



Corporate *NO: R118*

Report *COUNCIL DATE: May 29, 2000*

REGULAR COUNCIL

TO: Mayor & Council DATE: May 23, 2000

FROM: General Manager, Engineering FILE: 4859-001
General Manager, Planning & Development

SUBJECT: Draft Streamside Protection Regulation

RECOMMENDATION

1. That Council receive this Report on the Draft Provincial Streamside Protection Regulation for information;
2. That Council oppose the transfer of responsibility for habitat/streamside approvals from the agencies having responsibility for the fisheries resource to the City; and
3. That a copy of this Report be forwarded to the Provincial government as Surrey's input into the process of developing the Streamside Protection Regulation.

INTENT

To inform Council about issues concerning Surrey regarding the proposed introduction of the Streamside Protection Regulation (SPR) under the Fish Protection Act (FPA).

EXECUTIVE SUMMARY

Currently the protection of fish habitat is dealt with by the Federal Department of Fisheries & Oceans (DFO) and Provincial Ministry of Environment (MOE) agencies using the regulatory authority of the Federal Fisheries Act. This legislation does not, however, clearly define what is fish habitat or the widths adjacent to streams that are to be left in a natural state when development occurs. Currently these issues are dealt with by land development guidelines which have been published by the Department of Fisheries & Oceans and enforced by the City.

The Province has sought to deal with the protection of such riparian (i.e., fish habitat) areas through the Fish

Protection Act introduced in 1997. The Fish Protection Act authorizes the Province to establish regulations for the protection of fish habitat and the Province has been carrying out stakeholder and UBCM consultation on a Draft Streamside Protection Policy Regulation (Draft Regulation) for the last two years.

The basic premise of the Draft Regulation is to base the riparian protection (i.e., setback requirements) on biological criteria, and to place responsibility for establishing, reviewing and accepting setbacks on the local government. The Draft Regulation outlines three approaches for establishing and potentially revising setback widths.

1. A strict numeric (i.e., prescriptive) approach established by the regulation.
2. A watershed approach based on the City establishing local watershed baseline information.
3. A site specific amendment approach, with land owners applying to amend setbacks established by 1 or 2 above, based on site specific data.

The impact of the regulation on the total amount of setbacks has been reviewed by Surrey staff and based on a pilot test, the average overall setback width is changed only marginally from current practice. In some cases the draft regulation calls for a greater setback and, in some cases, less than current practice. Therefore, the impact of the proposed regulations on various types of development projects is inconclusive. The Draft Regulation will, however, put a much greater responsibility and administrative cost on the City to establish, review and regulate setbacks with associated liability, should errors or omissions occur. Property owners and developers will have serious concerns if the proposed regulations are more onerous than the current standards.

Currently the majority of land development applications comply with the setback guidelines agreed to by the Ministry and the Department of Fisheries & Oceans based on land use and density. The new Draft Regulation establishes a three tiered process (outlined above) which will likely result in calls for the City to establish comprehensive plans needed for the watershed-based approach or numerous cases defaulting to the site-specific amendment approach whereby the local government becomes the decision maker. It is considered more appropriate for the Agencies having the responsibility for managing the fisheries resource to be making the final decisions regarding that resource.

Closing

Surrey, unlike most other municipalities, has a current process for establishing fisheries setbacks including the review of non-compliance applications through a joint Environmental Review Committee (ERC) with the Ministry of Environment and Department of Fisheries & Oceans. However, under this process, the MOE and DFO retain the final decision. Additionally, creek preserve areas have been identified in the City's NCPs and Master Drainage Plans. Consequently the actual impact on the City of the Draft Regulation should be much less than many other municipalities.

In view of our existing established process, which is working effectively (i.e., identified creek widths, an ERC, etc.), we question the value of the Draft Regulation. It would appear to add additional process and resource needs for little, if any, overall benefit, plus bring in new levels of uncertainty and future costs for the City.

We understand that the Province is continuing to work with stakeholder groups on this legislation and that a revised version will be prepared for the UBCM conference this fall. We also understand that the time frame for implementation of the Draft Regulation has been extended from the original proposal of two years to four years.

A more in-depth analysis of the Draft Regulations plus comment from the Environmental Advisory Committee

are attached as Appendices 1 and 2.

Jorgen Johansen, P. Eng. Murray D. Dinwoodie, P. Eng.
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Attachments

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