

CITY OF BURNABY

ENVIRONMENT COMMITTEE

HIS WORSHIP, THE MAYOR
AND COUNCILLORS

RE: INTERIM STRATEGY FOR RIPARIAN AREA REGULATION

RECOMMENDATIONS:

1. **THAT** Council endorse staff's continued use of streamside setbacks as outlined in the 2001 Streamside Protection Regulation in the land development and permitting process for all land uses.
2. **THAT** Council enact a bylaw to integrate the Streamside Protection Regulation into the land development process, with variance provisions provided through the federal Department of Fisheries and Oceans (DFO) and/or an Environmental Review Committee (ERC) process and the bylaw be advanced to first reading and the 2005 March 22 Public Hearing.
3. **THAT** Council require staff to continue to monitor the Riparian Area Regulation (RAR) process, and the proposed City bylaw, and report back in Spring 2006 to Committee and Council to determine if amendment to the City process and bylaw is needed.
4. **THAT** a copy of this report be forwarded to the Union of British Columbia Municipalities; Minister of Water, Land, and Air Protection, and the federal Department of Fisheries and Oceans.

REPORT

The Environment Committee, at its Open meeting held on 2005 February 08, received and adopted the *attached* report proposing an interim strategy for the City to address the Riparian Area Regulation.

The Committee advised that, on January 24, 2005, Council sent a request to the Minister of Water, Land, and Air Protection to extend the implementation deadline, in order to address numerous outstanding administrative and technical issues related to the regulation. To date, a reply had not been received.

:COPY - CITY MANAGER
- DIRECTOR PLANNING & BUILDING
- DIRECTOR PARKS, RECREATION & CULTURAL SERVICES
- DIRECTOR ENGINEERING
- CITY SOLICITOR

The Committee further advised that, if the extension is not granted, the Riparian Area Regulation will come into effect March 31, 2005. The only exception to the new procedure of individual lot assessment would be if a municipality adopts an alternative streamside protection strategy before March 31, 2005, that in the opinion of the local government meets or beats the Provincial regulation. If no alternative is adopted before that time, one cannot be adopted in the future.

The Committee concluded by supporting a strategy whereby the City would adopt its existing streamside process as the alternative streamside protection strategy prior to March 31, 2005. The Committee would then continue to monitor both the RAR and the City process, and recommend a long-term streamside strategy to Council in Spring 2006.

Respectfully submitted,

Councillor D. Johnston
Chair

Councillor P. Calendino
Vice Chair

Councillor C. Redman
Member

TO: ENVIRONMENT COMMITTEE 2004 February 2
FROM: DIRECTOR PLANNING AND BUILDING OUR FILE: PL 31000 - 01
DIRECTOR ENGINEERING

SUBJECT: INTERIM STRATEGY FOR RIPARIAN AREA REGULATION

PURPOSE: To propose an interim strategy for the City to address the Riparian Area Regulation.

RECOMMENDATIONS:

1. **THAT** the Committee recommend that Council:
 - a. Endorse staff's continued use of streamside setbacks as outlined in the 2001 Streamside Protection Regulation in the land development and permitting process for all land uses.
 - b. Enact a bylaw to integrate the Streamside Protection Regulation into the land development process, with variance provisions provided through the federal Department of Fisheries and Oceans (DFO) and/or an Environmental Review Committee (ERC) process.
 - c. Require staff to continue to monitor the Riparian Area Regulation (RAR) process, and the proposed City bylaw, and report back in Spring 2006 to Committee and Council to determine if amendment to the City process and bylaw is needed.
 - d. Forward this report to the Union of British Columbia Municipalities; Minister of Water, Land, and Air Protection, and the federal Department of Fisheries and Oceans.

REPORT

1.0 PURPOSE

On July 27, 2004, the Province enacted the Riparian Area Regulation (RAR) to come into effect March 31, 2005. On January 24, 2005 Council sent a request to the Minister of Water, Land, and Air protection to extend the implementation deadline, in order to address numerous outstanding administrative and technical issues related to the regulation. To date, staff do not know if this extension will be granted.

If the extension is not granted, the Riparian Area Regulation will come into effect March 31, 2005. The only exception to the new procedure of individual lot assessment would be if a municipality adopts an alternative streamside protection strategy before March 31, 2005, that in the opinion of the local government meets or beats the Provincial regulation. If no alternative is adopted before that time, one cannot be adopted in the future.

The purpose of the following report is to recommend that the City adopt its existing streamside process as the alternative streamside protection strategy prior to March 31, 2005. Staff would then continue to monitor both the RAR and the City process, and recommend a long-term streamside strategy to Council in Spring 2006.

2.0 CITY'S STREAMSIDE PROTECTION PROCESS

The City has a long history of balancing environment and development interests. An overview of key events related to streamside protection is provided in Table 1. As outlined in the City Official Community Plan (1998), the City has used the Land Development Guidelines to manage land development close to watercourses since the mid 1990s, with the Environmental Review Committee (ERC) providing a variance process since 1999.

In 2001, the new Provincial Streamside Protection Regulation (SPR) outlined new watercourse setbacks, including a revised setback assessment methodology. The SPR approach was reviewed in detail by the Environment Committee and Council during development of the regulation. In October 2000, Council notified the Province and UBCM that the City had no significant objections to the final SPR approach, subject to development of an intergovernmental agreement, liability protection, provision of resources, and application of the regulation to all land uses. DFO approved of the new SPR methods and revised the Land Development Guidelines accordingly. These were then used in the ERC to reflect the setbacks. Therefore, through policy and practice, the City has been applying the SPR to development applications since 2001.

The SPR allows for variances where setbacks are not achievable. These variances have been obtained through the ERC process with DFO. Developments that take place on the existing building footprint are automatically permitted without ERC review.

Since 2000, the ERC has reviewed an average 15 new proposals per year, with a third of applications being large-scale rezonings. Other common applications include single family building permits (2-3 applications per year), local area plans (1-2 per year), and trails and park development work (1-2 per year). Through this process, the ERC has brokered solutions that have allowed development to proceed, while protecting environmental resources.

Table 1: Streamside Protection in the City of Burnaby	
Date	Event
1973	City of Burnaby <i>Open Watercourse Policy</i> ensures watercourses remain open.
1970s	City adopts practice of minimum 15m ravine setbacks during subdivision
1992	Provincial and Federal governments release <i>Land Development Guidelines</i> – outlining recommended stream setbacks to protect fish habitat.
1990s	City of Burnaby requires applicants seeking relaxations to <i>Land Development Guideline</i> setbacks to provide letter of approval from senior agencies
1998	City of Burnaby Official Community Plan outlines integration of <i>Land Development Guidelines</i> into development review process
1999	City Environmental Review Committee (ERC) established with senior agencies to streamline review of relaxation variances to <i>Land Development Guidelines</i> setbacks
2001	Province adopts Streamside Protection Regulation (SPR), with revised streamside setbacks. SPR allows building on existing footprint.
2001	DFO updates SPR setbacks into <i>Land Development Guidelines</i> , so the SPR becomes the new standards for the City of Burnaby ERC.
2004	Province introduces Riparian Area Regulation (RAR), to come into effect March 31, 2005. RAR includes new setback assessment methodology.
2004	Staff review of ERC indicates that it is functioning well to meet City interests.
2005	Municipalities not wishing to adopt RAR must establish SPR within municipality by March 31, 2005.

3.0 THE RIPARIAN AREA REGULATION

As noted in the January 24, 2005 Council Report, there have been significant delays in the Province’s proposed strategy to develop the RAR implementation process. Consequently, there are numerous key outstanding issues that inhibit staff’s ability to assess the full potential implications of RAR implementation. These issues include finalization of the assessment methods, addressing liability issues, signing of the Cooperative agreement between the Union of BC Municipalities (UBCM) and senior agencies, and the details of the administrative process, including enforcement and monitoring.

While some issues may be subject to change, staff make the following observations about the RAR process.

- a. **Definitions:** The RAR and SPR both apply to all watercourses, including rivers, streams, and ditches.
- b. **Ravine Protection:** Under RAR, setbacks are from high-water mark, as opposed to top of bank. This means that in some instances, developers may construct within ravines, so long as the proposal is signed-off by a geotechnical engineer. The City has serious risk management, engineering, liability, geotechnical, and financial concerns about this approach.

- c. **Assessment Cost.** The RAR relies on the proponent hiring a Qualified Environmental Professional (QEP) to conduct an assessment on any development within 30m of a watercourse. The cost of such an assessment is unknown at this time.
- d. **Monitoring and enforcement.** The RAR requires that local governments participate in monitoring and enforcement, but the nature of this participation (including level of effort, resources, etc) is still unclear
- e. **City interests.** Under RAR (which only looks at fish issues), the City is excluded from the setback decision-process, leading to concerns that some City issues will not be addressed. (To date, the ERC has proved a useful forum for resolving issues such as servicing and trails, related to setbacks.)
- f. **Liability protection.** The lack of local government liability protection is a concern. If staff review QEP reports to ensure that local government interests are addressed, the local government may incur liability risk, should environmental errors subsequently occur. This issue must be addressed by the Province.
- g. **Channel migration and flooding issues.** The exact setbacks are still unclear as final assessment methods have not been released. However, generally it appears that default setbacks will be lower than under SPR. In some instances, the City has concerns that these setbacks will be inadequate to address channel migration and flooding issues.
- h. **Existing footprint.** The RAR is unclear about defining parking lots as existing development footprint, reducing opportunities for long-term environmental improvements of degraded areas.

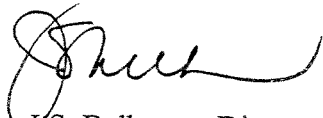
4.0 INTERIM STRATEGY

In the absence of clarification on issues related to the RAR, staff recommend the following interim strategy. The January 24, 2005 Council report asked the Minister for an extension to the RAR implementation deadline. In case this extension is not provided, it is recommended that the City formally endorse its current streamside protection approach before March 31, 2005. Staff advises that in the short-term, the approach also be formalized through bylaw, to ensure overall consistency with City policies. The formal endorsement of the City's current approach will ensure that the City can use existing policies and approaches, rather than being compelled to implement RAR on March 31, 2005.

It is also recommended that Council direct staff to continue to monitor RAR and its potential implications for municipalities. Staff can monitor both RAR progress and the existing City process, to report back to Council in Spring 2006 with an update to finalize a long-term strategy for streamside protection in the City. Issues will include items previously reviewed in both the SPR and RAR processes such as liability, resources, and issues related to small residential lots.

5.0 CONCLUSION

As noted in previous reports, the Province's RAR implementation process and finalization of assessment methods have been delayed. Many key outstanding issues remain, that affect both RAR application on the ground, and implementation issues. As such, staff believe that implementation of RAR by March 31, 2005 could be extremely difficult and chaotic. The interim strategy contained in this report should allow the City to maintain its current planning practices and process, with the flexibility of monitoring RAR, and potentially updating City practices in the future.



J.S. Belhouse, Director
PLANNING AND BUILDING



W.C. Sinclair, Director
ENGINEERING

RW/jc/sa

cc: City Solicitor
Director Parks, Recreation & Cultural Services

