

TO: CITY MANAGER 2004 May 13

FROM: DIRECTOR PLANNING AND BUILDING OUR FILE: 11.210

SUBJECT: REVISIONS TO STREAMSIDE PROTECTION REGULATION

PURPOSE: To update Council on the Province's process to amend the Streamside Protection Regulation.

RECOMMENDATIONS:

1. **THAT** this report be forwarded to the Provincial and Federal governments and UBCM with a letter requesting that changes to the Streamside Protection Regulation be delayed to allow for meaningful open consultation with local government.
2. **THAT** a copy of this report be forwarded to Burnaby's MLAs and MPs, and to the City's Environment Committee.

REPORT

1.0 BACKGROUND

In 2001, the new Provincial government decided to revisit the Streamside Protection Regulation that had been adopted by Cabinet in January 2001 under the previous government. Since early 2002, there has been no consultation with local governments on this matter. While Union of British Columbia Municipalities (UBCM) staff have reviewed drafts of a revised Regulation, they have had to sign a confidentiality agreement that information on the draft not be disseminated to other parties.

City staff now understand that the Province is intending to make a decision on the Regulation by June 2004. The following report outlines consultation so far, and the need for further consultation before the Regulation is revised or abandoned.

2.0 THE STREAMSIDE PROTECTION REGULATION

On January 19, 2001, the Provincial government enacted the Streamside Protection Regulation to support the 1997 Fish Protection Act. Local governments were given 5 years to fully implement the regulation. The purpose of the regulation was to bring clarity and a more transparent process for protection of streamside vegetation through the development process.

The Province conducted detailed and extensive consultations prior to enacting these Regulations, including pilot projects in Burnaby and other selected municipalities to refine the proposed methodologies, including variance processes and implementation approaches. Staff reported back to the Environment Committee and Council, and forwarded their comments to the UBCM. In reviewing the final draft of the Regulations in the fall of 2000, both the City of Burnaby and Union of British Columbia Municipalities (UBCM) supported the Regulations, subject to adequate provision of funding for implementation and liability protection to local governments.

3.0 PROPOSED RIPARIAN AREA REGULATION

In 2001, the new Provincial government decided to revisit the Streamside Protection Regulation and struck a task group to seek consensus on whether to abandon or amend the regulation. The task group included representatives from Department of Fisheries and Oceans (DFO), municipal environmental managers, UBCM, stream stewards, and land developers. While the task group did not wish to scrap the regulation, they could not reach consensus on amendments. As such, by 2002, the task group was disbanded. To replace the task group, the Province established an internal working group, involving staff and scientists from DFO and the Provincial Ministry of Water, Land, and Air Protection (MWLAP). Over the past year and a half, this working group has been seeking to develop a new method for defining streamside protection areas, and amending the Streamside Protection Regulation. The revised name of the Regulation is the proposed Riparian Area Regulation (RAR).

Staff and representatives from UBCM have reviewed the draft RAR and have sought to ensure that it continues to meet the spirit and intent of the formerly approved Streamside Protection Regulation. However, the Province required that any reviewer of the RAR sign a confidentiality agreement and that information would not be disseminated to other parties. As such, there has been no review of the Regulation by local government staff. Since 2001, City staff have enquired on numerous occasions to the Province, DFO, and UBCM about the status of the revised Regulation, but have been told that information was not available.

In late April 2004, City staff were finally invited to review the draft Regulation, on the condition that they also sign a confidentiality agreement, that the contents would not be shared with any other parties, including other City staff or Council. This approach was deemed unacceptable, and staff requested an open discussion process, including pilot testing of the revised Regulation.

The Province agreed to meet with local government environmental managers on May 12, 2004 to brief them on the revised Regulation. The Province emphasized that this was a briefing and not consultation. City staff attended this meeting. Copies of the revised Regulation were not available at the meeting, but elements of the Regulation were discussed.


Without seeing the proposed Regulation, meaningful comment was not possible. Again, the only way that staff could review the proposed Regulation was to sign a confidentiality agreement. Staff did not do so.

The Province noted that Cabinet was seeking to make a final decision by June 2004 on whether to adopt the new RAR or entirely eliminate the Streamside Protection Regulation. If the RAR is adopted, the Province envisages a phase-in process of a year or more, in which the process and details could be refined. At the meeting, staff expressed frustration at the lack of consultation and ability to meaningfully comment on a Regulation that has significant implications for local governments.

4.0 CONCLUSIONS

The success of any Riparian Area Regulation requires effective partnerships between local governments, the Province and the DFO. For the RAR to successfully proceed, pragmatic, open and meaningful consultation is needed with local governments to ensure that the revised Regulation adequately covers issues, such as liability protection, resourcing, variances, implementation agreements, monitoring, and roles and responsibilities.

It is, therefore recommended that this report be forwarded to the Provincial and Federal governments and to the UBCM, urging that the proposed Regulation be made available to local governments for open and meaningful review, prior to any promulgation of a revised Riparian Area Regulation.



J.S. Belhouse, Director
PLANNING AND BUILDING

RW/jc

cc: Director Engineering
Director Parks, Recreation and Cultural Services
City Solicitor

