



To: Richmond City Council **Date:** March 24, 2006
From: Mayor Malcolm D. Brodie **File:** 10-6125-00/Vol 01
Chair, General Purposes Committee
Re: **RIPARIAN AREAS REGULATION RESPONSE STRATEGY**

The General Purposes Committee, at its meeting held on Monday, March 20th, 2006, considered the attached report, and recommends as follows:

Committee Recommendation

- (1) *That the City adopt the Richmond-Specific Riparian Management Approach (as outlined in Attachment 2 to the staff report dated February 28, 2006 from the Assistant Manager, Environmental Programs) as its response strategy for meeting the Riparian Areas Regulations.*
- (2) *That the City send a letter to Minister Barry Penner, Minister of the Environment to advise of the City's action.*
- (3) *That staff continue to pursue an alternative variance strategy that is acceptable to the Province and report back to Council.*
- (4) *That the City of Richmond send a letter to the UBCM requesting that the UBCM not sign the tri-party agreement until the following issues are satisfactorily addressed:*
 - (a) *the roles and responsibilities of the parties are more clearly defined,*
 - (b) *that the proposed Executive Committee be comprised of urban and rural partners, and serve as an oversight advisory group only; and*
 - (c) *that RAR monitoring and compliance be a direct responsibility of the Provincial government; and*
- (5) *That a copy of the letter to the Minister of the Environment be forwarded to the Lower Mainland Municipal Association.*

Mayor Malcolm D. Brodie, Chair
General Purposes Committee

Attach.

VARIANCE

Please note that staff recommended the following for Part (4):

That the City send a letter to the UBCM re-affirming its request that the UBCM not sign the tri-party agreement until affected member municipalities have been afforded the opportunity to review the draft agreement and provide meaningful input.

Origin

On July 27, 2004, the Province enacted the *Riparian Areas Regulation (RAR)* to come into effect March 31, 2005. These regulations require that local governments protect riparian areas through the development approval process. Municipal implementation of the RAR has been extremely difficult given that key Provincial implementation tools have yet to be completed. The Province has extended the implementation date on two separate occasions.

In June 2005, Council adopted an interim RAR response strategy that maintained existing procedures and strategic direction until such time that the Province completed the necessary implementation tools and procedures. While implementation tools remain outstanding, this report recommends that the City adopt an updated response strategy which provides greater certainty to the development community and proactively establishes a meaningful approach for watercourse protection reflective of Richmond's unique environment and community interests.

Background

Provincial Fish Protection Act and RAR Requirements

The *Riparian Areas Regulation (RAR)* is a policy directive under the Fish Protection Act (FPA). The *FPA* requires that the City apply the *RAR* as outlined in the regulation or implement an alternative approach that provides a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the *RAR*. The Province has advised staff that having council approval of a municipal approach used to meet the *RAR* by March 31, 2006 is adequate to be in legislative compliance.

The *RAR* stipulates that a local government must not allow a development to proceed within 30m of a stream (which definition under the regulations include some ditches) unless a Qualified Environmental Professional (QEP) conducts an assessment for applicable development applications within 30 m of a watercourse and either,

- i. the municipality receives notification from the Province and receipt of the QEP's report that states a HADD¹ will not occur if development proceeds as per their assessment which establishes appropriate setbacks and potentially other protection measures, or
- ii. DFO provides a letter of authorization for a HADD.

Under the "meet or beat" clause of the *FPA*, local governments can, as an alternative approach, establish setbacks upfront that afford the same or greater level of protection.

The *RAR* applies to the following applicable development activity:

- new developments pertaining to residential, commercial and institutional activities adjacent to watercourses, including ditches, that are connected by surface flow to a watercourse that provides fish habitat

¹ 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.

- ancillary activities associated with the above new development, including disruption to vegetation, disturbance of soils, construction of structures, creation of impervious surfaces, flood protection works, construction of roads, trails, docks, wharves and bridges, provision and maintenance of sewer and water services, development of drainage systems, and development of utility corridors.

The RAR does not apply to:

- development activities not associated with residential, industrial or commercial development (e.g., agricultural use², institutional development, city maintenance works, etc.)
- reconstruction or repair of existing roads or a permanent structure if structure remains on its existing foundation
- in-stream works (e.g., culvert construction and other ditch infill projects, ditch cleaning, etc.)
- developments that have been approved but not yet built (although requests for changes to the approved development may trigger a review depending on significance of proposed change)
- federal lands to the extent that they are already exempt from local government bylaws.

These activities, however, remain subject to the Federal Fisheries Act. The City currently works collaboratively with Fisheries and Oceans (DFO) on ensuring its practices adhere to federal requirements and staff are currently working with DFO on developing a Memorandum of Understanding to streamline review procedures.

RAR -- Implementation Concerns

Over the past two years, Richmond Council has taken a number of steps to address key concerns pertaining to RAR implementation (Attachment 1). The Province has been responsive to some of these concerns, but key concerns and implementation tools remain outstanding. Most notably, the Province is still working to complete a tri-party agreement between themselves, DFO and UBCM which is to set out respective roles and responsibilities for the three-levels of government and ensure effective harmonization between federal and provincial fisheries regulations. The City has made numerous unsuccessful requests to review and comment on the tri-party agreement during its development. However, staff do understand that the UBCM has recently decided to provide municipalities with the draft agreement. Staff are recommending that Council send a letter to the UBCM re-affirming Richmond's earlier request that the UBCM not endorse the tri-party agreement until it has provided affected municipalities with meaningful opportunity to provide comment.

Key additional concerns remain, particularly with respect to implementation of the QEP process. These include:

- **Lack of DFO endorsement** and therefore, assurance that process meets DFO requirements
- **Inapplicability of the QEP assessment** methodology for Richmond (e.g., assessment methods are not designed to reflect Richmond's lowland, estuarine-based environment)
- **Unclear responsibilities, workload and resource implications for City** (e.g., administration cost, unknown expectations for reviewing QEP reports, compliance monitoring, lack of process for resolving potential conflicts, etc.)
- **Local government liability**

² The Province has identified that the RAR would apply to the building of a house on agricultural land since this activity would be considered as residential.

- **Low environmental value** (e.g., site-level focus, detailed analysis spent reviewing relatively minor setback differences, inequitable application resulting in inconsistent levels of protection, etc.)
- **Unclear requirements and administrative complexity** for the development community, City and affected parties (e.g., application is dependent on sorting out whether a myriad of conditions apply, high operational ambiguity, incomplete implementation tools).

Analysis

Recommended Approach

Staff recommend that the City adopt the Richmond-Specific Riparian Management Approach as outlined in Attachment 2. This approach was developed in consultation with Provincial RAR management representatives and DFO.

The proposed approach identifies a Richmond-specific riparian management approach which streamlines federal and provincial regulatory process and meets Richmond environmental objectives. The proposed approach substantially reduces the regulatory burden and reduces uncertainty associated with the implementation of the RAR by:

1. proactively identifying which Richmond watercourses are important for riparian protection
2. pre-establishing 15m and 5 m development set-backs assessment areas (versus 30 m) which reflect specific site conditions of Richmond's inland watercourses
3. continued use of FREMP to address development along the Fraser River.

Development applications outside of the proposed riparian management areas would be considered to be compliant with the RAR and would not require further assessment.

Development applications as defined by the regulations which are within the proposed riparian management setback areas would require additional assessment in accordance with the RAR.

City staff are currently in discussion with Provincial staff on developing an effective setback variance process. City staff would like to develop a process where development applications within the identified development setback areas would be referred and approved by DFO directly and not involve the use of a QEP assessment.

At this point, the Province has not agreed to this approach. Accordingly, it is staff's recommendation that City staff review development applications within the proposed riparian management areas on a case-by-case basis to ensure compliance with Provincial and Federal fisheries requirements. Given that the RAR does not apply to the majority of watercourses within the urban core (e.g., RAR exempt ditches), staff do not consider that the case-by-case analysis will pose a significant challenge at as an interim measure. Staff will continue to work on developing an effective variance process and report back to Council.

Staff would also seek input from Urban Development Institute, Agricultural Advisory Committee and Advisory Committee on the Environment and include feedback in the report back to Council.

Advantages of Proposed Approach

The advantages of the proposed Richmond-specific assessment approach include:

- it substantially **reduces the regulatory burden** associated with implementing the RAR directly
- establishes a **clear and efficient process** for proponents, the broader Richmond community and City staff
- it establishes riparian management areas reflective of **Richmond's site specific conditions**
- it is **strategic**, directs efforts on protecting key resource areas, avoids time-consuming and costly site-by-site level analysis and conflict resolution, utilizes existing management processes (e.g., FREMP) and helps ensure a consistent level of protection
- improves **legislative certainty** and harmonization of federal and provincial legislative requirements
- uses **City resources wisely**, avoids the diversion of limited resources away from other priority areas and reduces potential confusion on how to address protection measures identified by a QEP
- meets **City environmental objectives** and demonstrates environmental responsibility
- provides opportunity for **consultation**.

It is important to note that the proposed approach does not preclude development but rather facilitates development compared to just adhering to the RAR directly. This is because the recommended approach provides upfront determination on where RAR applies and establishing riparian assessment areas reflective of Richmond specific conditions (15 and 5 m assessment areas versus 30 m). The approach also strengthens environmental protection by focusing efforts at the landscape-level, thereby ensuring a much more meaningful level of environmental return for resource investment.

It is noted that most of the ditches within the City's urban development area have been exempted from setback requirements since they do not meet the RAR's definition of a stream and therefore the RAR would not apply. These watercourses remain, however, subject to the Federal Fisheries Act.

Potential Impact on the City and Richmond Community

It is staff's assessment that the proposed approach is likely to result in:

- minimal overall impact to the *Richmond development community* (majority of Richmond's residential, industrial and commercial development would be adjacent to RAR exempt watercourse)
- minimal overall impact to the *Richmond farming community* (farm uses are an exempt activity – set-back assessment areas only apply to farm residential homes)
- low overall impact to *Richmond property owners* as majority of setbacks occur in areas with already-established development or in areas located in the Agricultural Land Reserve which is restrictive from development activities; in addition, setbacks only apply to redevelopment activities and do not impact repair or reconstruction activities on existing foundations
- overall low impact to *City engineering services* as setbacks would only apply to new services associated with residential, commercial or industrial development (e.g., roads, utilities, etc.) and do not pertain to City maintenance or repair activities. Depending on the success of
- minimal impact to *City urban development* staff resources since the proposed process is being established to be clear, efficient and minimize use of City staff resources

- potential impact to *City parks department*. The RAR does not apply to park maintenance activities; however, the application of the RAR to trail development is unclear and dependent upon individual circumstances, with various activities exempted. Staff will continue to work to clarify applicability of the RAR to park development activities and develop an acceptable exemption and/or variance strategy that meets the City needs.

Environmental Benefit

The proposed approach is anticipated to result in meaningful environmental benefit for the Richmond community. Key benefits include:

- providing a cleaner environment by reducing pollutant loading to Richmond watercourses and Fraser River through retention of natural biofiltration service
- support current and future Richmond community through provision of important ecological services (e.g., stormwater management, groundwater recharge, nutrient and soil regeneration, climate change mitigation, community aesthetics, desirability and enjoyment, etc.)
- strengthen protection of downstream Fraser River fisheries resource through provision of improved water quality and nutrient loading
- strengthen protection of Richmond's existing ESAs and wildlife habitat
- federal and provincial legislative compliance.

Additional Considerations

It is noted that while the above approach meets the requirements of the RAR, it does not enable the City to completely fulfill its obligations under Fish Protection Act which require that local governments amend or enact specific regulatory tools (e.g., bylaw, zoning amendment, OCP amendment).

The Province have verbally advised staff that having council approval of a municipal approach used to meet the *RAR* by March 31, 2006 is adequate as a matter of Provincial policy.

It is staff's recommendation that the City enact the implementation of the necessary regulatory tools once the setback variance process has been determined and consultation has been completed.

Alternative Approaches

The City could either:

Option 1 – **Maintain existing policy/ Do not implement RAR.**

Under this option the City would continue to follow the interim RAR response strategy adopted by Council in June 2006. This would mean that staff would follow existing procedures (e.g., requesting DFO approval) until such time that the Province completed the necessary implementation tools and procedures. Staff do not recommend this option as this would mean the City would likely be in legislative non-compliance. This assessment is based on communication with the Province and an independent legal review of the *RAR* and *FPA* (commissioned by UBCM and the Province at the request of local government staff).

Option 2 -- **Implement RAR directly** (*not recommended*).

This approach means that developments within 30 m of a watercourse are reviewed on a case-by-case basis to determine whether RAR applies and when applicable that setbacks and other protection measures are established by a QEP. Staff do not recommend this option due to the concerns identified pertaining to the QEP process.

A more detailed comparative analysis of the advantages and disadvantages of the proposed Richmond-Specific Riparian Management approach and alternative approaches is provided in Attachment 3.

Financial Impact

The management of riparian areas using the proposed approach can be accommodated within existing departmental budgets. Currently, applicable development proposals along the Fraser River foreshore are required to secure FREMP approval and development activities adjacent to inland watercourses are being reviewed by DFO on a case-by-case basis. It is envisioned that the proposed approach will streamline this latter process and reduce the degree of analysis required on individual applications. As such, the proposed approach is not anticipated to increase staff workload or other resources at this time. Staff will continue to work to establish a cost-effective variance strategy.

Conclusion

In order to be in compliance with the Provincial *Fish Protection Act* the City must apply the *RAR* as outlined in the regulation using a QEP process or implement an alternative approach that provides a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the *RAR* by March 31, 2006. There are numerous concerns with applying the *RAR* as outlined in the regulation using a QEP process. These concerns include increased municipal workload and resource implications, lack of upfront expectations for proponents and the City, implementation complexity, use of inappropriate assessment methods for Richmond's estuarine environment, and low environmental return for investment. To establish an effective and meaningful process reflective of Richmond's conditions, this report recommends that the City adopt strategic landscape-based approach which establishes development setbacks upfront for managing Richmond's important inland watercourses and continues to utilize FREMP for approvals along the Fraser River. Staff will continue to work on an acceptable variance process and report back to Council.



Margot Daykin, M.R.M.
Assistant Manager - Environmental Programs
(4130)
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Attachment 1: Richmond Responses to the RAR

In an effort to improve the *Riparian Areas Regulation (RAR)* development and implementation process, City Council has:

- sent a letter to the Provincial Minister of Water, Land and Air Protection expressing concern over the lack of consultation with local government in the development of the *Riparian Areas Regulation* and requesting that the *RAR* not be enacted pending meaningful and open consultation with affected local governments (June 7, 2004)
- submitted a resolution to the UBCM that it “not proceed in developing a tri-party agreement until such time as local governments have been provided the opportunity to review the regulations and provide meaningful input to the UBCM” (June 7, 2004)
- notified the Minister of Water, Land and Air Protection that because its implementation measures are not in place, an extension is required on the date for when the *RAR* comes into effect. This notification was copied to the Premier, local MLAs and the Union of BC Municipalities (Feb 11, 2005)
- sent a letter 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 (June 3, 2005).

Attachment 2: City of Richmond - Proposed Richmond-Specific Management Approach (March, 2006)

The proposed Richmond-Specific riparian management approach to meet Provincial requirements under the Fish Protection Act and Riparian Areas Regulations for the City of Richmond incorporates the following two key elements as matter of policy:

1. Development along the Fraser River foreshore – continuation of current practice of development application review by Fraser River Estuary Management Program (FREMP)
2. Development adjacent to inland watercourse – use of pre-established riparian development setbacks (Figure 1).

The proposed inland setbacks are:

1. Richmond's Major Canals/Sloughs - 15m Riparian Management Area (e.g. Bath Slough, Horseshoe Slough, No. 7 Road Canal).
2. Richmond's Minor Watercourses - 5m Riparian Management Area.

The setbacks would mean that development activities adjacent to inland watercourses outside of these riparian management assessment areas would not require any specific requirements.

The setbacks would mean that development activities as identified by the RAR proposed to occur within the Richmond riparian management areas would require further assessment in accordance with the RAR.

Attachment 3: Comparative Analysis of Alternative RAR Response Strategies

Option	Description	Advantages	Disadvantages
<p>1 – Maintain Existing Policy/ Do Not Implement RAR <i>(not recommended)</i></p>	<ul style="list-style-type: none"> The City would continue to follow the interim RAR response strategy adopted by Council in June 2006 Staff would continue to seek approvals under Federal Fisheries act 	<ul style="list-style-type: none"> conveys a position to the Province that the City does not want to implement RAR avoids additional layer of regulatory review avoids difficulties associated with implementation 	<ul style="list-style-type: none"> legislative non-compliance likely loss of future negotiation capacity potential loss of current gains already negotiated for Richmond-Specific approach
<p>2- Implement RAR directly with bylaw <i>(not recommended)</i></p>	<ul style="list-style-type: none"> Staff would implement a bylaw requiring that developments within 30 m of Richmond watercourses are reviewed on a case-by-case basis to determine if RAR apply and if so, would require QEP assessment to establish appropriate setbacks and other protection measures 	<ul style="list-style-type: none"> strict legislative compliance 	<ul style="list-style-type: none"> adds additional regulatory burden does not address RAR implementation concerns does not provide opportunity for consultation anticipated higher impact to the City and development community
<p>3 – Implement Proposed Richmond-Specific Approach <i>(recommended)</i></p>	<ul style="list-style-type: none"> City adopt the following approach as per Attachment 2 Staff continue to work on variance strategy Staff consult with key stakeholder groups Staff report back to Council with recommended regulatory instrument 	<ul style="list-style-type: none"> facilitates development and city construction projects by clarifying legislative requirements and significantly reducing assessment areas is cooperative and provides reasonable compliance at this time meets City's environmental objectives reduces regulatory redundancy by incorporating use of existing management processes (e.g., FREMP) provides opportunity for consultation anticipated low overall impact on City activities and development community 	<ul style="list-style-type: none"> not in strict compliance (until regulatory tool in place) add minor amount of additional regulatory burden