

STAFF REPORT TO COUNCIL

PRESENTED: June 21, 2022
FROM: Planning – Policy
SUBJECT: LAND USE CONTRACT TERMINATION BYLAW (BLACKCOMB COMMERCIAL)
NO. 2351, 2022 – PUBLIC HEARING, THIRD READING AND ADOPTION
REPORT

REPORT: 22-094
FILE: LUC00023

RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

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

RECOMMENDATION(S)

That Council consider giving third reading to “Land Use Contract Termination Bylaw (Blackcomb Commercial) No. 2351, 2022”; and further

That Council consider adopting “Land Use Contract Termination Bylaw (Blackcomb Commercial) No. 2351, 2022” as permitted under section 480 of the *Local Government Act*.

PURPOSE OF REPORT

The purpose of this report is to present “Land Use Contract Termination Bylaw (Blackcomb Commercial) No. 2351, 2022” (the LUC Termination Bylaw) to Council for consideration of third reading and adoption. This report also provides a summary and review of written and verbal submissions made during the Public Hearing process. Staff are not recommending any changes to the LUC Termination Bylaw based on Public Hearing submissions.

☐ Information Report ☒ Administrative Report (Decision or Direction)

DISCUSSION

Background

The subject lands are the predominantly visitor-oriented mixed accommodation and commercial developments located adjacent to Blackcomb Base One, which is a principal portal up Blackcomb Mountain and contains essential skiing facilities, outdoor recreation access, day facilities and associated auxiliary commercial uses. A map of the subject lands is included as Appendix A. The subject lands comprise five developed properties referred to as follows:

- | | | |
|---------------------|--------------------|----------|
| 1. Chateau Fairmont | 4599 Chateau Blvd | VAP21501 |
| 2. Le Chamois | 4557 Blackcomb Way | VAS2753 |

JUNE 21, 2022

3. Glacier Lodge	4573 Chateau Blvd	VAS2266
4. Embarc Whistler	4580 Chateau Blvd	LMS1252
5. Blackcomb Springs	4899 Painted Cliff Rd	LMS2364

The purpose of the LUC Termination Bylaw is to terminate the Blackcomb LUC from the subject lands and apply two different zones to applicable portions of the subject lands. The proposed replacement zoning consists of: 1) a new CC4 Zone (Commercial Core Four); and 2) a new TA18 Zone (Tourist Accommodation Eighteen). The TA18 Zone is proposed to be applied to Blackcomb Springs, while the CC4 Zone is proposed to be applied to the other four properties comprising the subject lands. The location of the zones proposed to be applied to the LUC areas is shown in Schedule 1 of the proposed LUC Termination Bylaw. The proposed CC4 Zone and TA18 Zone are included as Schedules 2 and 3 of the LUC Termination Bylaw, respectively.

The LUC Termination Bylaw received first and second readings from Council on May 24, 2022. On that date, Council also authorized staff to schedule a Public Hearing for the LUC Termination Bylaw and to provide notice of the Public Hearing.

The May 24, 2022 [Administrative Report No. 22-075](#) provides detailed information on the LUC termination process, the Blackcomb LUC, site context, and the proposed replacement zoning, along with the community engagement that had been completed and analysis of submissions that were received.

Analysis

The Resort Municipality of Whistler (RMOW) held a Public Hearing on the proposed LUC Termination Bylaw on June 8, 2022. The Public Hearing provided a statutory opportunity for members of the public to make verbal representations and submit written comments to Council respecting matters contained in the proposed bylaw. The Public Hearing was conducted consistent with statutory requirements, including public notice requirements.

There were 80 written submissions and eight verbal representations made by the public as part of the Public Hearing process. One written submission was not included in the late correspondence part of the Public Hearing package on June 8, 2022 due to a technical issue; this submission is attached to this report as Appendix B and has been added to the permanent Public Hearing record.

Section 465(5) of the *Local Government Act* (LGA) requires that a written report of the Public Hearing, containing a summary of the nature of the representations respecting the bylaw that were made at the Public Hearing, be prepared and maintained as a public record. **Staff's summary and review of the representations and submissions, along with staff's associated recommendations, are provided in the Public Hearing summary report in Appendix C.** The summary report is not intended to present verbatim the detail of the representations and submissions. While Appendix C provides the Public Hearing summary report, for context, the submissions to Council provided by subject property owners related to the following:

- Adherence to the “like-for-like” principle;
- Permitted uses for Blackcomb Springs within the TA18 Zone;
- Density;
- Comparative analysis of the LUC and replacement zoning; and

- Notice, timing and process.

Staff do not recommend any changes to the LUC Termination Bylaw based on the Public Hearing submissions. While details are provided in Appendix C, staff do not recommend any changes for the following key reasons:

- Provincial legislation does not require “like-for-like” zoning. The “like-for-like” principle was developed by staff and adopted by Council to guide the creation of replacement zoning throughout the LUC termination process. Staff have developed replacement zoning for the subject lands following the “like-for-like” principle.
- The “like-for-like” principle uses the entire regulatory framework 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.
- To enable Council and owners to confirm that the “like-for-like” principle is being followed with regard to the proposed bylaw, staff provided supporting documents consisting of RMOW LUC bylaws, LUC title documents, covenants and Blackcomb Development Permits/Plans.
- “Residential” was not included as a permitted use in the TA18 Zone for Blackcomb Springs as the property has a Phase 2 rental pool covenant and the use is not consistent with the Visitor Accommodation Official Community Plan (OCP) land use designation for this property, the designation for the property under Table 5B Hotel and Phase 2 Rental Pool Accommodation under Zoning and Parking Bylaw No. 303, 2015, and the designation for the property under Council Policy G-26: Tourist Accommodation Properties Zoning and Covenant Use Provisions, May 23, 2017.

The request to add residential use, and for RTA (Residential Tourist Accommodation) zoning for the property, would be in conflict with the Phase 2 covenant and the limitations on owner use, creating confusion and potential enforcement issues. The Phase 2 covenant was entered into by the developer of the property to satisfy public bed requirements under the LUC, supporting the RMOW’s warm bed policy to secure availability of accommodations for visitors to the resort community, fundamental to Whistler’s tourism economy. The Tourist Accommodation Review Project completed in 2016-2017 confirmed the importance of the secure supply of warm beds and in particular for hotel and Phase 2 rental pool properties, which include Blackcomb Springs.

Further, adding residential use for this property would be considered a significant departure from the “like-for-like” principle. Such a proposal to add residential use is most appropriately considered through a rezoning application and covenant modification process.

- Prior to Council’s consideration of first and second readings, staff included provision for “seasonal residential use” as part of both the CC4 Zone and TA18 Zone to allow for owner occupancy in accordance with the terms of any rental pool covenant registered on title.
- The additional gross floor area already provided in the proposed zones (three percent

on auxiliary gross floor area and 100 square metres of commercial gross floor area) is sufficient to allow incremental development for each property to support the overall vitality and efficient operations over time for these properties. The request to permit an additional gross floor area equal to 3 percent of the total existing gross floor area, including auxiliary, commercial and accommodation floor area, was considered to be a significant departure from the “like-for-like” principle, with potential community effects most appropriately considered through a rezoning process.

- Notice, timing and process is consistent with other LUC termination files and meets the requirements set out in the LGA.

POLICY CONSIDERATIONS

Relevant Council Authority/Previous Decisions

[May 24, 2022: Administrative Report No. 22-075](#), Land Use Contract Termination (Blackcomb Commercial) No. 2351, 2022 Report

[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 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 May 24, 2022 [Administrative Report No. 22-075](#) provides a review of the relevant policies within the OCP's Growth Management chapter (Chapter 4).

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 and Meetings with Strata Representatives

On April 14, 2022, staff distributed a letter to affected property owners that informed them of the commencement of the LUC termination process and provided a copy of the draft proposed CC4 Zone for owners' information and comment. The letter to registered owners invited individuals to submit written comments on the draft zone by May 16, 2022; this was a 30-day comment period consistent with that applied for all other properties subject to the LUC termination process.

In addition to the letter to registered owners, municipal staff communicated with strata and owner representatives and provided them the opportunity to meet with staff to review the LUC process and proposed draft replacement zoning and answer questions. Staff met with representatives for each of the properties except Embarc Whistler, for which no response was received.

In response to the letter to registered owners and the meetings, staff received a number of submissions with questions and comments. These submissions related to: density, permitted uses, height, the differences between the LUC and the proposed zoning, unsuitable zoning, timing and notice, and general questions related to LUCs. The submissions received and staff's responses where applicable are provided in Appendix C to [Administrative Report No. 22-075](#).

JUNE 21, 2022

In response to the submissions, staff made a number of changes to the proposed CC4 Zone and created the new RTA18 Zone for Blackcomb Springs before introducing the LUC Termination Bylaw to Council for consideration of first and second readings. While the May 24, 2022 [Administrative Report No. 22-075](#) details these changes, the revisions to the proposed replacement zoning are summarized as follows:

- To the CC4 Zone: “inn” was added as a permitted use; residential use for specified units in Le Chamois was recognized; the zone explicitly recognized owner use of all accommodation units in Le Chamois, Glacier Lodge and Embarc Whistler in accordance with the terms of any rental pool covenant registered on title to the unit; additional limited incremental density for each property was added for commercial and auxiliary uses; and the provision to specify each building as a hotel, inn, lodge or tourist accommodation building was removed.
- A new TA18 Zone was developed for Blackcomb Springs that: provided for limited commercial uses including restaurant; explicitly recognized owner use of all dwelling units in accordance with the terms of the rental pool covenant registered on title to the unit; and included additional limited incremental density for the property for commercial and auxiliary uses.

Public Hearing

As noted above, a Public Hearing on the proposed LUC Termination Bylaw, which was subject to public notice requirements, was held on June 8, 2022. Eighty written submissions and eight verbal representations were received from the public during the Public Hearing process. Staff’s summary and review of the written submissions and verbal representations, along with staff’s associated recommendations, are provided in the Public Hearing summary report in Appendix C.

Future Notifications

The LGA also requires that written notice be provided to property owners notifying them of the termination of the LUC after adoption of the LUC Termination 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 – Additional Public Hearing Written Submission

Appendix C – Summary and Review of Public Hearing Submissions

“Land Use Contract Termination Bylaw (Blackcomb Commercial) No. 2351, 2022” (Included in Council Package)

SUMMARY

This report presents the LUC Termination Bylaw to Council for consideration of third reading and adoption. The report also provides a summary and review of the written and verbal submissions made during the Public Hearing process. Staff are not recommending any changes to the proposed LUC Termination Bylaw.

SIGN-OFFS

Written by:

Philip Gibbins,
Planner – Policy

Courtney Beaubien,
Manager of Planning – Policy

Reviewed by:

Mike Kirkegaard,
Director of Planning

Jessie Gresley-Jones,
General Manager of Resort Experience

Virginia Cullen,
Chief Administrative Officer