

CITY OF BURNABY

ENVIRONMENT AND WASTE MANAGEMENT COMMITTEE

HIS WORSHIP, THE MAYOR
AND COUNCILLORS

RE: DEVELOPMENT OF STREAMSIDE DIRECTIVES UNDER THE
FISH PROTECTION ACT

RECOMMENDATIONS:

1. **THAT** staff report back to the Committee and Council following the next set of consultations with the Province when more specific draft directives are expected.
2. **THAT** Council receive this report for information.

REPORT

The Environment and Waste Management Committee, at its meeting held on 1999 April 13, received and adopted the *attached* report regarding the status of the development of streamside protection directives under the Province's Fish Protection Act. The Committee advised that the intent of the current draft directives which constitute goals, approaches and objectives for streamside protection and enhancement is generally supportable. However, the Committee noted that a number of outstanding issues are yet to be resolved by the Province in further developing draft directives. These include needs for clear liability protection, flexible approaches reflective of local circumstances and technical and financial resources to implement and manage directives. A further report will be forwarded to the Committee and Council once more specific information regarding the draft streamside protection directives becomes available.

Respectfully submitted,

Councillor D. Johnston
Chair

: COPY - CITY MANAGER
- DIRECTOR ENGINEERING
- DIRECTOR FINANCE
- DIR. PLNG. & BLDG.
- DIR. PARKS, REC. & CULT. SERV.
- CITY SOLICITOR

Councillor C. Redman
Member

Councillor D. Lawson
Member

TO: ENVIRONMENT AND WASTE
MANAGEMENT COMMITTEE

April 8, 1999

FROM: DIRECTOR PLANNING AND BUILDING

OUR FILE:

SUBJECT: Development of Streamside Directives Under the Fish Protection Act

PURPOSE: To update the Committee on the development of the Province's streamside directives under the Fish Protection Act

RECOMMENDATIONS:

1. **THAT** staff report back to the Committee following the next set of consultations with the Province when more specific draft directives are expected.
2. **THAT** a copy of this report be forwarded to Council for its information.

REPORT

1.0 BACKGROUND

At its meeting of 1998 September 08, the Environment and Waste Management Committee received correspondence from the Ministry of Environment, Lands and Parks (MOELP) regarding the development of Urban Streamside Protection and Sensitive Stream Designation regulations under the Fish Protection Act. Arising from the discussion, the Committee referred the correspondence to staff for report. The purpose of this report is to update the Committee on the status of the development of streamside protection directives under the Province's Fish Protection Act.

2.0 THE FISH PROTECTION ACT

The Fish Protection Act, Bill 25 was passed in the legislature in 1997 May. The Act is intended to provide comprehensive protection to fish and fish habitat through a variety of directives (i.e. regulations). Section 12 of the Fish Protection Act allows the Provincial government to establish regulations that contain policy directives regarding the protection and enhancement of riparian areas in settings subject to residential, commercial or industrial development. The regulation will require local governments to protect streamside areas according to management objectives established by the regulations by either:

- including in its zoning and rural land use bylaws riparian area provisions in accordance with the directive, or
- ensuring that its bylaws and measures provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive.

The directives only apply to new industrial, commercial and residential development and do not apply to agricultural, forestry, institutional or parkland developments. These areas are expected to be addressed by the Province in the future following adoption of the anticipated streamside directives under the Fish Protection Act.

The Province also passed in 1997 May, Bill 26 which amended the Municipal Act to provide additional tools to municipalities to undertake enhanced environmental planning should they wish to exercise these powers. Potential tools include use of OCP provisions, zoning bylaws, tree protection bylaws, landscaping bylaws, watercourse protection bylaws, subdivision approvals, run-off control requirements, floodplain construction requirements, parkland dedication, covenants and building permits.

At the Union of British Columbia Municipalities (UBCM) convention in 1997 October, the UBCM signed a Memorandum of Understanding (MOU) with MOELP and the Ministry of Municipal Affairs and Housing (MMAH) to ensure that local government needs are addressed in developing directives under the Fish Protection Act. Arising from this was the establishment of an extensive consultation process led by the Province involving MOELP, MMAH, and the Ministry of Fisheries which is currently underway.

3.0 PROCESS AND TIMELINE

The Province began the consultation process in late 1997, and currently anticipates completion of the streamside protection directives by the end of 1999 for presentation to Cabinet early in 2000. The consultation process has involved municipalities in three workshops including: An Introduction to the Fish Protection Act and Streamside Protection Policy Directives (December, 1997); Urban Streamside Protection and Sensitive Streams Workshops (June/July 1998); and Presentation of Draft Policy Directives Workshop (November, 1998). In addition, the Province has conducted consultations with special interest representatives.

Staff have actively participated in the three municipal workshops. Staff were also requested to present Burnaby's framework for stream protection and management including environmental policies, bylaws, review processes and initiatives at the July municipal and public workshops. Comprehensive summaries of feedback from workshops have been compiled by the Province and circulated to the UBCM and all participants.

Since the last municipal workshop coordinated through the Fraser Basin Council held in 1998 November, the Province has been working with DFO towards the development of specific draft directives based on a classification of streams with associated riparian protective setbacks (discussed below). A technical review and testing through the field application of this approach is currently underway. Results are expected at upcoming consultations with municipalities anticipated in May at a UBCM workshop. A workshop coordinated by the Urban Development Institute also recently took place in March and involved application of these working draft directives to a number of case studies.

4.0 REVIEW OF CURRENT INFORMATION

4.1 *Working Draft - Streamside Protection Policy Directives under the Fish Protection Act (Oct. '98)*

The most recent draft on Streamside Protection Policy Directives from the Province defines goals, approaches, and objectives for streamside protection and enhancement which are seen as the basis of the directives. It is broad in nature and does not define specific regulations or riparian setback guidelines. Goals and objectives are associated with maintaining and, where appropriate, enhancing riparian areas including specific ecosystem components and functions for fish habitat, while acknowledging permitted, existing and former landuses and municipal growth management strategies. Achievement of protection and management of riparian areas will seek to involve governments, community groups, land owners, developers and managers through coordinated planning, regulation, approvals and stewardship.

In general, the draft is consistent with the City's environmental policies, bylaws, guidelines, review processes and initiatives. UBCM has indicated that there is general support by municipalities on the draft and the intent of the Fish Protection Act.

4.2 *Transitional Working Document - Draft Streamside Protection Policy Directives (Feb. '99)*

As mentioned previously, a transitional Working Document of Draft Streamside Protection Policy Directives has been prepared by the Province in consultation with DFO. Although this document has not yet formed part of formal consultations, it is available to stakeholders for consideration. Incorporating the goals and objectives from the policy directives, this working document contains the most specific directives drafted to date involving a classification system for rating fish habitat. Keyed to this is a recommended riparian setback ranging from 30m (or greater) to a 5m minimum. The classification system is based on ratings of:

- fish presence and function ranging from confirmed salmonid presence to absence;
- watercourse status and quality which rates how much a watercourse and riparian area has been altered through the development of structures and impervious surfaces and;
- the integrity of the riparian area in relation to the parcel size.

The resulting guidelines recommend riparian setbacks whereby high value streams in relatively intact riparian areas contained on large parcels of land are protected with significant riparian leave areas (30m and greater) while streams in developed areas with the absence of fish may involve riparian leave areas as narrow as 5m.

At the March workshop sponsored by UDI, a number of case studies involving the application of the above working draft directives were presented. In most cases, the existing riparian setbacks which were previously resolved cooperatively with MOELP/ DFO and project proponents were not reflective of the working draft directives but represented unique, site specific and innovative solutions. These case studies emphasize the need for flexibility and agency input and cooperation as well as the need for further testing and refinement of the transitional working draft directives. The Province has indicated they are currently conducting a technical review of the working draft directives for presentation at the next series of consultations.

4.3 *Sensitive Streams Under the Fish Protection Act - A Discussion Paper (June, '98)*

This draft discussion paper attempts to identify streams which are high priorities for special water flow protection measures because of inadequate water flows or because fish habitat is endangered or has already been damaged. Proposed criteria for designation of sensitive streams include: presence of a significant fish population in the watershed, fish stocks are at risk, stream flows are of concern and there is a good potential for recovery of fish. Sustainability of fish would receive highest priority for streams under this designation and may involve the need to develop a recovery plan and manage water in consideration of "fish first." An initial list of 15 streams went out for comment at the June/July workshops with requests for further nominations. The initial list did not contain any streams in Burnaby.

A number of significant questions and concerns were raised at workshops in regard to criteria for designation of sensitive streams which did not generally apply to urban streams. As well the designation of a stream was seen to potentially lead to unfair requirements on land owners and managers. The Province is assessing these issues and is expected to present further information regarding sensitive streams in upcoming consultations.

5.0 DISCUSSION OF KEY ISSUES

Comprehensive summaries of input from consultations have been compiled by the Province and made available to municipalities and other stakeholders. The Province is currently considering this extensive feedback in preparing further drafts on the streamside protection directives. As resolved at the UBCM's 1998 convention, municipalities appear generally supportive of intent of the current direction of the streamside protection directives, however, a summary of main outstanding issues yet to be resolved include:

5.1 The need for clear liability protection

Municipalities have indicated the need for clear protection of liability from implementation of directives under the Fish Protection Act. Endorsement by DFO is required for protection in regard to the Federal Fisheries Act. Municipalities do not want to assume liabilities they were not formerly exposed to under the current MOELP/ DFO referral process. In addition, significant concerns associated with potential impacts on land values and the potential need for compensation have been raised. The terms of reference for the directives call for an approach that will not trigger compensation under the Municipal Act (s 914) and the intent of the directives is not to unfairly impact or sterilize land. An economic research study conducted for the province has indicated that riparian areas add substantially to the value of adjacent developments.

5.2 A flexible approach is needed to fit local circumstances

Local government has expressed the need for directives which reflect site specific conditions and unique solutions which are acceptable to various involved parties. The Province has indicated that a classification system which customizes how directives apply may be a vehicle to address the need for site specific solutions. A working draft classification system is currently being developed and is undergoing technical review with DFO. Opportunities for municipalities to "meet or beat" the regulations through the use of a variety of tools may also provide opportunities for flexible application.

5.3 There is a strong need for technical assistance

Technical assistance regarding establishments of setbacks is currently available as part of the existing MOELP/DFO referral process. Municipalities have clearly expressed the need for such technical assistance given their lack of resources and expertise in the current framework. The Province is reviewing this and has indicated that training, the development of a classification system, example tools including MOUs and environmental bylaws may aid in the implementation of directives.

5.4 There is a strong need for financial assistance to implement and manage directives

As indicated above, resources are required to replace the current MOELP/ DFO referral process for implementation of new directives which extend beyond the scope of most municipality's current environmental management framework. DFO has indicated that federal resources and support may be available to assist local governments with the implementation of streamside policy directives that help to meet the Fisheries and Oceans Canada's obligations under the Federal Fisheries Act. Additional potential resources were identified and include grant funding (i.e. USHP) and partnerships.

6.0 SEDIMENT CONTROL

Council previously requested a report addressing the potential development of a sediment control bylaw or enhanced guidelines which serve as an effective means to protect watercourses against the deleterious impacts associated with sediment discharge. As the Province's passing of the Fish Protection Act and subsequent process to develop streamside protection directives may include measures associated with sediment control, staff feel it appropriate to await the outcome of the process prior to addressing the need for a separate sediment control bylaw.

7.0 CONCLUSIONS AND RECOMMENDATIONS

As reflected in the summary of issues coordinated by UBCM based on municipal input, the intent of the current draft directives which constitute goals, approaches and objectives for streamside protection and enhancement directives under the Fish Protection Act is generally supportable. These are seen by staff as consistent with Burnaby's environmental policies, bylaws, guidelines, review processes and initiatives. However, a number of outstanding issues are yet to be resolved by the Province in further developing draft directives. These include needs for clear liability protection, flexible approaches reflective of local circumstances and technical and financial resources to implement and manage directives. The Province has received this input through its consultation process and from UBCM.

Specific directives which may take form through the classification of streams with associated protection measures, such as setbacks and sediment control measures, is currently being explored by the Province in consort with DFO. Results of this work and further resolution of the above issues is expected to be presented at upcoming consultations which are anticipated in May as part of a UBCM workshop. Staff will report back to the Committee

and Council once more specific information regarding the draft streamside protection directives, including any specific measures to control sediment, under the Fish Protection Act becomes available.

B. Rukon .1
for D.G. Stenson, Director
PLANNING AND BUILDING

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- cc: City Manager
- Director Engineering
- Director Finance
- Director Parks & Recreation
- City Solicitor

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