



# Corporate Report

NO: R128

COUNCIL DATE: June 7, 2004

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## REGULAR COUNCIL

TO: Mayor & Council                      DATE: June 2, 2004  
FROM: General Manager,                      FILE: 0410-20  
Engineering                                      (MWLAP)  
SUBJECT: Proposed Riparian Area Regulations - Ministry of  
Water, Land & Air Protection

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## RECOMMENDATIONS

It is recommended that Council:

1. Request that the draft resolution contained in the body of this report be forwarded to the UBCM for consideration during the 2004 UBCM convention; and
2. Authorize the City Clerk to forward a copy of this report 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 regarding the content of and processes for implementing such changes.

## 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 sometime in June 2004. The following report outlines consultation so far, the need for further consultation before the Regulation is revised, and a recommended resolution for the September 2004 UBCM convention.

## DISCUSSION

### 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 transparency for protection of streamside vegetation through the development process.

The Province conducted detailed and extensive consultations with local governments prior to enacting these Regulations, including pilot projects in Surrey and other selected municipalities to refine the proposed methodologies, including variance processes and implementation approaches. In reviewing the final draft of the Regulations in the fall of 2000, the Union of British Columbia Municipalities (UBCM) supported the Regulations, subject to adequate provision of funding for implementation and liability protection to local governments.

### **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 abandon 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 from DFO and the Provincial Ministry of Water, Land & Air Protection (MWLAP) but no representation from local governments. 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 individual reviewing of the draft 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 through UBCM. 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 from different local governments 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. Surrey 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.

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. In addition the one-year phase-in deadline was thought to be too limiting as the new legislation would possibly require some by-law amendments, additional resources, new business practices and possible education and enforcement.

It appears that the RAR, if adopted, will place more responsibility on local governments for the administration of environmental legislation which, in effect, will be “downloading” with no transfer of resources. Further, changes to the regulations will introduce additional uncertainty in the development process, which does not appear to have been given adequate consideration to date. Additionally, the RAR needs to be fully coordinated with DFO processes so that there is a ‘one window’ approach to approvals.

A subsequent meeting was held on May 27, 2004, involving UBCM staff and staff of local municipalities to discuss concerns with the proposed legislation. A list of specific issues was drafted by the joint municipalities. The outcome included a draft resolution for concerned municipalities to bring forward at the September UBCM convention. **The following is the proposed resolution.**

*“Whereas UBCM resolved in 2002 that a new riparian assessment regulation:*

- *Provide liability protection for local government when making land use decisions based on a report by a*

*Qualified Environment Professional on fish habitat;*

- *Ensure that no new responsibilities are downloaded on local government and that all training costs and management costs required to implement the new regulation are paid for by either the federal or provincial government;*
- *Ensure the process is timely and cost effective, from the community perspective;*
- *Ensure an integrated approach is implemented to avoid conflicts between the different levels of government;*
- *Ensure that a balance is maintained between development and protection of the environment.*

***And given that the Province has been proceeding with development of the riparian area regulation without open consultation with local governments, therefore let it be further resolved that UBCM not sign onto the tripartite agreement for implementing a Riparian Area Regulation unless the following measures have been met:***

- *Legal review of regulation to determine implications to local governments;*
- *Full liability protection for local governments;*
- *Involvement of local governments in Guidebook development.*

*And let it be further resolved that the RAR be extended to apply to institutional land uses, including federal and provincial crown lands.”*

## **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 Council:

1. Request that the draft resolution contained in the body of this report be forwarded to the UBCM for consideration during the 2004 UBCM convention; and
2. Authorize the City Clerk to forward a copy of this report 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 regarding the content of and processes for implementing such changes.

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