

**RESORT MUNICIPALITY OF WHISTLER**

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STAFF REPORT TO COUNCIL

PRESENTED: May 10, 2022
FROM: Planning – Policy
SUBJECT: LAND USE CONTRACT TERMINATION (BLACKCOMB MOUNTAIN) NO. 2350, 2022 REPORT

REPORT: 22-064
FILE: LUC00022

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 (Blackcomb Mountain) No. 2350, 2022”; and

That Council authorize staff to schedule a Public Hearing for “Land Use Contract Termination Bylaw (Blackcomb Mountain) No. 2350, 2022” and to provide notice of the Public Hearing; and

That Council authorize staff, subject to adoption of “Land Use Contract Termination Bylaw (Blackcomb Mountain) No. 2350, 2022”, 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 (Blackcomb Mountain) No. 2350, 2022”, 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 (Blackcomb Mountain) No. 2350, 2022” (the 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, the Public Hearing for the 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 recreational and commercial uses located at the base of Blackcomb Mountain that reflects the current use and historic development approvals for these properties. It also presents replacement zoning for the public roads within the Blackcomb LUC as well as the open spaces of a hooked parcel. 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.

Three associated reports were previously presented to Council. On May 3, 2016, staff presented Information Report 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. On February 8, 2022, staff presented Information Report No. 22-011, which clarified the LUC termination project approach with respect to replacement zoning and the principle commonly referred to as “like-for-like”.

Site Context

The subject lands, as shown on Appendix A, support recreational and commercial uses at the base of Blackcomb Mountain and include municipal roads. Aside from the municipal road network, the subject lands are comprised of seven distinct properties, two of which are hooked parcels. Existing structures and buildings include: Blackcomb Gondola Base, Magic Chair, Excalibur Gondola Mid-Station, Whistler Blackcomb Administration Offices and Kids Kamp, Blackcomb Day Lodge, Plaza Pavilion, Blackcomb Ski Club and Blackcomb Base II. Additional uses include parking located at Lot 6 and Lot 7, as well as auxiliary buildings for ticket sales and maintenance.

Blackcomb LUC

The Blackcomb LUC was enacted on January 8, 1979 by “Resort Municipality of Whistler Zoning Bylaw No. 9, 1975 Land Use Contract Approval Bylaw (Fortress Mountain Resorts Ltd.) No. 107, 1978” (Bylaw No. 107). This LUC applies to the majority of the original development of Blackcomb Mountain and appears on titles as charge G2520. RMOW Bylaw No. 107 and G2520 are included as Appendices B and C, respectively.

The LUC was then amended on June 13, 1988 by “Land Use Contract Amendment Bylaw No. 650, 1988” (Bylaw No. 650) for the majority of the Blackcomb LUC area, and this appears as charge GB77455 on titles. All properties, excluding portions of municipal roads, forming part of the subject

lands are subject to the LUC Amendment. RMOW Bylaw No. 650 and GB77455 are included as Appendices D and E, respectively.

The LUC was further amended on April 5, 1994 through a Council Resolution and this amendment appears as charge BH231897. The Council Resolution and BH231897 are included as Appendices F and G, respectively.

The Blackcomb LUC generally provided for a range of uses, density and building sizes to be located within the LUC area, which were distributed within designated development zones and provided for recreation, commercial services and accommodation facilities adjacent to Blackcomb Mountain.

Each development within the LUC was subject to a Development Approval process established within the LUC to further specify the type of development, development program and design, and address surrounding context and site conditions. Developments were subject to Council approval, and some Blackcomb Permits were registered on title by restrictive covenant requiring all future development to be consistent with the terms of the covenant and the associated approved plans.

Part of the subject lands, namely the properties at 4545 Blackcomb Way (Whistler Blackcomb Administration Offices and Kids Kamp), 4553 Blackcomb Way (Blackcomb Day Lodge), 4555 Blackcomb Way (Plaza Pavilion) and 4900 Glacier Drive (Blackcomb Base II) are further regulated by development covenants registered on title. These covenants specify permitted uses and density, and reference Blackcomb Development Permits (the BPAs). The relevant development covenants, modifications and BPAs are attached to this report as Appendices H, I, J and K. Key Plan Areas D, E, and F, in the proposed MC3 Zone discussed below, are within the Controlled Recreation Area (CRA) and are also governed by agreement between the Crown and the mountain operator.

Analysis

The LUC Termination 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 bylaw will terminate the Blackcomb LUC from where it applies within the subject lands and apply three different zones.

The proposed zoning consists of: 1) one new zone: MC3 Zone (Mountain Commercial Three); and 2) two existing zones: RR1 Zone (Rural Resource One) and LP2 Zone (Leisure Park Two). The termination of the Blackcomb LUC from the subject lands and effect of the zones will take place one year from the date of adoption of the LUC Termination Bylaw. An overview of each zone is provided below. The location of the zones proposed to be applied to LUC areas are shown in Schedule 1, Schedule 3 and Schedule 4 of the proposed LUC Termination Bylaw.

Proposed MC3 Zone (Mountain Commercial Three)

The proposed MC3 Zone provides for the existing approved developments within the subject lands and is presented in Schedule 2 of the proposed LUC Termination Bylaw. The intent of this zone is to provide a variety of uses related directly to the base area operations of an outdoor recreation enterprise within the Whistler/Blackcomb CRA. The proposed MC3 Zone specifies six Key Plan Areas (A to F).

The maximum height is 3 stories or 13 metres, whichever is less and there are no setback regulations. Within Key Plan Area E, a maximum of one auxiliary residential dwelling unit for employee housing is permitted within a principal use building, with a maximum gross floor area of 75 square metres.

The density provisions within the proposed MC3 Zone specify a maximum gross floor area for each of the Key Plan Areas, reflecting covenants where applicable and existing approvals and development. Additionally, there are provisions to provide for any potential discrepancy between the maximum density that has been specified in the Key Plan Areas in the zone 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 a Key Plan Area 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.

The parking requirements in the proposed zone 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 bylaw also proposes an amendment to Part 6 of the Zoning Bylaw to accommodate offsite parking arrangements. The existing approved parking continues to be permitted for the existing developments.

Additionally, parking is a permitted use in the proposed MC3 Zone. This allows for parking to be a principal use. Furthermore, as per the [Blackcomb Mountain Master Plan Update \(September 2013\)](#) on Blackcomb, the ski area has a commitment with the Province and the RMOW to provide 1,500 skier parking stalls. These stalls are currently located on Crown land within Blackcomb Mountain's CRA at Base II in Lots P6 through P8, as well as approximately 190 stalls along the road that are used on peak days. As per table II.19, there are 488 parking stalls and 416 parking stalls on P6 and P7, respectively. Therefore, notwithstanding the general applicable parking requirements under Part 6 of the Zoning Bylaw, the MC3 Zone requires that a minimum of 904 parking stalls are provided for in Key Plan Area F.

LP2 (Leisure Park Two)

The existing LP2 Zone is to be applied to the existing open space areas within the subject lands. This zone provides for nature conservation park and auxiliary uses and is intended to preserve existing open spaces.

RR1 (Rural Resource One)

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

POLICY CONSIDERATIONS

Relevant Council Authority/Previous Decisions

[February 8, 2022: Information Report No. 22-011](#), Land Use Contracts Termination Approach Update

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

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

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 Official Community Plan (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 subject lands described by proposed zone are located in Development Permit Areas (DPAs) as shown in the following table. In some cases, only a portion of the proposed zone falls within the identified DPA.

Development Permit Area	Affected areas identified by proposed zone
Protection of Riparian Ecosystems	RR1, LP2, MC3 (Key Plan Area F)
Protection of Sensitive Ecosystems	LP2, MC3 (Key Plan Areas D, E & F)
Aquifer Protection	RR1, LP2, MC3 (Key Plan Areas A, B, C, F)
Whistler Village	RR1, MC3 (Key Plan Areas A, B & C)
Commercial Industrial	MC3 (Key Plan Areas D, E & F)
Multi-family Residential	RR1, LP2, MC3 (Key Plan Areas D, E, & F)
Wildfire Protection – Moderate Risk	RR1, LP2, MC3 (Key Plan Areas B & C)
Wildfire Protection – High Risk	RR1, LP2, MC3 (Key Plan Areas A, D, E, & F)

Any future redevelopment would be subject to Development Permits, as required.

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 Blackcomb LUC is provided below.

4.1.2.11. Policy

The termination of the Blackcomb 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 Blackcomb LUC and the applicable permits related to the subject lands. This will largely ensure that any redevelopment of the subject lands will be complementary to the existing development in the area.

4.1.4.2. Policy

In Schedule A (Whistler Land Use Map and Designations), the OCP designates Key Plan Areas A, B & C of the proposed MC3 Zone, a portion of the municipal road Blackcomb Way, and a portion of the area proposed to be zoned LP2 as:

“Core Commercial: Whistler Village and Whistler Creek are the resort community’s multi-use commercial centres. Whistler Village is the town centre serving visitors and residents with a diverse mix of retail, business, office, service, food and beverage, entertainment, institutional and accommodation uses and associated parking areas as well as parks and leisure space.”

For a portion of the lands proposed to be zoned LP2 and Key Plan Areas D, E & F of the proposed MC3 Zone, the OCP designates the areas as:

“Whistler/Blackcomb CRA: Crown land leased to Whistler Blackcomb for recreation and related indoor and outdoor uses and amenities including ski lifts, alpine skiing runs and terrain, hiking and mountain biking trails, tube park and auxiliary uses such as parking, restaurant, retail, skier-service facilities, mountain operations facilities, mountain lodges and accommodation”.

The proposed zones to replace the Blackcomb LUC within the subject lands are consistent with the applicable OCP land use designations.

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.

In Schedule B (Lil’wat Nation and Squamish Nation Fee Simple Lands and Partnership Interest), the OCP specifies the OCP Land Use and Development Considerations (2018 proposed) for the Whistler and Blackcomb CRAs as follows:

Support update of zoning for Whistler and Blackcomb Mountain to recognize all existing development, generally support recreation activities and associated lifts, trails and operational facilities, and require rezoning for future commercial developments (including food and

beverage and retail) and accommodation and base area developments, which are also subject to OCP amendment.

COMMUNITY ENGAGEMENT

Level of community engagement commitment for this project:

☐ Inform ☒ Consult ☐ Involve ☐ Collaborate ☐ Empower

Comment(s):

Letter to Registered Owners

On April 1, 2022, staff emailed a letter to affected property owners informing them of the commencement of the LUC termination process. A paper copy of the letter was mailed on April 6, 2022. The draft proposed MC3 and P3 Zones were attached to the letter for owners' information. The letter also identified the opportunity for written comments on the draft proposed zones. The letter to registered owners invited individuals to submit written comments on the draft zones by May 2, 2022. This letter is attached as Appendix L.

Submissions from Registered Owners

In response to the letter to registered owners, staff received one submission on behalf of Vail Resorts on May 1, 2022. The submission questioned if the "like-for-like" principle is being implemented fully and properly, noting that not all of the uses permitted in the Blackcomb LUC are included in the proposed replacement zoning and that the density provisions in the replacement zoning do not reflect the density of a 1.5 floor space ratio noted in the LUC. Additionally, the submission states that while the land that is currently included in the LUC carries the same uses and densities across all land, the replacement zoning has separated the land into three replacement zones.

The submission requests the following changes to the draft proposed replacement zoning: 1) all lands under LUC Agreements be zoned to the MC3 Zone; 2) all permitted uses under the LUC Agreements be incorporated into the MC3 Zone; and 3) permitted density of 1.5 FAR be incorporated into the MC3 Zone. The requests are further discussed below and the submission received is attached as Appendix M. Staff's response to Owners is attached as Appendix N.

Staff Response

Adherence to the "Like-for-like" Principle: Permitted Uses and Density

In the February 8, 2022 [Information Report No. 22-011](#), staff provided information to clarify the LUC termination project approach with respect to replacement zoning and the principle commonly referred to as "like-for-like". The Blackcomb LUC provided only a highly generalized regulatory framework that was later particularized via development permits, covenants and, in some cases, building permits. In preparing replacement zoning regulations for LUC lands, staff have taken into account not only the wording of the original LUC but the detailed provisions of development permits and covenants, and in some cases building permits, that were used to tailor the general requirements of the LUC to particular sites as the owners of those sites brought development plans forward. In many cases this fine-tuning process eliminated many of the permitted uses that had initially been identified in the LUC, and introduced density controls such as maximum floor areas. The "like-for-like" principle uses the entire

regulatory framework for these sites as the baseline for preparation of replacement zoning regulations, since the principle was intended to preserve and mirror only the development rights that the owners of LUC lands actually used when they developed their sites. Other potential development scenarios for these properties will be subject to the usual zoning amendment processes.

The submission notes several uses listed in the Blackcomb LUC that have been excluded from the proposed replacement zoning. The discussion below presents these uses in *italics*, with staff's analysis and response in the bullets:

Lodges, hotels, hostels

- Lodges, hotels and hostels are not existing uses on the subject lands and have not been provided for in further municipal approvals.

As noted above, in Schedule A (Whistler Land Use Map and Designations), the OCP designates the subject lands as “*Core Commercial*” and “*Whistler/Blackcomb CRA*”. These OCP designations specifically provide for “accommodation uses” and “mountain lodges and accommodation” respectively. Future potential development scenarios for the subject lands contemplating lodges, hotels and hostels are generally supported as permitted uses by the OCP and will be subject to the zoning amendment process.

Single residential buildings, duplex residential buildings and multiple residential buildings

- The subject lands are located in Zone 1 of the Blackcomb LUC. Single residential buildings are not specified as a permitted use in this zone of the LUC. Duplex residential buildings and multiple residential buildings are not existing uses and have not been provided for in further municipal approvals.

Again, the OCP designations for the lands specifically provide for accommodation uses, which include duplex residential buildings and multiple residential buildings. The OCP defines “accommodation” as a building or facility, or portion thereof, where people either reside or stay on a temporary basis. Accommodation includes residential accommodation, visitor accommodation and employee housing. Any future development of duplex residential buildings and multiple residential buildings, is subject to a zoning amendment process.

Skiing facilities including administrative and maintenance facilities, ski runs, ski schools, ski school offices, skier parking (it is unclear if these uses are included in the generic term “ski lift facilities” proposed in MC3 Zone)

- The proposed MC3 Zone includes the following permitted uses, which are intended to capture the uses listed above: administrative office, auxiliary buildings and auxiliary uses, child care facility, outdoor recreation, skiing facilities and parking.

Parks, recreational uses and golf courses and such commercial accessory uses

- The proposed MC3 Zone includes indoor recreation, outdoor recreation, and auxiliary buildings and auxiliary uses.
- The existing LP2 Zone is to be applied to the existing open space areas within the subject lands. This zone provides for nature conservation park and auxiliary uses and is intended to preserve existing open spaces located outside of the ski trails.

Public utility installations excluding any uses which are primarily of a maintenance and storage nature

- Under Part 5 (General Regulations) of the Zoning Bylaw, section 6 specifies “*all utility uses other than storage or works yards are permitted in every zone.*”

Laundromat and dry cleaning, theatre, video arcades and rentals

- Laundromat and dry cleaning, theatre, video arcades and rentals are not existing uses and have not been provided for in further municipal approvals. Under the proposed MC3 Zone these uses would be subject to a zoning (and if necessary, OCP) amendment process.

Accessory off-street parking use

- The MC3 Zone has been revised to include “parking” as a permitted use. Additionally, parking is considered as an auxiliary use to principal permitted uses.

Zoning all Subject Lands MC3 Zone

In the letter to owners, staff proposed four draft replacement zones to be applied to the subject lands: MC3 Zone (Mountain Commercial Three), LP2 Zone (Leisure Park Two), P3 Zone (Parking Three), and RR1 Zone (Rural Residential One). The subject properties of each of the four proposed replacement zones were grouped to reflect similarities in existing uses and applicable land use regulations.

In response to the comments received, staff removed the proposed P3 Zone and instead included the P3 Zone subject lands into the proposed MC3 Zone. The previously proposed P3 Zone was intended to provide for the existing parking uses located at Lot 6 and Lot 7 on Blackcomb Mountain. The intent of the zone was to provide for parking use and permitted uses included parking uses, outdoor assembly, and auxiliary buildings and uses. The MC3 Zone was revised to include parking and outdoor assembly as permitted uses and the areas of Lot 6 and Lot 7 on Blackcomb Mountain have been included as Area F within the MC3 Zone Key Area Plan.

The existing LP2 Zone is proposed to be applied to the hooked Crown land areas and is intended to preserve the existing open spaces. The existing RR1 Zone is proposed to be applied to municipal roads in the Blackcomb LUC, consistent with the treatment of other roads within the municipality. Staff do not recommend incorporating the subject lands of the LP2 Zone and RR1 Zone into the proposed MC3 Zone.

Future Notifications

The LGA requires that a Public Hearing for the proposed bylaw be held prior to final consideration by Council, including notification in the local paper. If Council authorizes staff to schedule a Public Hearing for the proposed 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 LUC Termination Bylaw be adopted by Council.

REFERENCES

Appendix A – Subject Lands Map

Appendix B – RMOW Bylaw No. 107 – LUC G2520

Appendix C – LUC G2520 – Document registered on title
Appendix D – RMOW Bylaw No. 650 – LUC Amendment GB77455
Appendix E – LUC Amendment GB77455 – Document registered on title
Appendix F – LUC Amendment Council Resolution (Council Minutes of 1994-04-05)
Appendix G – LUC Amendment BH231897 – Document registered on title
Appendix H – 4545 Blackcomb Way – Covenants and Blackcomb Development Permit
Appendix I – 4553 Blackcomb Way – Covenants and Blackcomb Development Permit
Appendix J – 4900 Glacier Drive – Covenants and Blackcomb Development Permit
Appendix K – 4555 Blackcomb Way – Blackcomb Development Permit
Appendix L – Letter to Registered Owners
Appendix M – Submissions from Owners
Appendix N – Staff response to submission from Owners

“Land Use Contract Termination Bylaw (Blackcomb Mountain) No. 2350, 2022” (included in Council Package)

SUMMARY

This report presents the 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 LUC Termination Bylaw. The proposed termination bylaw will apply replacement zoning to the subject lands and terminate the Blackcomb LUC from these same subject lands.

SIGN-OFFS

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