



City of Richmond

Report to Committee

To: Public Works and Transportation Committee **Date:** May 5, 2014
From: John Irving, P.Eng. MPA **File:** 10-6125-00/Vol 01
Director, Engineering
Re: **Legislative Changes: Update and Review – New *Water Sustainability Act*,
Federal Fisheries Act Update and Ombudsperson Review**

Staff Recommendation

That the report titled “*Legislative Changes: Update and Review – New Water Sustainability Act, Federal Fisheries Act Update and Ombudsperson Review*” dated May 5th, 2014 from the Director, Engineering be received for information.

John Irving, P. Eng. MPA
Director, Engineering
(604-276-4140)

REPORT CONCURRENCE	
CONCURRENCE OF GENERAL MANAGER	
REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE	INITIALS:
APPROVED BY CAO	

Staff Report

Origin

This report provides an information update and review of the following legislation and processes: new Water Sustainability Act; amendments to the federal Fisheries Act; the British Columbia Ombudsperson's review of the provincial Riparian Areas Regulation and an overview of implications to the City.

In recent years, the City has witnessed an unprecedented rate of change to senior government legislation pertaining to environmental management. In many cases, the legislations overlap to a certain degree and changes to one can affect the others. With the number of changes taking place, lack of clarity can arise for both staff and project proponents in the City. Although, in many cases the regulations discussed are under development; staff is providing this update to Council to describe the scope of changes and how staff are responding.

Analysis

Province of BC Water Sustainability Act

On April 29th, 2014, the BC legislature passed the third reading of Bill 18 – 2014: Water Sustainability Act. This Act will replace the 105-year-old Water Act, and will make a number of changes in how freshwater resources in the province are regulated, allocated and managed. One significant change is the introduction of regulations on the extraction and use of groundwater for the first time in the province. The Ministry has indicated that regulations and the framework for new water fees and rentals (both of surface and groundwater extraction) will be established before the Act comes into effect in spring 2015.

Bill 18 repeals the majority of the Water Act and enacts the Water Sustainability Act to modernize the language of the Act. This modernization process includes a number of amendments to other existing Acts (e.g. Drainage Ditch and Dike Act, Fish Protection Act, Agricultural Land Commission Act, etc.) in order to streamline the Act.

The new Water Sustainability Act is broad-reaching at 140 pages. The Act's full effect will depend on regulations which have not yet been developed to support it. There are no changes to the "First-in-time, First-in-rights" system of water use allocations through water licensing, and there is suggestion that some regulations will not apply to existing licensees. The Act does allow for greater protection of watercourses with the opportunity to mandate minimum flows to better protect stream ecology and creates more protective language requiring water extractions for beneficial use to include the requirement for "efficient" use of water. The Act also provides increased powers for groups (including local governments) to develop "Water Sustainability Plans" to protect and manage a specific ground or surface water resource.

Bill 18 also makes concurrent changes to the Fish Protection Act, most notably changing the Act's title to the Riparian Areas Protection (RAP) Act. Sections of the former RAP Act have been moved to the Water Sustainability Act for clarity. The City's most significant interaction with the Riparian Areas Protection Act is through the previously established Riparian Areas Regulation (RAP), which remains unchanged.

Until the regulations for the Act are developed, City staff are unable to provide certainty regarding the full impact of the new Act. Examples that illustrate this uncertainty include the lack of clarity and scope for the new regulations regarding the maintenance of environmental flows for City drainage works or agricultural lands and how the new Water Sustainability Plans can protect surface and groundwater resources as they relate to sloughs and wetlands. Staff will continue to follow the progress of the Act, partake in upcoming consultation opportunities for the development of the associated regulation to reflect City interests and provide updates to Council accordingly.

Federal Fisheries Act 1985, Amended 2012

On June 29, 2012, amendments to the Fisheries Act received Royal Assent. The Act now focuses on productivity of recreational, commercial and Aboriginal fisheries. This is a major shift in approach; the previous regulation was based on a habitat management approach. The regulations establishing conditions for making regulations under subsection 36 (5.2) of the amended Fisheries Act were posted to the Canadian Gazette on April 23rd, 2014.

Since the announcement of the June 29th, 2012 Fisheries Act amendments there has been a withdrawal of Department of Fisheries and Oceans (DFO) staff from municipal Environmental Review Committee (ERC) processes. The previous ERC model provided a venue for DFO staff to attend regular meetings and facilitate efficient and timely approvals for City Capital, Operations and Development projects. As a result of this withdrawal local governments, including the City of Richmond, have been required to move to a triage approach based on an online application process. The move to this centralized delivery model, which depends heavily upon the opinion of qualified environmental professionals (QEPs) has already resulted in uncertainty for both City staff and project proponents. Staff have addressed this issue by working with colleagues across the region as part of their participation in the Municipal Environmental Managers Committee. This group has been successful in arranging dialogue with senior Department of Fisheries and Ocean staff to clarify roles and expectations. DFO staff have made it clear that municipalities should expect less direct support from the ministry and that the onus is now on the proponent of a project to ensure compliance with the Act.

Staff responded to the ERC withdrawal by proactively implementing a new process termed the Environmental Review Process (ERP) to facilitate an effective and efficient environmental review and approval process for City Capitol, Operations and Development projects. The ERP provided a continued opportunity for City staff to dialogue directly with proponents to address compliance and ensure that City interests were considered during senior agency approvals. The new DFO centralized triage system relies almost entirely on the opinion of QEPs and approvals for development affecting fish habitat may be granted by DFO based exclusively on this opinion, which may not reflect City priorities or management objectives (i.e. Richmond Ecological Network Management Strategy and Environmentally Sensitive Areas Management Strategy). In light of these changes and increasing uncertainty surrounding regulatory approach, City staff have retained the ERP to ensure that proponents are cognizant of the new DFO approval process, proponents and QEPs address City interests and City's ESA DPA requirements are followed.

BC Ombudsperson's review of the Riparian Areas Regulation (RAR)

The Province of BC established the Riparian Areas Regulation in 2006 under the provincial Fish Protection Act, with the objective to preserve streamside habitat in specific regional districts under development pressure. As Richmond is subject to the regulation, the City is obliged to provide protection for riparian areas as part of its bylaws and permits. RAR requirements are linked to the Fisheries Act as under the current regulation, DFO approvals are required for variances proposed to recommended watercourse setbacks. An Intergovernmental Cooperation Agreement (ICA) was created between the UBCM, DFO and the Province to outline each partner's responsibilities in delivering the RAR.

In response to public concerns regarding the Regulation's administration, the BC Ombudsperson launched a comprehensive review of the Provincial Riparian Areas Regulation (RAR). This is of significance to the City as municipalities subject to the RAR, including Richmond, will be affected by any changes proposed to the RAR arising from the review.

The Ombudsperson's report was released in April 2014 and contains 25 recommendations for improving the administration of the Riparian Areas Regulation and the fairness of its standards. These recommendations were made to the governing ministry for the RAR, the Provincial Ministry of Forests, Lands and Natural Resource Operations. The recommendations pertaining directly to local governments are Recommendations 1 through 3, all of which have been accepted by the Ministry.

Recommendation 1: *The Ministry of Forests, Lands and Natural Resource Operations review, by October 1, 2014, local government implementation of and compliance with the Riparian Areas Regulation and report publicly on the results of that review.*

Implications for Richmond: The City adopted a unique approach to implementing the RAR through its Riparian Response Strategy (RRS) which pre-established development setbacks on relevant watercourses. Environmental Sustainability staff currently review all permit applications that are subject to the RAR to ensure compliance. Staff expect that they will be asked to work with Ministry staff to define City processes and the City's approach to Riparian Areas Regulation standards.

Note: City designated Riparian Management Areas are a separate designation to City designated Environmentally Sensitive Areas. A small portion of significant ecological riparian features such as City sloughs (i.e. Horseshoe and Bath Sloughs) and portions of the RMA along the West Dike have both designations to maximize protection opportunities.

Recommendation 2: *The Ministry of Forests, Lands and Natural Resource Operations work with local governments to bring them into compliance with the Riparian Areas Regulation (RAR). If the ministry is not able to achieve full compliance by local governments with the RAR, the ministry should, by October 1, 2015, develop a mechanism to allow the ministry to require local government compliance with the RAR.*

Implications for Richmond: Staff were already carrying out a review of the Riparian Response Strategy by assessing its post-implementation effectiveness with regard to watercourse protection, and a review of development and other activity in proximity to watercourses. Staff have also assessed the role of the associated Watercourse Protection and Crossing Bylaw (8441) in maintaining a robust drainage infrastructure. Based on the findings of this review staff have identified opportunities for improvements but have been awaiting the ombudsperson's review to be completed. For these reasons, staff are well placed to respond to any provincial review of the City's Riparian Areas Regulation approach.

Recommendation 3: *The Ministry of Forests, Lands and Natural Resource Operations clarify the scope of the authority of local governments to vary streamside protection and enhancement areas in accordance with the Riparian Areas Regulation and, once it has done so, update the Riparian Areas Regulation Implementation Guidebook.*

Implications for Richmond: This recommendation allows for the clarification of process where a proponent wishes to reduce the established development setbacks in the Riparian Response Strategy. This has been an ambiguous standard since the implementation of the RAR, and this recommendation will provide greater certainty to City staff and proponents.

Overall, the Ombudsperson's recommendations will provide for greater clarity and certainty for the City and development proponents.

Financial Impact

None at this time.

Conclusion

The recent legislative changes described in the report will likely have operational implications for the City; however in the case of the Water Sustainability Act the absence of supporting regulations makes this impact unknown at this time. Regulations and information supporting the amended Fisheries Act differ significantly from previous direction and have created confusion and additional workload in the interim while precedent is set. The Province has not yet indicated how it will respond to the Ombudsperson's report on the RAR beyond accepting their recommendations. It is

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likely staff will be requested to work with provincial staff to provide detail on the City's RAR response.

Staff will continue to monitor legislative changes and their implications to the City and report back when more information is available.

A handwritten signature in black ink, appearing to read "Lesley Douglas". The signature is fluid and cursive, with the first name "Lesley" written in a larger, more prominent script than the last name "Douglas".

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