

SUMMARY AND REVIEW OF PUBLIC HEARING SUBMISSIONS FOR “LAND USE CONTRACT TERMINATION BYLAW (BLACKCOMB MOUNTAIN) NO. 2350, 2022”

A Public Hearing on “Land Use Contract Termination Bylaw (Blackcomb Mountain) No. 2350, 2022” (the proposed bylaw) was held on May 25, 2022. The Public Hearing provided an opportunity for members of the public to make verbal representations and submit written comments to Council respecting matters contained in the proposed bylaw.

There were two written submissions and three verbal representations made by the public as part of the Public Hearing process. A total of four members of the public provided representations or submissions.

The following provides staff’s summary and review of the written submissions and verbal representations, along with staff’s associated recommendations. The written and verbal comments will be collectively referred to as the “submissions” in this summary report. The summary of the content of the submissions is not intended to transcribe or replicate all of the comments that were made during the Public Hearing process.

Public Submissions:

Submissions were made by members of the public in the vicinity of the subject lands and property owner representatives within the Blackcomb Mountain subject lands. Comments included the following topics:

- Adherence to the “like-for-like” principle and permitted uses and in particular a request to include accommodation uses in the proposed MC3 Zone;
- Notice, timing and process;
- Map within the notice of Public Hearing; and
- Road maintenance.

Staff Review:

Staff responses to the comments made in the public submissions is provided below.

Adherence to the “like-for-like” principle and permitted uses

A representative for Vail Resorts provided written and verbal submissions regarding the adherence to the “like-for-like” principle and requested that all permitted uses under the Land Use Contract (LUC) be included in the proposed MC3 Zone, with emphasis on accommodation uses including: lodges, hotels, hostels, and single, duplex and multiple residential buildings. The following discussion specifies comments provided in the written submission in italics, with staff’s analysis and response below.

Among the existing, permitted uses under the Blackcomb LUC are lodges, hotels, and hostels, as well single, duplex, or multiple residential buildings. RMOW’s proposed replacement zoning does not include these existing, permitted uses. This means that today, under the LUC, Whistler Blackcomb would be able to build a hotel on its lands, but after termination of the LUC, we will not be able to do so without a zoning amendment. While we recognize that even under the LUC, a rezoning may be necessary to formalize density necessary to develop some of these uses, the proposed uses themselves would not be subject to that rezoning as those development rights are already established.

- The Blackcomb LUC uses a combination of floor area limits and bed unit limits to manage development. In the Blackcomb LUC accommodation uses are permitted only if bed units have been allocated to those uses. All bed units permitted to be developed under the Blackcomb

LUC have been fully allocated and covenanted to developments approved under the LUC. No bed units have been allocated for accommodation use for the subject lands. There are no remaining bed units available under the LUC and therefore a “like-for-like” approach does not require or permit that the MC3 regulations include accommodation uses. The OCP (Policy 4.1.6.3) stipulates that rezonings that increase the accommodation bed unit capacity of the resort will include significant community engagement and should only be supported if the proposal meets stated criteria. Further the Council Policy on Residual Bed Units and Growth Management stipulates that property owners seeking rezonings are not entitled to a transfer of the existing estimated bed unit allocation to alternate sites except as may be approved by Council as part of the rezoning process. These policies reflect the fact that accommodation uses may have different site-specific impacts and land use management implications than non-accommodation uses. The density provisions recommended in the proposed zone provide for all existing covenanted development located at Base 1 and Base 2. The registered development covenants do not provide for accommodation use.

- There is no basis to include the requested accommodation uses as permitted uses, given the municipality’s existing bed unit allocation policies. This would require a development application that would require review and analysis relative to the OCP and the criteria specified for evaluating rezonings, as well as an allocation of bed units and rezoning subject to Council approval.

In other words, Whistler Blackcomb controls density that could be applied to these lands and currently the lands could be redeveloped under the LUC as a hotel or multi-family development.

- There is a remaining allocation of Council approved bed units to Whistler Blackcomb that are recognized by Council Policy G-21 and are accounted for within the OCP accommodation capacity limit measured in bed units. There are 134 bed units that are recognized as available for future development by Whistler Blackcomb. These bed units, or any portion thereof, could not be developed on the lands under the LUC; this would require an amendment to the LUC that would require approval by Council. Given the mandated LUC termination process, and the municipality’s previous desire to discharge LUCs with replacement zoning for proposed new developments or changes in use and density through owner initiated rezonings, such a proposed redevelopment would be subject to a rezoning.
- Rezoning approval to apply the recognized bed units to a specific site and development is subject to consistency with the OCP and the criteria specified for the evaluation of rezonings.

RMOW has acknowledged that the replacement zoning does not include permitted uses for lodges, hostels, hotels, single or duplex or multiple residence residential development on the basis that they are not “existing uses” of the lands subject to the land use contracts. This is a narrower view of “like for like” principle that RMOW initially represented would preserve our current rights under the LUC. Whistler Blackcomb relied on RMOW’s representation that the new zoning would not result in a loss of development rights and would be “like-for-like” with our current rights. RMOW has not provided an explanation for its departure from this governing principle, and has not explained why the new MC-3 zoning does not, or cannot, incorporate Whistler Blackcomb’s existing, permitted uses under the LUC.

- Staff met with representative from Vail Resorts on March 15, 2022 to provide an overview of the LUC termination process. Specifically, staff presented the generalized LUC regulatory framework to communicate how the framework was later particularized through development approvals and existing development.
- 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. Staff provided a letter in response to this submission to Vail Resorts, attached as Appendix N to [Administrative Report No. 22-064](#), and provided the following information within [Administrative Report No. 22-064](#):

- 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.
- Staff do not recommend including the specified accommodation uses in the MC3 Zone for the following reasons:
 - LUCs are a distinct regulatory tool from zoning. The Blackcomb LUC provided only a highly generalized regulatory framework that was later particularized via development permits, covenants and, in some cases, building permits.
 - 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.
 - While duplex residential buildings, multiple residential buildings, lodges, hotels and hostels are specified as permitted uses in Zone 1 of the LUC, they are not existing uses on the subject lands and have not been provided for in further municipal approvals including covenants and permits registered on title.
 - As described above, there is no basis to include the requested accommodation uses as permitted uses, given the municipality’s existing bed unit allocation policies.

Furthermore, relying on the OCP for the permitted uses that are omitted in the proposed zoning will also result in a more complicated, lengthy, and costly process for Whistler Blackcomb. The rezoning process would require amending bylaws and statutory public hearings and allows for RMOW to refuse the requested uses, where it could not if the permitted uses allowed under the LUC were allowed by the replacement zoning.

- Generally, subject to growth management considerations, the OCP supports accommodation uses on the subject lands.
- 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. 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.
- As noted above, any future development of accommodation uses, either under the LUC or the proposed replacement zoning, would require an application to either rezone the subject lands or to amend the LUC, in addition to a covenant modification. There is no distinction in the statutory process that the municipality follows for a rezoning for just density versus a rezoning for a permitted use and density. Both require evaluation against the OCP rezoning evaluation criteria and follow the same zoning bylaw amendment process. The evaluation would also be similar in nature as in both cases the evaluation would be of both the proposed use and density of the use. There has been no rezoning evaluation of the proposed use for the lands.
- The owner’s suggestion that the Council could not in future refuse to amend the MC3 zoning

regulations for a rezoning application to provide density for accommodation uses, if the accommodation uses were already listed as permitted uses in the zone, is unsound. Proposals to develop accommodation uses would automatically engage the question of appropriateness of the use and its density at the proposed location.

- The rezoning process, and LUC amendment process, are both discretionary processes, which enable the municipality to establish requirements and conditions to address municipal objectives and policies and mitigate potential impacts of proposed developments. This is not available through a development permit process.

Staff recommend no changes to the proposed bylaw as a result of this submission.

Notice, timing, and process

One member of the public suggested that the timing and notice given for the LUC termination process was insufficient to provide members of the public adequate time to comment on the proposed bylaw.

The notice and timing given to owners and members of the public is consistent with that given for other LUC termination files and meets the requirements for notice set out in the *Local Government Act* (LGA).

The letter to owners prior to first and second readings is not required under the LGA, but was undertaken to provide owners an opportunity to review the draft zoning prior to the bylaw being brought before Council. In addition, staff conducted meetings with property owner representatives to describe the LUC termination process, the principles applied, and the details of the proposed replacement zoning.

Staff recommend no changes to the proposed bylaw as a result of this submission.

Map within the notice of Public Hearing

One member of the public raised a question regarding if the subject lands identified in the staff presentation made at the Public Hearing differed from the subject lands identified in the notice of Public Hearing.

The subject lands identified on the notice of Public Hearing, within the proposed bylaw and during the staff Public Hearing presentation are consistent. Staff noted during the Public Hearing that perhaps the submission is referring to a letter to owners that was sent regarding LUC00023 (Land Use Contract Termination Bylaw (Blackcomb Commercial) No. 2351, 2022) and confirmed, that as per the requirements of the LGA, notice of this Public Hearing was also sent to neighbouring properties.

Staff recommend no changes to the proposed bylaw as a result of this submission.

Road Maintenance

One member of the public provided a written submission to inquire if the zoning of municipal roads within the Blackcomb LUC to the RR1 Zone will impact road maintenance to roads outside of the subject lands.

Staff provided a written response confirming that applying the RR1 Zone to municipal roads currently within the Blackcomb LUC is consistent with the zoning of other municipal roads in Whistler and that the zoning of municipal roads will have no impact on road maintenance.

Staff recommend no changes to the proposed bylaw as a result of this submission.

Staff Recommendation:

Staff do not recommend any changes to the proposed bylaw based on the Public Hearing submissions. Staff recommend that the proposed bylaw be given third reading without further revision.