequent land uses should be developed with due consideration given to the maintenance of a safe and efficient highway network, protection of the natural and cultural heritage resources and community character.
8. The construction standard of a private road must be suited to the use or activity using the road as its primary access. Access to property must be suitable for existing and subsequent landowners.
9. The construction standard and condition of a private access must be such that emergency response vehicles can safely use the access to respond to emergency situations involving development located along a private access.

7.0 Objective of the Policy

The following are the objectives of the policy. These objectives should be considered when the Planning Services staff and the members of the PRAC are considering the issue of private accesses.

1. To provide guidance to the PRAC considering approval of a proposed subdivision that proposes to create a lot, block or parcel of land which does not abut a street owned by the Crown;
2. To ensure consistency in the review of subdivision applications that would have the effect of creating new lot on private accesses;
3. To ensure that development proposals are submitted with adequate legal and technical information;
4. To ensure that access to development is appropriate to the proposed use and for the provision of emergency services;
5. To reduce environmental disturbances (e.g. on streams, wetlands, hillsides or areas of special ecological value) while ensuring that safe and appropriate access is provided;
6. To control sprawl and ribbon development along arterial highways by permitting development of appropriate types and at appropriate locations on private accesses; and
7. To legitimize private accesses to lots with appropriate uses and at appropriate locations.

8.0 Preferred Access Options

Generally, a public year-round access is the best means of providing public access, public services (e.g. garbage collection, school bussing), private services (i.e. septic tank maintenance), and emergency services (e.g. ambulance, police and fire) to individual properties. Subdivision plans in areas with a high probability of being predominately composed of year-round residential development should be serviced by an adequate public road system. Typically private access roads have been approved for recreational properties, such as camps and cottages. The PRAC has been asked by applicants to approve private accesses in areas that are predominately developed with permanent residential dwellings. In order to access whether a private access should be approved in a particular area it is necessary to determine the use of the land in the vicinity of the proposed

subdivision, particularly to determine if there is any pre-existing recreational land. Planning Services staff can utilize Service New Brunswick property type codes to evaluate the use of land in the immediate vicinity of the proposed subdivision to determine which areas have high probability of being predominantly composed of year-round residential development. In 2004 Northumberland County, there are 4475 properties (9.49%) containing these types of recreational land uses. The following recreational land use property type codes will be considered if there are any pre-existing recreational properties:

- Recreational Land – Unimproved (See definition)
- Recreational Land – Improved (See definition)
- Hunting/Fishing Clubs or Lodges

If there are no (or very limited number) of recreational properties in general vicinity (approximately 1 kilometre) of a subdivision that proposed to use a private access then there is a strong likelihood that the private access will be used to serve permanent residential dwellings. In this instance the access to the proposed lots should be by means of a public road.

These accesses should be built in manner that will satisfy the *New Brunswick Department of Transportation – Guide to the Minimum Standards for the Construction of Subdivision Roads and Streets* (latest Version). This will ensure that the access is able to adequately meet the needs of the residents (current and future) and property owners, as well the general public. Additionally, the access will be acceptable to the New Brunswick Department of Transportation and Infrastructure (DTI) for maintenance, such as snow plowing.

Private accesses are an acceptable means of access to resources and seasonal use lots. The determining factors are type, condition and size of the access is dependent on the purpose of the access (i.e. providing access to cottages versus access to a seasonal forestry operation).

The difficulty is enforcing the standard to which these accesses should be built. Other jurisdictions in New Brunswick have required that the developer of a subdivision with a private access to build the access to a certain standards and require a licensed engineer to inspect and approve the construction of the access before the final subdivision plan can be approved by the PRAC. The limited number of engineers (consulting firms) in the Miramichi area makes this requirement impractical in the Greater Miramichi Service Commission. The predominance of small scale (e.g. 1 and 2 lots) on a private access inspection and Planning Services staff of the PRAC is not qualified or trained to determine if the access is suitable, thus they are unable to make a qualified decision on the suitability of the access.

It is possible during the subdivision approval process to consider the width of the right-of-way ("R-O-W"). If an area proposed to be subdivided could accommodate several lots the right-of-way ("R-O-W") could be required to be twenty metres, if the subdivision will result in the creation of the only one lot, then the right-of-way ("R-O-W") could be reduced to six to ten metres. Additionally, the intended purpose of the lots would also dictate the required width of the right-of-way ("R-O-W"). If the area will accommodate cottages, with the potential for year round use, the right-of-way ("R-O-W") should be twenty metres so if in the future a public road were required, there would be sufficient width to create access that would satisfy Department of Transportation. If the access is to be used for a resource use, such as a woodlot, then right-of-way ("R-O-W") could be reduced.

Ensuring that the access portion located within the "R-O-W" is suitable for providing safe access to the buildings constructed on the lots is the difficult aspect of the issue.

9.0 Minimum Width of Right-of-Way ("R-O-W")

The intended use of the lots created through the subdivision process can influence and determine the appropriate width of the right-of-way ("R-O-W"). If for example the access will serve one recreational (seasonal camp or cottage, forestry operation) lot, then the right-of-way ("R-O-W") and resulting travelled portion can be relatively narrow (perhaps six metres). However, if the access is intended to serve several recreational lots, which would result in a significant volume of traffic and traffic movements at the intersection with a public road, then the width of the right-of-way ("R-O-W") and travel portion should be sufficiently wide enough to accommodate this type of use.

PART B: THE POLICY

1.0 Policy – Private Access

When considering subdivision plans that contain a private access, the PRAC shall refer to the following policies:

- 1.1 For subdivisions with 1 to 2 lots (proposed or potential) recreational use, the minimum right-of-way ("R-O-W") shall be a minimum of ten metres. The developer shall be advised that the access should be developed with the following design considerations:
 - a) have clear width of not less than six metres, unless it can be shown that lesser widths are satisfactory;
 - b) have a centerline radius not less than twelve metres;
 - c) have an overhead clearance not less than five metres;

- d) have a change in gradient not more than 1m in 12.5m over a minimum distance of fifteen metres.
- e) be designed to support the expected loads imposed by firefighting equipment and be surfaced with concrete, asphalt or other material designed to permit accessibility under all climatic conditions.
- f) have turnaround facilities for any dead-end portion of the access route more than ninety metres long; and
- g) be connected with a public thoroughfare.

1.2 For subdivisions that will create three or more lots (proposed or potential) for recreational use, the right-of-way ("R-O-W") shall be a minimum of twenty metres. The developer shall be advised that the access should be developed with the following design considerations.

- a) have clear width of not less than six metres, unless it can be shown that lesser widths are satisfactory;
- b) have a centerline radius not less than twelve metres;
- c) have an overhead clearance not less than five metres;
- d) have a change in gradient not more than 1m in 12.5m over a minimum distance of fifteen metres.
- e) be designed to support the expected loads imposed by firefighting equipment and be surfaced with concrete, asphalt or other material designed to permit accessibility under all climatic conditions.
- f) have turnaround facilities for any dead-end portion of the access route more than ninety metres long; and
- g) be connected with a public thoroughfare.

1.3 Notwithstanding policies 11.1 and 11.2 the PRAC may consider accesses that do not conform to these standards for resource based uses, communication towers, active and passive recreational uses, or other similar type uses. However, the minimum right-of-way ("R-O-W") width shall be six metres.

1.4 A notation (in form of a stamp) will be placed on all final subdivision plans which include a private access stating:

"The Planning Review Adjustment Committee (PRAC) does not carry on-site inspections of the private access shown on this plan. Construction of a private access on this parcel of land in accordance with all relevant regulations, if any, is the strict and sole responsibility of the property owner or developer. The PRAC expressly makes no representations nor warranties of any nature whatsoever that the condition and construction of the access is suitable for safe movement of vehicle traffic. The PRAC only approves the location of the access shown on this plan and not its

condition and makes no representation nor warranties whatsoever with respect to the condition of the access.”

- 1.5 In instance where the proposed lot will be used to accommodate a permanent year-round dwelling (s), it shall be the policy of the PRAC not to approve any private access to such lots. Subdivision plans in areas with high probability of being predominately composed of year-round residential development should be serviced by an adequate public road system built to the Department of Transportation and Infrastructure standards. In addition to a field inspection of the type codes to evaluate the use of land in the immediate vicinity (approximately 1 kilometre) of the proposed subdivision to determine which areas have a high probability of being predominately composed of year-round residential development. In particular, the following recreational land use property type codes will be used to determine if there are any pre-existing recreational properties:
 - Recreational Land – Unimproved (See definition)
 - Recreational Land – Improved (See definition)
 - Hunting/Fishing Clubs or Lodges
- 1.6 Land owners/developers proposing to create new lots on a private access where it may be possible to locate such lots on an existing or public road should demonstrate why development on a public road is inappropriate or unreasonable.
- 1.7 Private accesses shall be located at least thirty metres from a watercourse unless a Watercourse Alteration Permit has been received from the Department of Environment and Local Government.
- 1.8 In some instances the PRAC may consider approving an extension to an existing private access.
- 1.9 The location of all private accesses shall comply with the Department of Transportation and Infrastructure technical standards with regard to sight distance at the public street intersection and with “A Guide to the Minimum Standards for the Construction of Subdivision Roads and Street” (latest edition).
- 1.10 In the case of a Flag Lot, the portion of the abutting the public street/road which forms the access shall be shown on the subdivision plan as “cross-hatching” if there is the possibility that it could be extended to provide access to additional property. The surveyor shall place the following notation on the subdivision plan – “the development, installation or construction of a building or structure in the cross-hatched section of the plan is prohibited”.

- 1.11 Subdivisions using a right-of-way easement shall be prohibited, except for landlocked lots or lots having an existing building with an existing right-of-way. The commission may approve a new right-of-way easement to lots where alternative means of access are not available.
- 1.12 Access to a lot by Crown Reserve Road may be considered as suitable access provided the use of the road is approved by the Department of Natural Resources and Energy.

2.0 DEFINITIONS

Flag lots – is a lot with majority of its area separated from the street by another lot or lots and gains access to the street by a narrow corridor of property.

Recreational Land – is land that is used for a cottage, camp or similar non-permanent type of seasonal dwelling.

Resource Use - is any use involving the processing or storing of natural resource material including but not limited to agricultural, forestry, fishing and mining resources and shall include the production of agricultural products and keeping of farm animals.

Seasonal Dwelling – is a single detached dwelling used essentially for recreation, rest or relaxation from time to time, throughout any season of the year, by any person or persons but not used or intended to be used continuously as a permanent residence.