



RESORT MUNICIPALITY OF WHISTLER

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STAFF REPORT TO COUNCIL

PRESENTED: December 7, 2021 **REPORT:** 21-139
FROM: Planning – Policy **FILE:** LUC00006
SUBJECT: LAND USE CONTRACT TERMINATION BYLAW (BLUEBERRY) NO. 2337, 2021
REPORT

RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

That the recommendation of the General Manager of Resort Experience be endorsed.

RECOMMENDATION(S)

That Council consider giving first and second readings to “Land Use Contract Termination Bylaw (Blueberry) No. 2337, 2021”; and

That Council authorize staff to schedule a Public Hearing for “Land Use Contract Termination Bylaw (Blueberry) No. 2337, 2021” and to provide notice of the Public Hearing; and

That Council authorize staff, subject to adoption of “Land Use Contract Termination Bylaw (Blueberry) No. 2337, 2021”, to give written notice of termination to the Registrar of Land Titles, pursuant to section 548(6) of the *Local Government Act*; and further

That Council authorize staff, subject to adoption of “Land Use Contract Termination Bylaw (Blueberry) No. 2337, 2021”, to give written notice of termination to the affected property owners pursuant to section 549 of the *Local Government Act*.

PURPOSE OF REPORT

The purpose of this report is to present “Land Use Contract Termination Bylaw (Blueberry) No. 2337, 2021” (Blueberry LUC Termination Bylaw) to Council for consideration of first and second readings. This report also requests that Council authorize staff to schedule, and provide notice of, a Public Hearing for the Blueberry LUC Termination Bylaw.

Information Report

Administrative Report (Decision or Direction)

DISCUSSION

Background

As required by provincial legislation, the Resort Municipality of Whistler (RMOW) is in the process of terminating Land Use Contracts (LUCs) and implementing replacement zoning for all properties subject to a LUC. The replacement zoning must be adopted by June 30, 2022. This report presents replacement zoning for the Blueberry Hills neighbourhood (subject lands), which reflects the current use and historic development approvals. A map of the subject lands is included as Appendix A.

LUC Terminations

LUCs existed as a regulatory tool between 1970 and 1980 and were used in place of zoning and other development bylaws to regulate development (land use, siting, infrastructure, amenities, form and character, environmental considerations, etc.). LUCs could “lock in” development regulations in perpetuity and could only be amended or terminated by agreement between the municipality and land owner. LUCs were legislated out of use in the early 1980s, however existing LUCs remain in force.

In May 2014, the *Local Government Act* (LGA) was amended to automatically terminate all LUCs on June 30, 2024. The same legislation requires municipalities to zone all lands subject to LUCs by June 30, 2022. The LGA allows a local government to, by bylaw, terminate LUCs prior to June 30, 2022, provided the bylaw comes into force on a date that is at least one year after the date the bylaw is adopted and zoning is in place on the date the bylaw comes into force.

Two associated reports were previously presented to Council. On May 3, 2016, staff presented Information Report to Council No. 16-055, which outlined the new legislation, presented an approach for early termination of all LUCs in Whistler, and described the general principles that would be applied by the RMOW through its zoning and termination process. On June 1, 2021, staff presented Administrative Report No. 21-061, which provided an update to Council on the status of the LUC termination process and obtained Council’s endorsement for proposed process efficiencies and for applying consistent parking standards within the LUC termination bylaws that reflect current standards in “Zoning and Parking Bylaw No. 303, 2015” (the Zoning Bylaw), which are generally applicable to all other lands within the municipality.

Blueberry LUC

The Blueberry LUC was enacted in 1979 (Bylaw No. 108) and applies to the southern portion of the Blueberry Hill neighbourhood (south from Falcon Lane). The LUC appears on titles as charge G2947 and was subject to a major amendment in 1983 (Bylaw No. 355) which, amongst other things, provided more detailed regulatory and conceptual provisions than the original LUC; the LUC has also undergone a number of other amendments since it was originally enacted.

The LUC generally provided for a range of dwelling types for both residential and temporary visitor accommodation use, as well as park and auxiliary recreational uses, and tree preservation areas. The LUC used a Conceptual Development Plan, which divided the LUC lands into eight development areas. Each area set out requirements in terms of land use, density, site coverage, building height, siting and parking. The LUC also included Design Guidelines that set the standard and quality of each development, specified the character of development, provided design context and provided a framework for evaluation of development proposals. The LUC also provided for tree preservation areas and that buildings should be sited generally in accordance with the Conceptual Development Plan unless modified by Development Permit. At subdivision, the LUC required that a restrictive covenant be registered on title specifying the total number and type of dwelling units for each parcel.

Each development within the LUC was subject to a Development Approval process established within the LUC for review against the Design Guidelines and to further specify the type of development, addressing surrounding context and site conditions. Developments of four or more dwellings were subject to Council approval through a development permit process and developments of three or less dwellings were subject to approval by the Director of Planning through the building permit process.

Site Context

As shown on Appendix A, the Blueberry Hills neighbourhood is located north of Highway 99 and south of Whistler Cay Heights between Alta Lake on the west and the Whistler Golf Course on the east. The LUC area comprises the southern portion of the neighbourhood south of Falcon Lane.

The neighbourhood consists of apartment, townhouse, duplex and single-family detached dwelling developments. Each development corresponds with the dwelling type permitted for the property as specified with the LUC. The dwellings are permitted both residential and temporary accommodation use for visitors. There are five housing units within one apartment complex that are restricted to employee use by covenant. The neighbourhood also includes Blueberry Park amongst other park and trail uses, and tree preservation areas as delineated within the LUC.

There are currently 54 single-family parcels, 14 duplexes (7 buildings), 71 townhouses and 183 apartment dwelling units within the LUC area. There are three split zoned parcels: 3525 Falcon Crescent (predominantly Residential Multiple Four Zone (RM4)); and 3595 and 3591 Falcon Crescent (partially Single Family Residential One Zone (RS1)).

Analysis

The proposed bylaw has been prepared consistent with provincial regulations for the termination of LUCs, and with the RMOW's project approach and principles for its LUC termination process. The proposed bylaw will terminate the Blueberry LUC from all land to which it applies and apply seven different zones to the subject lands.

The proposed zoning includes four new zones: Residential/Tourist Accommodation Thirty (RTA30); Residential/Tourist Accommodation Thirty-One (RTA31); Residential/Tourist Accommodation Thirty-Two (RTA32); and Residential/Tourist Accommodation Thirty-Three (RTA33). The proposed zoning also includes three existing zones: Rural Resource One (RR1); Leisure Park One (LP1); and Residential Multiple Four (RM4). A new zone was created for each of the four dwelling types (apartment, townhouse, duplex and single family detached dwellings) that apply to corresponding development areas within the LUC and existing developments of the same type.

Specifics of each zone and how they are to be applied is provided below. Regulations for each proposed zone are discussed separately except where they are treated consistently across zones. The termination of the LUC and effect of the zones will take place one year from the date of adoption of the bylaw. The zones are to be applied to LUC areas as shown in Schedule 1 to the bylaw and the proposed regulations of the new zones are provided in Schedule 2 to the bylaw.

RTA30 Zone (Residential/Tourist Accommodation Thirty)

The proposed RTA30 Zone provides for the existing approved apartment developments within Areas Two, Three and Four of the LUC. The intent of the zone is to provide for medium density residential development and tourist accommodation. Permitted uses include apartment dwelling units, employee housing, park and playground, and auxiliary buildings and uses. For the other regulations in the zone, the zone has been divided into five areas that reflect the five existing parcels of land within that zone. The other regulations (density, height, site coverage and setbacks) have been set to reflect the existing development for each area based on the LUC regulations, restrictive covenants and development permits. Since the letter was sent to the registered owners, a clause has been added to restrict the five existing employee housing apartment dwelling units to employee housing use only consistent with existing covenants.

RTA31 Zone (Residential/Tourist Accommodation Thirty-One)

The proposed RTA31 Zone provides for the existing approved townhouse developments within Areas One and Seven of the LUC. The intent of the zone is to provide for medium density residential development and tourist accommodation. Permitted uses include townhouses, park and playground, and auxiliary buildings and uses. For the other regulations in the zone, the zone has been divided into two areas that reflect the two existing parcels of land within that zone. The other regulations (density, height, site coverage and setbacks) have been set to reflect the existing development for each area based on the LUC regulations, restrictive covenants and development permits.

RTA32 Zone (Residential/Tourist Accommodation Thirty-Two)

The proposed RTA32 Zone provides for the existing approved duplex dwellings within Area Five of the LUC. The intent of the zone is to provide for low density residential development and tourist accommodation. Permitted uses include duplex dwellings, park and playground, and auxiliary buildings and uses. The other regulations in the zone (density, height, site dimensions, site coverage and setbacks) reflect the regulations in Area Five of the LUC.

RTA33 Zone (Residential/Tourist Accommodation Thirty-Three)

The proposed RTA33 Zone provides for the existing single-family parcels within Areas Six and Eight of the LUC. The two single-family split zoned parcels (3595 and 3591 Falcon Crescent) are also to be included in this zone, consistent with the land use designations in Schedule A of the Official Community Plan (OCP). The intent of the zone is to provide for low density residential development and tourist accommodation. Permitted uses include detached dwellings, auxiliary residential dwelling unit if contained within a detached dwelling, park and playground, and auxiliary buildings and uses. The other regulations in the zone (density, height, site dimensions, site coverage and setbacks) reflect the regulations in Areas Six and Eight of the LUC.

RM4 Zone (Residential Multiple Four)

The existing RM4 Zone is to be applied to the small portion of 3525 Falcon Crescent which falls within the LUC area. This is consistent with the land use designations in Schedule A of the OCP.

LP1 (Leisure Park One)

The existing LP1 Zone is to be applied to the existing municipally owned parkland areas within the LUC area. This zoning provides for park and auxiliary recreation uses and is consistent with the zoning of parks elsewhere in the municipality.

RR1 (Rural Resource One)

The existing RR1 Zone is to be applied to municipally owned roads within the LUC area. This approach is consistent with the treatment of other roads within the municipality.

Density Provisions within the RTA30 and RTA31 Zones

The density provisions within the two multi-family zones also provide for any potential discrepancy between the maximum density that has been specified and the actual gross floor area that currently exists, for construction that was authorized by approved building permit. If the actual area is less than the amount specified in the zone then the maximum density shall be the lesser number, and if the

actual area is greater, then it shall be the greater number. Existing floor area that was not authorized by building permit would not be included in the calculation of the maximum permitted density. This is a change to the proposed zone from the version included in the letter to owners.

Tourist Accommodation Use

In all proposed zones, dwelling units (except employee housing) are permitted to be used for temporary accommodation when not occupied for residential use.

Tree Preservation

The LUC sets out tree preservation areas, which are identified on Schedule C – Conceptual Development Plan to the LUC. Under the LUC, these areas were to be kept in their natural state and provide a landscape buffer between uses, particularly to the Valley Trail. The proposed RTA30, RTA31 and RTA33 Zones include hatched areas (replicating the LUC tree preservation areas) on their respective key plans, which must be maintained for environmental protection and as a landscape buffer. This is a change to the proposed zone from the version included in the letter to owners.

Design Guidelines

The design guidelines that are contained within the Blueberry LUC will no longer be in effect upon the termination of the LUC. The lands will however be subject to Development Permit designations and requirements for form and character of development in the updated OCP. The form and character designation that will apply is the Multi-family-Residential Development Permit Area. The *Local Government Act* does not enable development permit requirements for form and character of development for single-family and duplex dwellings, so these development types will no longer have design review and development approval requirements for form and character after the termination of the LUC.

Parking

The parking requirements in the proposed zones reference the generally applicable parking requirements under Part 6 of the Zoning Bylaw, as previously endorsed by Council. These requirements would apply to any new development or redevelopment of the lands. The existing approved parking continues to be permitted for existing development.

POLICY CONSIDERATIONS

Relevant Council Authority/Previous Decisions

[May 3, 2016: Information Report No. 16-055](#), Land Use Contract Termination Process

[June 1, 2021: Administrative Report No. 21-061](#), Land Use Contract Terminations – Update Report

Corporate Plan

The RMOW Corporate Plan is updated annually and articulates strategic direction for the organization. This section identifies how this report links to the plan.

Council Focus Areas

Community Balance

*Effectively **balance resort and community needs** through deliberate planning, partnerships and investment*

Climate Action

*Provide leadership to **accelerate climate action and environmental performance** across the community*

Housing

*Advance strategic and innovative initiatives to enable and **deliver additional employee housing***

Not Applicable

Community Vision and Official Community Plan

The OCP is the RMOW's most important guiding document that sets the community vision and long-term community direction. This section identifies how this report applies to the OCP.

The termination of Whistler's LUCs advances policies within the OCP's Growth Management chapter (Chapter 4). The analysis of these policies in relation to the termination of the LUCs is provided below.

4.1.2.11. Policy

The termination of the Blueberry LUC replaces an outdated and inefficient regulatory scheme with modern, streamlined, consistent and accessible zoning regulations. The proposed zoning will better support and optimize efficient land use and development on the subject lands.

4.1.2.13. Policy

The proposed zoning reflects the regulations established by the Blueberry LUC, applicable permits and covenants for each parcel comprising the subject lands. This will ensure that any redevelopment of the subject lands will be complementary to the existing development in the area.

BUDGET CONSIDERATIONS

There are no budget considerations. The termination of Whistler's LUCs is a planned, multi-year project. All costs associated with bylaw preparation, the Public Hearing, notices and legal fees will be covered under the existing Planning Department budget.

LIL'WAT NATION & SQUAMISH NATION CONSIDERATIONS

The RMOW is committed to working with the Lil'wat People, known in their language as *L'il'wat7úl* and the Squamish People, known in their language as the *Skwxwú7mesh Úxwumixw* to: create an enduring relationship; establish collaborative processes for Crown land planning; achieve mutual objectives; and enable participation in Whistler's resort economy. This section identifies areas where RMOW activities intersect with these relationships.

There are no specific considerations to include in this report.

COMMUNITY ENGAGEMENT

Level of community engagement commitment for this project:

Inform Consult Involve Collaborate Empower

Comment(s):

Letter to Registered Owners

On October 18, 2021, staff distributed a letter to affected property owners informing them of the commencement of the LUC termination process. The draft proposed zones were attached to the letter for owners' information. The letter also identified the opportunity for written comments on the draft proposed zones. This letter is attached as Appendix B.

Submissions from Registered Owners

The letter to registered owners invited individuals to submit written comments on the draft zones by November 17, 2021. Given there was an issue with the timing of the distribution of the letter to some owners, an extension to November 26, 2021 was granted to those who requested an extension.

In response to the letter to registered owners, staff received a number of questions and comments related to the proposed zoning. Questions and comments received related to permitted uses, nightly rentals, the differences between the LUC and the proposed zoning, non-conforming use rights and general questions related to LUCs. Staff also received one public submission for a change to the proposed RTA31 Zone (see discussion below related to Blueberry Hill Estates (3102-3188 St Moritz Crescent)). Submissions from registered owners with substantive questions or comments have been provided in Appendix C.

Owner Proposed Changes – Blueberry Hill Estates (3102-3188 St Moritz Crescent)

The one submission requesting changes proposed that the permitted uses should be updated to include duplex dwellings. Additionally, they are opposed to any change which would prevent rebuilding in the event of a loss, such as from wildfire.

Staff Response – Blueberry Hill Estates (3102-3188 St Moritz Crescent)

The proposed zoning reflects the existing development based on RMOW records including the LUC, development permits, and restrictive covenants on title. The existing use of the Blueberry Hills Estate is permitted by the proposed zoning, and the density provisions (discussed above) within the proposed RTA31 Zone account for any potential discrepancy between the maximum density that has been specified and the actual gross floor area that currently exists. In relation to the request for duplex to be a permitted use, staff recommend against this request. The existing development does not include any duplexes as defined in the Zoning Bylaw. The units are attached and meet the definition of townhouse consistent with the uses permitted under the LUC for the subject property. Duplexes are not a permitted use for Area 1 of Schedule C to the LUC, which is the applicable area, and the registered development covenant specifies a townhouse development. Therefore, staff recommend no changes to the permitted uses within the proposed RTA31 Zone.

Future Notifications

The LGA requires that a Public Hearing for the proposed bylaw be held prior to final consideration by Council, including a notification in the local paper. If Council authorizes staff to schedule a Public Hearing for the Blueberry LUC Termination Bylaw, staff will advertise the Public Hearing in the local newspaper and deliver notice of the Public Hearing to the owners and tenants of all parcels within the subject lands.

The LGA also requires that written notice be provided to property owners notifying them of the termination of the LUC after adoption of the bylaw. This notice must advise owners of their right to apply to the Board of Variance for an exemption from early termination, and it must identify the place where and the times and dates when bylaws are available for public inspection. Staff will carry out this notification should the Blueberry LUC Termination Bylaw be adopted by Council.

REFERENCES

Appendix A – Subject Lands Map
Appendix B – Letter to Registered Owners
Appendix C – Submissions from Owners

“Land Use Contract Termination Bylaw (Blueberry) No. 2337, 2021” (Included in Council Package)

SUMMARY

This report presents the Blueberry LUC Termination Bylaw to Council for consideration of first and second readings. This report also requests that Council authorize staff to schedule a Public Hearing for the Blueberry LUC Termination Bylaw. The proposed termination bylaw will apply replacement zoning to all lands affected by the Blueberry LUC and terminate the Blueberry LUC and subsequent LUC amendments.

SIGN-OFFS

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