



REPORT | INFORMATION REPORT TO COUNCIL

PRESENTED: May 3rd, 2016

REPORT: 16-055

FROM: Resort Experience

FILE: 7648.02

SUBJECT: LAND USE CONTRACT TERMINATION PROCESS

COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

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

RECOMMENDATION

That Information Report No. 16-055 regarding the Land Use Contract termination process be received.

REFERENCES

Appendix A – Map of Land Use Contracts in Whistler

Appendix B – Provincial Bulletin: The *Local Government Act* Pertaining to LUC Termination

PURPOSE OF REPORT

The purpose of this report is to inform Council of the process for terminating land use contracts as a result of recent changes to provincial legislation which automatically terminates all land use contracts in BC on June 30th 2024 and requires municipalities to rezone all lands regulated by land use contracts by June 30th 2022.

DISCUSSION

Background

Land use Contracts Generally

Land use contracts existed as a regulatory tool between 1970 and 1980. Land use contracts were used in place of zoning and were essentially a contract between a Municipality and property owner (usually a developer). They could regulate virtually all aspects of development (land use, siting, infrastructure, amenities, form and character, environmental etc.) and could “lock in” regulations by rendering any future development-related bylaws of the municipality inapplicable. Similar to restrictive covenants, land use contracts were registered on the titles of the lands they regulated and could only be amended or discharged by agreement between the Municipality and land owner. The legislation authorizing the use of land use contracts was repealed in 1978, however land use contracts entered into prior to these legislation changes remained in force.

The specificity of land use contracts indicates that—unlike zoning regulations—they were intended to address only a single generation of development (E.g. reference to specific building layouts, plans,

land use mixes, servicing obligations). Thus land use contracts generally became obsolete once the development they regulated was fully completed; often complicating the approval process for renovations and redevelopment. Broadly applicable amendments to land use regulatory bylaws, even those that expanded development rights, did not apply unless the owner initiated a land use amendment or discharge process.

Land Use Contracts in Whistler

There are eight land use contracts in Whistler affecting 2,600 properties 2,568 of which are stratified properties governed by 60 separate strata corporations. Only 31 fee simple lots are regulated by land use contracts.

Each land use contract is a unique and complex regulatory document. Even the same contract can vary from property to property, as over the years a number of owners have received approvals for site-specific modifications to their land use contracts. The exact number of site specific modifications is currently unknown. Two land use contract areas have been “zoned over” (Brio and Alpine). This zoning does not apply until the land use contract is terminated.

Bill 17 and the End of Land Use Contracts in BC

In May of 2014, the *Local Government Act* was amended to:

- automatically terminate all Land Use Contracts in BC on June 30, 2024;
- require municipalities to zone all lands subject to Land Use Contracts by June 30, 2022;
- allow unilateral, local government-initiated, termination of land use contracts if zoning is in place;
- allow property owners to apply to the Board of Variance for temporary exemptions from early termination; and
- grant non-conforming use and siting rights for properties developed under an LUC, which do not conform to new zoning.

Since the adoption of the new provincial legislation, staff have been developing an implementation strategy.

Process and approach for discharging land use contracts

There are essentially two options for the RMOW to meet the new requirements of the *Local Government Act* for land use contract termination:

1. Zone all lands affected by land use contracts by 2022 and wait for contracts to automatically terminate in 2024; or
2. Zone lands affected by land use contracts and terminate concurrently with the adoption of zoning.

Staff have developed a process to proceed with the second option, executed at a rate of 1-2 land use contracts/year. The process is expected to have four parts:

1. Assessment and preparation: Currently underway, staff will review all of Whistler's land use contracts, determining the general scope of the regulations in each land use contract and developing a termination schedule.

2. Property owner communication: Staff will host a general information session each year followed by a tailored session for land owners whose land use contract is scheduled for termination. In the second session, property owners will be able to review and comment on the zoning and other regulations that will replace their land use contract.
3. Bylaw preparation and consideration process: Draft bylaws will be finalized incorporating input from the public consultation and proceed through the Council consideration process. This includes a legislated public hearing and notification process (see public consultation below).
4. Repeat 2 & 3 until all LUCs are discharged: Steps 2 and 3 will be repeated annually until all land use contracts are discharged. The deadline to have zoning in place for land use contract areas is June 30th 2022. Any board of variance exemptions to early termination will expire on June 30th 2024, when all land use contracts in BC automatically terminate.

Each land use contract differs substantially and over 3,000 property owners will be affected by the termination process. To ensure consistency in applying the above process, Staff have also developed four overarching principles:

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 (see public consultation below).
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. “Spent” regulations—i.e. regulations that are no longer applicable¹—will not be carried forward into new regulations.
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.

It is important to note that rules for site-specific amendment and discharge of land use contracts that existed prior to amendments to the *Local Government Act* in 2014 remain in effect. For this reason owner-initiated applications to discharge or amend land use contracts will continue to be received and processed. These applications will follow a different approval process than the one described in this report.

¹ Examples of “spent” regulations include requirements to build amenities or infrastructure which has already been built or rules that have been rendered irrelevant or redundant by the enactment of newer rules.

WHISTLER 2020 ANALYSIS

W2020 Strategy	TOWARD Descriptions of success that resolution moves us toward	Comments
Built Environment	1. Limits to growth are understood and respected.	The termination of LUCs in Whistler will eliminate regulatory confusion and allow for a more effective regulatory framework to better manage growth.
Built Environment	9. Building design, construction and operation is characterized by efficiency, durability and flexibility for changing and long-term uses.	Zoning is more flexible and easier to modify to reflect new building techniques and changing uses.

OTHER POLICY CONSIDERATIONS

The proposed LUC termination process directly supports two strategies identified in the RMOW's 2015 Corporate Plan and at least one policy identified in Official Community Plan Bylaw 1983.

Policy Source	Policy	Comments
2015 Corporate Plan	Advance progressive community planning tools, policies and processes.	The proposed process provides for a timely and responsible approach to meet Provincial requirements for LUC termination. A clearer and simpler regulatory regime for development will be created.
2015 Corporate Plan	Ensure community engagement is structured to effectively support municipal decision making.	The proposed process includes a targeted engagement program to ensure all stakeholders can access the information they need and have meaningful input.
2015 Corporate Plan	Execute on organizational commitments to improve customer service	The LUC regulatory system is more time consuming and costly for both applicants and the RMOW. Replacing LUCs with zoning will have a positive impact on customer service.
Official Community Plan Bylaw 1983	Policy 3.1.2.1: Support flexibility, diversity, adaptability and efficiency in land use development so the resort community can derive the greatest benefit from existing development.	Zoning is a more flexible tool which better supports flexible land use development and redevelopment.

BUDGET CONSIDERATIONS

Because the proposed LUC termination process will occur over a period of six years, budget implications will be realized on an annual basis. Costs for work to be done in 2016 have been allocated in the Planning Department budget. Staff will account for the necessary costs of implementing the project each year through the annual budgeting processes. No fees to property owners will be charged as a result of the termination program. However land owners who wish to apply to the Board of Variance for a temporary exemption from early discharge are required to pay application fees.

COMMUNITY ENGAGEMENT AND CONSULTATION

The proposed rezoning and termination process includes a consultation program that exceeds the requirements of the *Local Government Act*. Highlights include:

- An initial press release has been prepared outlining the proposed process and where property owners can find more information. This release will be sent out shortly after Council receives this report.
- A page on the RMOW's website will be added (whistler.ca/landusecontracts) updated with information about the LUC termination process and a direct e-mail address will be established and continually monitored (landusecontracts@whistler.ca).
- An extensive list of frequently asked question (FAQs) has been prepared and will be posted on the RMOW's website and included with mail out notifications to property owners
- Annual open houses will be held where for the general public can obtain general information about the land use contract termination and rezoning process and where property owners with land use contracts scheduled for termination can provide feedback on the proposed zoning.
- *Local Government Act* requirements for notification and consultation. This includes:
 - A public hearing for each rezoning and LUC termination bylaw must occur prior to final consideration by Council. This includes newspaper notification and mail notification to affected property owners.
 - Written notification to property owners once the contract is terminated informing them of Council's decision, the date of LUC termination and their right to apply to the Board of Variance for an exemption from early termination.

SUMMARY

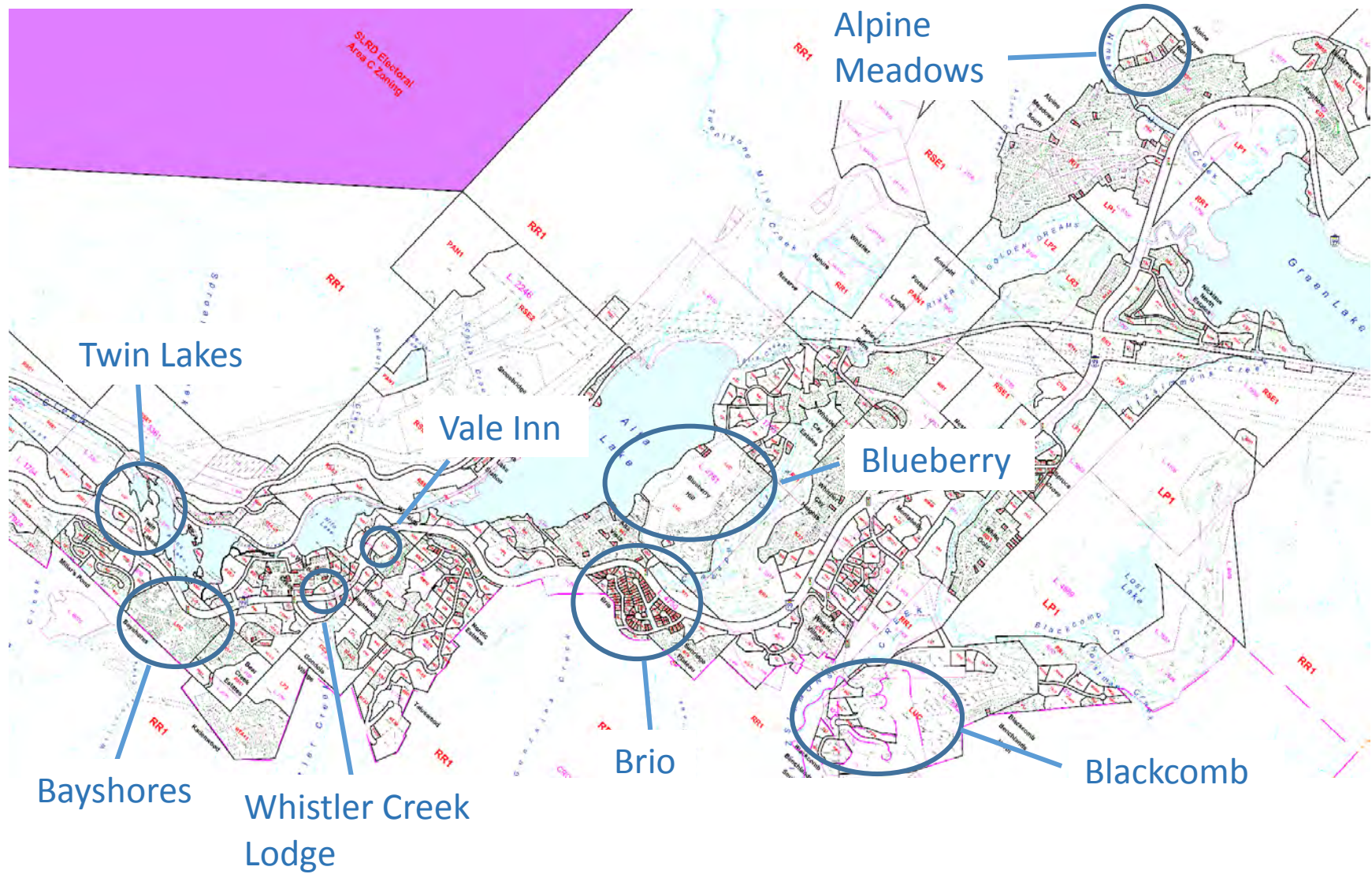
Recent changes to the *Local Government Act* terminates all land use contracts in BC on June 30, 2024. Local governments can either enact zoning no later than June 30, 2022 and wait for automatic termination in 2024; or enact zoning and terminate land use contracts immediately. Staff have developed a plan consistent with the latter, executed over time at a rate of 1-3 land use contracts each year.

This approach accelerates the termination process providing time to accommodate public input, complete a thorough and fair zoning process, ensure established development rights are protected where warranted, minimize the impact on RMOW resources and ensure that the termination is equitably applied to all affected land owners. Staff are recommending that this report be received as information.

Respectfully submitted,

Jake Belobaba
Senior Planner
for
Jan Jansen
General Manager of Resort Experience

Appendix "A" – Map of Land Use Contracts in Whistler



Appendix “B”
Provincial Bulletin: *The Local Government Act* Pertaining to LUC Termination

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Miscellaneous Statutes Amendment Act, 2014

BULLETIN

Miscellaneous Statutes Amendment Act, 2014 (Bill 17, 2014)

Miscellaneous Statutes Amendment Act, 2014 (Bill 17, 2014)

Amendments to *Local Government Act*, *Community Charter* and *Vancouver Charter* are now in force (as of the date of Royal Assent-May 29, 2014)

Bill 17, 2014, the *Miscellaneous Statutes Amendment Act, 2014* includes amendments to streamline local and provincial government land use planning and development approvals, modernize outdated legislative tools and provide greater certainty and transparency for residents and those who develop and build within communities.

Specifically, Bill 17 introduced amendments to the *Local Government Act*, *Community Charter* and *Vancouver Charter* to remove unnecessary ministerial approvals for certain land use planning and development bylaws; allow modern land use policies and practices to replace land use contracts; and, protect developers from increases in development cost charges (DCC) (or development cost levies (DCL) in the City of Vancouver) for 12 months after DCC/DCL rate increases are made, where a rezoning or development permit application is in process.

Amendments:

Amendments to the *Local Government Act*, *Community Charter* and *Vancouver Chart*

Removing the requirement for Ministerial approval for Regional District (RD) land use bylaws.

The following amendments remove the requirement for Ministerial approval of certain RD land use bylaws, streamlining the RD bylaw approval process. They also broaden the authority of the Minister to develop provincial policy guidelines in relation to RD land use bylaws, providing an opportunity to provide clarity regarding provincial interests and support the appropriate notification and referral of RD bylaws to Provincial ministries and agencies.

- Removes requirement for Ministerial approval of RD OCP, zoning, subdivision servicing and temporary use bylaws (LGA s. 882, 913, 921, 930, 938).
- Provides discretionary authority for the Minister to require approval of RD bylaws (LGA s. 874.1).
- Broadens the existing authority of the Minister to develop provincial policy guidelines in relation to RD zoning, subdivision servicing and temporary use bylaws (LGA s.873.2).

- Removes the requirement for the Minister responsible for the *Transportation Act* to approve subdivision servicing bylaws, if an RD provides the subdivision approving officer services, and provides discretionary regulatory authority for that minister to require approval of such bylaws (LGA s. 938(3.1)).

Removing Ministerial approval for soil removal and deposit bylaws that include fees

1. Removes the requirement for the Minister to approve the application of fees within municipal soil removal and deposit bylaws (CC s. 195(3)), and for such RD bylaws (LGA s. 723(7)).
2. Note: The Ministry of Environment maintains its approval role for soil deposit bylaws, and the Ministry of Energy and Mines maintains its approval role for soil removal bylaws.

Terminating Land Use Contracts (LUC):

1. Provides for the termination of all land use contracts in affected B.C. municipalities and RDs on the “sunset” date of June 30, 2024 and requires all local governments to have zoning in place for lands covered by land use contracts by June 30, 2022 (LGA Part 26, Division 7.1, s. 914.1).
2. Enables local governments to undertake early termination of land use contracts under certain conditions (LGA, Division 7.1, s. 914.2), namely:
 - early termination bylaw is adopted on or before June 30, 2022;
 - early termination bylaw comes into force at least one year after it is adopted;
 - a public hearing, which cannot be waived, is held (LGA s. 892, 893);
 - zoning is in place where land use contracts are to be terminated; and,
 - proper land title office is notified of early termination bylaw within 30 days of its adoption.
3. Requires local governments to give written notice of land use contract termination, when land use contracts are terminated early or in advance of the sunset date of June 30, 2024 (LGA s. 914.3).
4. Provides Boards of Variance with new authority to extend the dates set in early termination bylaws for reasons of hardship, up to the sunset date of June 30, 2024 at the latest (LGA s.901.1).
5. Provides non-conforming use status to land, buildings and structures that are on land subject to a land use contract after land use contracts are terminated (LGA s. 911).
6. Provides that compensation is not payable with regard to land use decisions for the termination of land use contracts, which extends the current no-compensation provisions currently provided in relation to land use bylaws (LGA s. 914).
7. Note: this amendment does not impact the City of Vancouver, as there are no lands affected by land use contracts in the City.

Providing in-stream protection from DCC/DCL rate changes

8. Provides developers with 12 months protection from increases to development cost charges (DCCs) if a DCC bylaw is adopted after an application for a rezoning or a development permit has been submitted to a local government for approval (in a form acceptable to the local government and fees paid) (LGA s.937.001).
 - The same level of protection currently exists for subdivision (LGA s. 943) and building permit applications (LGA s. 937.001).

9. Provides that the same 12-month protection applies to development cost levy (DCL) rate changes in the City of Vancouver for development permit and rezoning applications (in a form acceptable to the City and fees paid) (VC s.523D).

The City of Vancouver currently has the same level of protection for building permit applications (VC s. 523D (8.2)).

Practical Considerations:

Royal Assent was received on May 29, 2014.

Statutes Amended:

- *Local Government Act*: sections 5, 723, 870, 873.2, 874.1, 876, 882, 890, 892, 893, 900, 901.1, 911, 913, 914, 914.1, 914.2, 914.3, 914.4, 921, 930, 937.001, 938
 - *Community Charter*: section 195
 - *Vancouver Charter*: sections 2.1, 523D
 - Bill 17, 2014
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http://www.cscd.gov.bc.ca/lqd/intergov_relations/planning_bulletins/bulletinBill17.htm (retrieved December 7, 2015)