



# WHISTLER

## REPORT | ADMINISTRATIVE REPORT TO COUNCIL

**PRESENTED:** May 5, 2020  
**FROM:** Resort Experience  
**SUBJECT:** BAYSHORES LAND USE CONTRACT TERMINATION – FIRST AND SECOND READINGS

**REPORT:** 20-033  
**FILE:** LUC00003

### COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

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

### RECOMMENDATION

**That** Council consider giving first and second readings to “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020”; and

**That** Council authorize staff to schedule a Public Hearing for “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” and to provide notice of the Public Hearing; and

**That** Council authorize staff, subject to adoption of “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020”, 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 (Bayshores) No. 2213, 2020”, to give written notice of termination to the affected property owners pursuant to section 549 of the *Local Government Act*.

### REFERENCES

Appendix “A” – Subject Property Map

Appendix “B” – Letter to Owners regarding Open House

Appendix “C” – Open House Presentation

Appendix “D” – Letter from Mr. Murray A. Braaten regarding Strata Plan VAS695

Administrative Report to Council No. 19-117 – LUC003 – Bayshores Land Use Contract Termination, dated September 17, 2019 (Not attached)

Information Report to Council No. 16-055 – Land Use Contract Termination Process, dated May 3, 2016 (Not attached)

### PURPOSE OF REPORT

The purpose of this Report is to present “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” 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 “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020”. The proposed bylaw will terminate the Bayshores Land Use Contract (LUC) from the subject lands and zone the subject lands RM70 Zone (Residential Multiple

Seventy) (RM70 Zone) under “Zoning and Parking Bylaw No. 303, 2015” (the Zoning Bylaw). If the bylaw is adopted, the Bayshores LUC will be terminated from the subject lands and the zoning will take effect one year from the date of adoption of the bylaw. The subject lands are identified in Appendix “A”. The proposed zoning applies to ten different strata properties, representing a total of 248 strata lots. The strata properties are VAS817, VAS904, VAS632, VAS808, VAS809, VAS811, VAS653, VAS1005, VAS695 and VAS755.

The proposed zoning bylaw has been prepared consistent with provincial regulations for the termination of Land Use Contracts, and with the RMOW’s project approach and principles for its Land Use Contract discharge process.

## DISCUSSION

### Background

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 unilateral, local government initiated termination of LUCs prior to June 30, 2022, provided zoning is in place prior to termination. The LGA also stipulates that the LUC remains applicable until one year after the adoption of the zoning bylaw, after which time the zoning bylaw comes into force.

On May 3, 2016, staff presented Information Report to Council No. 16-055 – Land Use Contract Termination Process. Report No. 16-055 outlined the new legislation and recommended an approach for early termination of all LUCs in Whistler. The report identified eight LUCs in Whistler affecting 2,600 properties, 2,568 of which are stratified properties governed by 60 separate strata corporations, with only 31 fee simple lots regulated by LUCs. The project approach targeted the discharge of one to two LUCs per year. To date, two LUCs, Alpine Meadows and Brio, have been terminated.

The May 3, 2016 staff report also described four overarching principles that would be applied by the RMOW through its zoning and discharge process. These are excerpted from that report as follows:

1. Adherence to legislation: New regulations will be drafted and adopted in accordance with the requirements of the *Community Charter* and *Local Government Act*. In cases where applicable legislation prohibits land use contract regulations from being enacted in current municipal bylaws, these regulations cannot be carried forward.
2. Public engagement: *Local Government Act* requirements will be met and additional consultation with affected property owners will occur.
3. Alignment of regulations: Wherever possible, existing land use contract development rights will be preserved and mirrored in new land use regulations. Similarly, site specific land use contract modifications will be incorporated where practical.

4. Consistent and equitable approach: Through collective engagement, affected property owners will be treated consistently and fairly through the termination and rezoning process. There will be no fees charged to property owners for the termination and zoning process.

The Bayshores LUC was enacted in April 1978. It is registered on the affected property titles as F80566. On September 17, 2019, staff presented Administrative Report to Council No. 19-117 – LUC003 – Bayshores Land Use Contract Termination. Report No. 19-117 detailed the history of the Bayshores LUC and its relationship to Zoning Bylaw No. 9. Report No. 19-117 also presented a draft of the proposed RM70 Zone, which is the zoning proposed to replace the Bayshores LUC for the subject lands upon its termination. On September 17, 2019, Council authorized staff to prepare the necessary bylaws to rezone lands subject to the Bayshores LUC and to terminate the Bayshores LUC pursuant to sections 547 and 548 of the LGA.

Subsequent to the September 17, 2019 regular meeting of Council, staff distributed an information letter to property owners within the subject lands. This letter provided the draft proposed zone, invited owners to an open house and provided an invitation to submit written comments on the proposed zoning to replace the LUC. The open house was held on November 25, 2019.

### **Proposed Bylaw**

“Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” will terminate the Bayshores LUC from the subject lands and assign the RM70 Zone to the subject lands in Appendix “A”.

The RM70 Zone is intended to mirror the regulations established by the LUC, applicable permits and covenants for each strata lot. Overall, the RM70 Zone divides the LUC area into different sections based on strata plans to reflect the historic patterns of development and to provide specifications regarding permitted land use, maximum gross floor area (GFA), setbacks and maximum height. As the RM70 Zone will be added to the RMOW’s current Zoning Bylaw, the general regulations from the Zoning Bylaw that provide for auxiliary residential dwelling units and GFA exclusions will also apply to the subject lands currently within the Bayshores LUC area.

The RM70 Zone presented in “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” reflects the draft proposed zone that was provided to Council on September 17, 2019 and distributed to property owners with revisions to address off-street parking and to tighten the bylaw language based on legal review to clarify interpretation. To address Council’s comments regarding parking concerns in the Bayshores LUC area, the clause respecting off-street parking and loading was revised to clarify that parking spaces required in respect of the use of a parcel within a bare land strata plan may be located on strata roads *within the same strata plan*; this reflects existing conditions and historic use. Revisions were also made to address allowances for covered or enclosed parking which is excluded from the calculation of gross floor area similar to other residential zones. The maximum areas established are specified in the density provisions of the bylaw, and reflect existing conditions based on building permit records. Additionally, Table 13A was revised to clarify the correct interpretation of the specified maximum GFA and setback requirements which have not been changed.

The LGA delays the effect of any bylaw discharging an LUC for one year. Subsequently, if the proposed termination bylaw is ultimately adopted by Council, the LUC will not be formally terminated from the subject lands and the zoning will not take effect until one year from the date of adoption of the bylaw (approximately July 2021).

## **WHISTLER 2020 ANALYSIS**

Please refer to the analysis provided in Administrative Report to Council No. 19-117 – LUC003 – Bayshores Land Use Contract Termination, dated September 17, 2019.

## **OTHER POLICY CONSIDERATIONS**

Please refer to the analysis provided in Administrative Report to Council No. 19-117 – LUC003 – Bayshores Land Use Contract Termination, dated September 17, 2019.

## **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.

## **COMMUNITY ENGAGEMENT AND CONSULTATION**

### **Letter to Owners**

On November 8, 2019, staff distributed a letter to affected property owners. This letter provided an overview of the provincial requirement for municipalities to terminate LUCs and described Council's permission to proceed with terminating the Bayshores LUC. The draft proposed zone was attached to the letter for owners' information. The letter also invited property owners to attend an open house and identified the opportunity for written comments on the draft zone. This letter is provided in Appendix "B".

### **Open House**

Staff held an open house on the termination of the Bayshores LUC and the proposed zone for affected property owners on Monday, November 25, 2019 from 5 p.m. to 7 p.m. at the Whistler Conference Centre. Posters on the termination process and draft proposed zone were displayed in the meeting room. At this open house, staff presented an overview of the proposed zone and were available for questions about the draft zone and the LUC termination process. The staff presentation is provided in Appendix "C". A total of 15 people attended the open house; this included 12 members of the public and three members of RMOW Council.

### **Public Submissions**

The letter to owners invited individuals to submit written comments on the draft zone by December 15, 2019. In response to the letter to owners and public open house, staff received one public submission. The received letter is from solicitors who have identified themselves as representing the strata units within Strata Plan VAS695, known as The Seasons. The letter requests that the proposed zone be amended to allow tourist accommodation in The Seasons. The letter claims that tourist accommodation is a pre-existing use of The Seasons and that this use is permitted pursuant to the Bayshores LUC. Staff note that a title search shows that the fractional ownership component referenced in the letter applies to six of the 13 strata lots within The Seasons property (Strata Plan VAS695), and no other properties in the Bayshores LUC area (242 strata lots).

Tourist accommodation use is not permitted by the Bayshores LUC. The Bayshores LUC restricts the use of the lands to "single, duplex and multiple residential dwellings" as defined by Zoning Bylaw No. 9, 1975. There is no reference to tourist accommodation use in the Bayshores LUC. As such, staff have

not amended the proposed RM70 Zone to include tourist accommodation as a permitted use of The Seasons.

### **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 “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020”, 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 notification be provided to property owners notifying them of the adoption of the bylaw terminating the LUC. This notice must state the date of LUC termination and advise the owners of their right to apply to the Board of Variance for a delay of early termination. Staff will carry out this notification should “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” be adopted by Council.

### **SUMMARY**

This Report presents “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” to Council for consideration of first and second readings. This Report also requests that Council authorize staff to schedule a Public Hearing for “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020”. The proposed bylaw will terminate the Bayshores LUC from the subject lands and zone the subject lands RM70 Zone.

Respectfully submitted,

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and

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for

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