



Staff Report

Date April 15, 2016 File Number 6500-20 (Mayne RAR)

To Mayne Island Local Trust Committee
For Meeting of April 25, 2016

From Gary Richardson, Island Planner

Re Riparian Areas Regulation (RAR) Implementation

Purpose

The purpose of this staff report is to give some background on RAR implementation on Mayne Island and to provide some options to discuss.

Background

The LTC previously contracted two Qualified Environmental Professionals (QEPs) to provide reports on RAR applicable streams, both of whom identified three streams as subject to the RAR. The Mayne Island Landowners Coalition also contracted two reports from a QEP to determine fish absence in two streams.

A legal opinion was obtained in January of 2012 which clarified several questions regarding the RAR and confirmed that the three streams are RAR applicable. Opinion is attached.

Ministry staff attended the May 2014 LTC meeting and confirmed that three streams on Mayne are subject to the RAR.

In summary, the Riparian Areas Regulation, enacted under Section 12 of the Fish Protection Act in July 2004, requires local governments to protect riparian areas during residential, commercial and industrial development by ensuring that proposed activities are subject to a science based assessment conducted by a Qualified Environmental Professional (QEP).

RAR has been a work program priority of the Mayne LTC previously, there were various staff reports prepared summarizing the RAR and the LTC's options for implementation (available on the [webpage](#)). The LTC provided further direction at its June 25, 2014 LTC meeting.

At its June 25, 2014 meeting LTC passed the following resolutions:

MA-2014-043

It was Moved and Seconded that Mayne Island Local Trust Committee direct staff to draft a Riparian Area Regulation bylaw, incorporating Trustee Crumblehulme's document.

MA-2014-044

It was Moved and Seconded that Mayne Island Local Trust Committee direct staff to draft Official Community Plan amendments indicating that Village Bay/Deacon Creek be Riparian Area Regulations compliant and that Horton Bay/Hunt Brook and Campbell Bay Creek be excluded due to natural barriers.

Trustee Crumblehulme's document regarding RAR is attached for reference.

Proposed Next Steps

The LTC had previously supported pursuing compliance with the RAR through using a simple assessment method. In this approach a Development Permit Area (DPA) is established that may be less than the 30 metre Riparian Assessment Area (RAA) otherwise required in some locations. Undeveloped areas would likely retain a 30m SPEA and areas with a stream along the roadside or that are already heavily developed would likely have a smaller SPEA. If the LTC proceeds in this manner, Ministry staff should be asked to confirm that this approach would fulfill the RAR requirements.

Staff has previously proposed that the existing QEP reports be used to determine the distances and measures required on various stream sections using a simple assessment method and incorporate them into a DP area. This could be done by staff (possibly with review by a QEP) or a QEP could be retained under contract to do the analysis using the existing reports. Staff are recommending the second approach (using a contractor reporting to the planner) in order to protect limited planner time for the other LTC projects and current applications. The specific costs are not yet available, but there is an available budget.

Staff will also work with the Mapping Coordinator to address the issue of the diversion on Montrose, the result may be that this portion of the stream is not included in a DPA until the final watercourse is determined by MFLNRO and MoTI.

The agricultural building setbacks recommended by the province could also be incorporated into this project.

In terms of timing, if a contract QEP is hired the proposal is that the work be conducted this summer, with final mapping available for the September meeting. Draft bylaw provisions for a DPA were also prepared previously and would be available for the September meeting. If staff were to undertake the simple assessment, it is unlikely that the work could be completed before the October meeting, given vacations and other on-going priorities.

Alternatively, the LTC could proceed with designating DPAs based on a 30 metre Riparian Assessment Area. In this option, no contract work would be required and bylaws could be available for consideration at the next meeting.

If the LTC supports proceeding as outlined in this memo (using a contract QEP to determine SPEA widths using the Simple Assessment Method), the LTC should consider a resolution requesting staff to report back with a draft project charter at the next meeting. Staff would proceed with retaining a contract QEP and undertaking a simple assessment.

Resolution Wording:

1. THAT the Mayne Island Local Trust Committee request staff to report back with a draft Project Charter for the RAR Implementation project based on the approach outlined in the staff memo dated June 17, 2014.

Pc Robert Kojima, RPM

RAR Bylaw proposal

Instead of a simple assessment for the whole island...

That the MI LTC adopt an RAR compliance bylaw as legislated by the province and instruct staff to draft such a Bylaw to include the following information.

Three streams have been identified as potential RAR watercourses: Campbell Creek, Hunt Stream and Deacon Stream. All three streams are seasonal, have been assessed as suffering “from lack of water or intolerable water quality in the summer,” and there is no record of fish presence in any of them. (1)

1) Campbell Creek:

This northerly flowing seasonal watercourse dries up in summer leaving only a few small mud ponds with relatively high water temperatures, making it very difficult for fish to survive. Several irrigation ponds have been created. Excepting the small mountain springs, most of this watercourse passes through ALR agriculturally used land.

Campbell Creek spills into Campbell Bay where it falls over two steep rocky reaches, 9 Meters and 10 Meters high before it meets the shingle. It is highly unlikely that Campbell Creek has ever supported fish and this “natural barrier” (2) creates an impassable barrier to salmonid fish and so does not meet RAR requirements for fish habitat potential.

2) Hunt Stream:

This seasonal watercourse flows east into Horton Bay and is substantially dry in the summer months. A few small mud puddles have high temperatures and low oxygen. A long defunct micro-hydro generator exists that includes a culvert ending in a two meter vertical fall before it meets the tidal estuary. This culvert provides an impassable barrier to fish. With extensive restoration, it might be possible to recreate a fish passable seasonal stream.

The very high reaches of Hunt Stream consist of steep rocky seasonal springs while most of it passes through active ALR farmland. This farm was created on a former beaver marsh and the watercourse passes through about a kilometer of ancient peat bog. Consequently, any water that does reach the lower levels is brown and acidic making it impossible for fish to survive. The Clough report of 2010 state: “acidic water and low oxygen are intolerable to fish.” (3) Clough

continues “we have inspected the reach 2 and 3 on three separate occasions in winter and summer and find the habitat above the dam to not offer any potential for fish populations.” (4)

Hunt Stream cannot support fish and any restoration for fish habitat would likely fail due to the seasonality and acidity and therefore does not meet RAR requirements.

3) Deacon Creek:

Flowing west into Village Bay, Deacon Creek is also a seasonal watercourse. Fed by short mountain springs, it passes most of its length through ALR active farmland. The stream then passes through a short section of substantially built out settlement land with approved dwellings and outbuildings. The lower 100 meters are either overgrown or culverted beneath a road and contain a number of small man-made barriers making fish habitat highly unlikely. However, if the lower reaches of residential and roadway land were cleaned up and protected it is possible that fish could be induced to travel up-stream as far as the created ponds. How well they would survive is moot.

Like the other two watercourses on the island, there is no record of fish being present in Deacon Creek. It does however, meet the minimum legislated RAR requirements for fish habitat potential. The Clough report states “this lower area was also the best of a very poor habitat for salmon.” (5)

In a separate report, Swell Environmental Consulting categorically state: “Because the RAR applies to both perennial and seasonal streams, low or absent summer flows are not sufficient grounds to determine that the regulation does not apply. The key is to determine if: a) fish have access to the stream from the ocean, b) if any fish are resident in the stream, c) if the watercourses upstream flow into any areas that are considered to be fish habitat. The RAR applies unless it is determined that these conditions are not met.” (6)

In summary the MI LTC believe:

- that Campbell Creek does not meet the RAR criteria on the basis of a natural impassible fish barrier at its lowest reach.
- that Hunt Stream does not meet the RAR criteria due to natural and intolerable acidity
- that Deacon Creek may potentially meet the minimum RAR conditions

Therefore, the MI LTC will apply RAR regulations on Deacon Creek for future

buildings and landscape changes.

Or: apply a simple assessment for the Riparian Area area of Deacon Creek

- (1) Clough Report Aug 13, 2010
D. R. Clough Consulting
Fisheries Resource Consultants
- (2) Ditto
- (3) Ditto
- (4) Ditto
- (5) Ditto
- (6) Swell Report, February 16, 2010
Swell Environmental Consulting Ltd

Met with Dean McKay