
CITY OF KELOWNA

MEMORANDUM

Date: March.15, 2005
File No.: 0135-20
To: City Manager
From: Environment & Solid Waste Manager
Subject: Simplified Riparian Areas Regulation Process

Recommendation:

THAT Council declares that the City of Kelowna conforms to the provincial Streamside Protection Regulation, B.C. Reg. 10/2001 Regulation (SPR);

AND THAT Council endorses the continuation of the existing development permitting process for protection of natural environment, its ecosystems and biological diversity (Part 26 of Local Government Act under s.919.1(1)a and s.920(7);

AND THAT Council express in writing to the Province by March 31/2005 that our existing by-laws and permits under part 26 provide a level of protection for riparian areas that is comparable to or in excess of that established by the SPR and therefore in conformance with the proposed Riparian Areas Regulation.

Report:

Kelowna has a long history of environmental policy that precludes by-law 7600 (OCP) in 1995. However in 1995 Council endorsed Environmentally Sensitive Areas as requiring protection. In 1998 the OCP revision included the development permitting policy for these areas (Part 26 Local Government Act). Development Applications Procedures Bylaw No. 8140 was adopted to legalize and provide process for development permits on properties that were designated as Environment or Hazardous Condition Development Permit Areas.

Amendments to the bylaws in 2000 and 2002 have clearly established a system that protects stream corridors for many reasons including fish (flood, vegetation, riparian areas, linear corridors, and water quality).Section 7.11 of the OCP, by-law 8000, Development Permit Guidelines for the Protection of the Natural Environment, its Ecosystems and Biological Diversity is the template for our policies and by-laws.

This system of permitting is unique in the Province and has served us well. An audit of areas, done by MWALP, that had works required or approved through the DP process (requiring MWALP referral-advice) in 1998-99 showed a very high level of compliance. Our hard work over the last 10 years is starting to show improvements to our stream riparian areas. Both developers and the City have contributed successfully to the restoration of these areas.

It is the understanding of UBCM that the Province will adopt the Riparian Areas Regulation on March 31 and that all municipalities will have to comply with the RAR at the latest date of June 30, 2005.

A recent legal opinion (attach 1) provides some useful recommendations but also expresses some uncertainty. Council should also be aware that we always have had similar uncertainty with the level of development along our creeks and lakes in regards to external agency approvals and especially for fish protection. The Province previously adopted the Fish Protection Act but never did have the subsequent enabling legislation endorsed (Streamside Protection Regulation). The process went on for over 4 years and finally the Liberal Government abandoned the regulation and has come up with this new derivation over the last 18 months.

City staff and UBCM staff have participated on the Provincial RAR monitoring committee over the last 3 months. Also our experience (City Staff) from having been part of the process for the SPR (4 years on committee and also used as part of pilot project) provided us with the ability to understand this new approach particularly with the increased level of downloading. UBCM will be asking the Province on our behalf if the "simplified RAR process" that we are requesting is RAR compliant.

Council by endorsing the recommendations for the "simplified RAR process" will not be alone. Several other municipalities have also requested the same status and over 88% of municipalities asked for a 9 to 12 month extension. If Council chooses not to endorse the "meet or beat" simplified RAR process then on March 31 this option will no longer be available as this option will be rescinded.

If in the event that we are forced to be legislated under the new RAR process the City will incur many new costs and potential delays for development processing. Initially we likely will have to GPS all of our creeks in order to determine their exact location as more properties will be linked to the new legislation due to the 30 meter setback for all creeks. When works are proposed for the expanded areas or for the existing setbacks areas a Qualified Professional (QEP) trained in the new methodology (nobody in Province trained yet) will have to submit a report to the Province in addition to the City process. The monitoring, assessment and enforcement protocols are still yet to be finalized. Most efforts to date by the Province are leading to complete downloading to local government.

Mark Watt, Environment & Solid Waste Manager

Attach 1 ; Lidstone Opinion
Attach 2 ; UBCM Letter

cc: Director of Planning & Development Services, City Clerk, UBCM.