



To: General Purposes

Date: June 3, 2005

From: Suzanne Bycraft
Manager, Emergency & Environmental Programs

File: 10-6125-00/Vol 01

Re: Proposed Interim Response Strategy to the Riparian Areas Regulations (RAR)

Staff Recommendation

1. That Council adopt the City of Richmond Interim Strategy for Responding to the Riparian Areas Regulations (RAR) as outlined in Attachment 1.
2. That a letter be written to the UBCM advising them that it is Council's position that the UBCM not sign the tri-party agreement among the Province, DFO and UBCM until affected local municipalities have been provided with the opportunity to provide meaningful input on appropriate roles and responsibilities.
3. That staff continue to monitor the RAR and report back to Council on any amendments required to the Interim Strategy once key implementation tools and procedures have been completed.

Suzanne Bycraft
Manager, Emergency & Environmental Programs (3338)

FOR ORIGINATING DIVISION USE ONLY					
ROUTED TO:	CONCURRENCE		CONCURRENCE OF GENERAL MANAGER		
Development Applications.....	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>			
Policy Planning	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>			
Law	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>			
REVIEWED BY TAG	YES	NO	REVIEWED BY CAO	YES	NO
	<input checked="" type="checkbox"/> <i>dw</i>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Staff Report

Origin

On July 27, 2004, the Province enacted the Riparian Area Regulation (RAR) to come into effect March 31, 2005. On March 2, 2005, Council sent a request to the Minister of Water, Land, and Air Protection to extend the implementation deadline as the necessary implementation tools to be developed by the Province were incomplete. An extension was granted by the Province but just until the end of June 2005 and, while some progress has been made, key implementation tools and procedures remain incomplete.

This report recommends that the City adopt an interim RAR strategy that maintains existing procedures and strategic direction until such time that the Province completes the necessary implementation tools and procedures.

Background

1. Fisheries Management – Federal and Provincial Roles

The Federal Fisheries and Oceans Canada (DFO) has regulatory authority over fish habitat protection through the Federal *Fisheries Act*. The *Fisheries Act* prohibits the harmful alteration, disruption or destruction of fish habitat (HADD). The *Fisheries Act* applies throughout Richmond.

The Riparian Areas Regulation is a Provincial directive under the Provincial *Fish Protection Act*. The Riparian Areas Regulation stipulates that specific local governments, including Richmond, cannot approve residential, commercial or industrial development adjacent to specified waterways, which may include ditches, until appropriate setbacks and other fish protection measures have been determined by qualified environmental professionals (QEP). Unlike the *Fisheries Act*, the RAR only applies to specific types of development and does not apply to institutional or agricultural development. However, where it applies, “development” is given an expansive definition, and includes any disruption of vegetation and soils. The RAR is intended to replace the Streamside Protection Regulation (SPR) which stipulated designated set-backs based on watercourse characteristics.

It is noted that the QEP assessments are responsible for identifying fish protection measures which will ensure that proposed developments will not result in a HADD as defined by the Federal *Fisheries Act*. Should this not be possible, then it is staff’s understanding that developers would require authorization by DFO.

2. Legislative Requirements for Responding to Provincial RAR

In accordance with the *Fish Protection Act*, if a policy directive under subsection (1) of the Act applies, a local government must:

- (a) include in its zoning and rural land use bylaws riparian area protection provisions in accordance with the directive, or

(b) ensure that its bylaws and permits under Part 26 of the Local Government Act or Part XXVII of the Vancouver Charter, as applicable, provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive.

The RAR is a policy directive which applies to Richmond. Local governments must comply with the RAR by June 30, 2005, unless a further extension is requested and granted by the Province.

3. Municipal Implementation Concerns

Implementation of RAR riparian area protection provisions and methodology contained in the RAR, in its current form, is difficult given a number of outstanding logistical issues, including:

- the development of a Cooperative Agreement between the Union of BC Municipalities (UBCM) and senior agencies which is agreeable to local governments – this agreement is important for providing the necessary clarity on the respective roles and responsibilities of the Federal Government, Province and affected local governments
- endorsement and sign-off by Federal Fisheries and Oceans
- completion of liability review being conducted by UBCM with time provided to local governments to evaluate review findings
- finalization of the assessment methods, with particular emphasis on applicability in highly urbanised areas
- a roster of qualified environmental professionals who are appropriately trained in RAR,
- lack of sufficient regulatory clarity to enable local governments to properly evaluate logistical details and identify responses which integrate with already existing management processes, and
- details on appropriate administrative processes, including dispute resolution, enforcement and monitoring and finalization of implementation guidebook.

Most notably, DFO has advised local municipalities that they have not endorsed the assessment methodology for the RAR and are discouraging its use until it has received DFO official endorsement. In the meantime, DFO has recommended that local governments follow existing processes to determine appropriate setbacks to ensure compliance with the Federal Fisheries Act.

4. Other Municipal Action

Many affected municipalities have expressed similar concerns to the Province and the UBCM. None of the Lower Mainland municipalities have adopted the RAR. Certain municipalities, including Coquitlam and Delta, have adopted designated set-backs requirements in accordance with the Streamside Protection Regulations (SPR). The City of Burnaby have also adopted set-backs as an interim strategy. Other municipalities are still evaluating options.

Analysis

1. Management Options

There are three options available for the City:

- a. Option 1 – Request a further extension to the RAR implementation date , which request is permitted under section 12(6) of the *Fish Protection Act*
 - b. Option 2 – Initiate action to implement the RAR process or adopt establish setbacks in accordance with the Fish Protection Act
 - c. Option 3 – Adopt an interim strategy which follows existing City procedures and strategic direction as outlined in Attachment 1 (*Recommended*).
2. Recommended Option 3: Interim Strategy - Follow Existing City Procedures and Strategic Direction

It is staff's recommendation that the City follow the proposed Interim Strategy (Attachment 1) which is based on existing practices until such time that key implementation tools and practices are complete. The City's existing practices involve:

1. Foreshore Development
 - Outside the crest of the dyke – development review via Fraser River Estuary Management Program (FREMP) which involves DFO and the Province
 - Within 30 m – Environmental Sensitive Area (ESA) Development Permit review/assessment in accordance with City's ESA development guidelines
2. Richmond Major Sloughs/Canals
 - Bath and Horseshoe Sloughs – Environmental Sensitive Area (ESA) Development Permit review/assessment in accordance with City's ESA development guidelines
 - Hollybridge Canal – DFO review as part of the environmental assessment being conducted on the Richmond Oval in accordance with the Canadian Environmental Assessment Act (CEAA)
3. Inland ditches of fisheries value as identified by DFO – development review by DFO.

Advantages of the proposed approach include:

- ensures that the City does not expend resources to establish a process which lacks DFO endorsement
- adopts a formal position which can be communicated to the Richmond development and broader community, and avoids inefficiency in continuing to request time extensions
- avoids the adoption of an ill-informed reactive approach which has potential to add unnecessary regulatory burden and direct limited City's environmental resources away from more strategic approaches
- enables the City to continue to work towards its desired more strategic approach which would serve to better harmonize federal and provincial legislation, capitalize on existing management strategies and processes (several of which were developed in coordination with DFO and the Province), and result in greater environmental benefit.

It is staff's assessment that, in the absence of any more information, that the City's existing practices provide a level of protection that meets the intent behind the Riparian Areas Regulations and *Fish Protection Act*.

It is also recommended that, since affected local governments have not been provided an opportunity to review and provide input on the tri-party agreement, the City send a letter to the UBCM conveying Council's position that the UBCM not sign the tri-party agreement until affected local municipalities have been provided with the opportunity to provide meaningful input.

Financial Impact

There is no identified financial impact associated with the recommended approach.

Conclusion

This report recommends that the City formally adopt an interim strategy to meet the overall intent of the Provincial Riparian Areas Regulations which is based on existing City procedures and strategic direction. This strategy will be re-visited when the key implementation tools are completed. The report also recommends that Council send a letter to the UBCM re-asserting the City's position that the UBCM not sign the tri-party agreement pertaining to the RAR until such time that local governments have been consulted and afforded with the opportunity to provide meaningful input.



Margot Daykin, M.R.M.
Assistant Manager - Environmental Programs
(4130) / MD:md

Attachment 1: City of Richmond Proposed Interim Strategy for Responding to the Riparian Areas Regulations

The City’s proposed interim strategy is comprised of three components:

1. continuing to follow established procedures and mechanisms which are aimed at protecting riparian areas and other environmental attributes (Table 1). Several of these procedures were developed by or in collaboration with senior agencies and continue to involve DFO and the Province
2. continuing to work with external agencies to a develop a more strategic approach to fisheries management in Richmond which would better integrate fisheries, biodiversity and other objectives of natural areas management throughout Richmond, better integrate environmental objectives with the suite of other community needs and objectives, and streamline regulatory review processes
3. will continue to monitor the RAR and will review the City’s Interim Strategy for potential amendment once appropriate Riparian Area Regulation implementation tools and procedures have been development

Table 1: Existing Procedures and Mechanisms

Tools/ Procedures	Application	Basis	Management Action
FREMP Procedures	Development activity outside of the crest of the dyke	<ul style="list-style-type: none"> • Estuary Management Plan • Area Designation Agreements • FREMP Coordinated Project Review • FREMP Habitat Coding 	Proposals are referred by the City for review by an interagency Environmental Review Committee upon which DFO is a member.
ESA Designation Areas	Sub-division, re-zoning or construction within areas designated as ESA DP areas under Part 26 of the Local Government Act	<ul style="list-style-type: none"> • Official Community Plan (OCP) • ESA DP guidelines were developed in consultation DFO and Province 	Proposals are required to meet ESA DP guidelines which may require set-backs from aquatic environments, reviews by professional and other environmental protection measures.
Development Referrals to DFO	Development activities in or around inland watercourses identified interest by DFO	<ul style="list-style-type: none"> • Fisheries Act • Local Fisheries Staff request 	Proposals are referred to DFO.