



RESORT MUNICIPALITY OF WHISTLER

4325 Blackcomb Way TEL 604 932 5535
Whistler, BC Canada V8E 0X5 TF 1 866 932 5535
whistler.ca FAX 604 938 8109

STAFF REPORT TO COUNCIL

PRESENTED: May 10, 2022 **REPORT:** 22-065
FROM: Planning – Policy **FILE:** LUC00004
SUBJECT: LAND USE CONTRACT TERMINATION BYLAW (HORSTMAN ESTATES) NO. 2323, 2022 – PUBLIC HEARING, THIRD READING AND ADOPTION REPORT

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 (Horstman Estates) No. 2323, 2022”; and further

That Council consider adopting “Land Use Contract Termination Bylaw (Horstman Estates) No. 2323, 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 (Horstman Estates) No. 2323, 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 the Public Hearing submissions.

- Information Report Administrative Report (Decision or Direction)

DISCUSSION

Background

The Horstman Estates subdivision lies on the outskirts of the Blackcomb Benchlands between Painted Cliff Road and the foot of Blackcomb Mountain. This is a bareland strata subdivision consisting of 33 single family residential lots of various sizes. The Horstman Estates strata plan is split zoned: the lands lie partially within the Blackcomb Land Use Contract (LUC) area, and partially within the RS3 Zone (Residential Single Family Three) of the RMOW’s current Zoning and Parking Bylaw No. 303, 2015 (Zoning Bylaw). Two maps showing affected properties are included in Appendix A: Map 1 shows the entirety of the Horstman Estates area, which is affected by the revised density provisions in the RS3 Zone; and Map 2 shows the lands where the Blackcomb LUC is proposed to be terminated.

The LUC Termination Bylaw received first and second readings from Council on March 22, 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 purpose of the LUC Termination Bylaw is to terminate the Blackcomb LUC from the applicable subject lands and apply a revised version of the RS3 Zone to the entirety of Horstman Estates. Proposed changes to the RS3 Zone are revising the intent statement to remove reference to the Blackcomb LUC, including maximum gross floor areas for each strata lot consistent with restrictive covenant no. GC125596, and updating the parking requirements to reference Part 6 of the Zoning Bylaw.

The March 22, 2022 [Administrative Report No. 22-046](#) provides detailed information on the LUC termination process, the Blackcomb LUC, site context, covenant no. GC125596 and proposed revised RS3 Zone.

Analysis

The Resort Municipality of Whistler (RMOW) held a Public Hearing on the proposed LUC Termination Bylaw on April 19, 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. The Public Hearing was conducted consistent with statutory requirements, including public notice requirements. Six written submissions and three verbal representations were received from the public during the Public Hearing process (numbers do not account for those who spoke more than once).

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 B.** The summary report is not intended to present verbatim the detail of the representations and submissions. While Appendix B provides the Public Hearing summary report, for context, the submissions to Council provided by subject property owners related to the following:

- Inclusions of maximum gross floor area in the proposed revised RS3 Zone;
- Applicability of Part 5, section 26 (Gross Floor Area Exclusions) of the Zoning Bylaw;
- Ability to rebuild in the event of a fire;
- Tourist accommodation as a permitted use in Horstman Estates;
- Rezoning Application File No.001172;
- Discharge of covenant no. GC125596; and
- Request for additional information.

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

MAY 10, 2022

- The inclusion of maximum GFA in the proposed revised RS3 Zone is a reflection of the regulations provided in covenant no. GC125596 and is intended to provide clarity regarding the regulations for each strata lot;
- Part 5, section 26 of the Zoning Bylaw will be applicable to properties within the proposed revised RS3 Zone subject to a covenant modification application;
- In the event of a fire, the use and density provisions of the proposed revised RS3 Zone are intended to provide for the existing approved development, and protections for any potential non-conforming structures are afforded under section 529 of the LGA;
- Tourist accommodation is not recognized as a permitted use in Horstman Estates. Submissions made by a strata lot owner and by the Chair of the strata indicated support for this use and that the strata could address any concerns associated with the use through adoption of strata bylaws. For the reasons described in Appendix B, staff recommend that there is a policy basis for supporting this use. Staff are supportive of consideration of a future rezoning to add this use, should the property owners submit a rezoning application on behalf of the entirety of Horstman Estates. This is a similar process to that pursued in relation to the Snowridge strata which was referenced in the submission, whereby Snowridge was rezoned in 2006 to a RTA (Residential Tourist Accommodation) zone to permit both residential and tourist accommodation use (see Council Report 05-140 attached as Appendix C);
- Should the applicant of File No.001172 choose to follow through with their application, the RMOW will process the application as per the requirements of the LGA and the Land Use Procedures and Fees Bylaw No. 2019, 2012;
- Covenant no. GC125596 is registered on the titles of all the Horstman Estates properties, it does not automatically terminate on a specified date, and it will remain on title and continue to regulate the development of Horstman Estates; and
- The notice and timing given to owners is consistent with that given for other LUC termination files and meet the requirements for notice set out in the LGA.

POLICY CONSIDERATIONS

Relevant Council Authority/Previous Decisions

[March 22, 2022: Administrative Report No. 22-046](#), Land Use Contract Termination (Horstman Estates) 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 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 March 22, 2022 [Administrative Report No. 22-046](#) 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

On February 8, 2022, staff distributed a letter to affected property owners within the LUC portion of Horstman Estates informing them of the commencement of the LUC termination process. The draft revised RS3 Zone was attached to the letter for owners' information. The letter also identified the opportunity for written comments on the draft proposed zone.

In response to the letter to registered owners, the RMOW received two of the same submission from one individual and their representative, and one submission on behalf of strata council for VR2482 (Horstman Estates); the submission on behalf of the strata was subsequently retracted. The March 22, 2022 [Administrative Report No. 22-046](#) includes staff's summary of and response to comments and it also includes the submissions received with substantive questions or comments as Appendix H.

Public Hearing

As noted above, a Public Hearing on the proposed LUC Termination Bylaw, which was subject to public notice requirements, was held on March 1, 2022. Six written submissions and three verbal representations were received from the public during the Public Hearing process. 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 B.

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 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 – Maps

Appendix B – Summary and Review of Public Hearing Submissions

Appendix C – October 17, 2005: Administrative Report No.05-140

Appendix D – Council Policy G-20: Tourist Accommodation Rezoning Policy (May 31, 1999)

"Land Use Contract Termination Bylaw (Horstman Estates) No. 2323, 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 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:

Joanna Rees,
Planning Analyst – Policy

Courtney Beaubien,
Manager of Planning – Policy

Mike Kirkegaard,
Director of Planning

Reviewed by:

Jessie Gresley-Jones,
General Manager of Resort Experience

Virginia Cullen,
Chief Administrative Officer

Map 1



Map 2



SUMMARY AND REVIEW OF PUBLIC HEARING SUBMISSIONS FOR “LAND USE CONTRACT TERMINATION BYLAW (HORSTMAN ESTATES) NO. 2323, 2022”

A Public Hearing on “Land Use Contract Termination Bylaw (Horstman Estates) No. 2323, 2022” (the proposed bylaw) was held on April 19, 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 six written submissions and three verbal representations made by the public as part of the Public Hearing process. A total of six members of the public provided representations or submissions (numbers do not account for those who spoke more than once). All submissions were in relation to the proposed bylaw.

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

Public Submissions:

Submissions were made by property owners within Horstman Estates and comments consisted of the following topics:

- Inclusions of maximum gross floor area (GFA) in the proposed revised RS3 Zone;
- Applicability of Part 5, section 26 (GFA Exclusions) of Zoning and Parking Bylaw No. 303, 2015 (the Zoning Bylaw);
- Ability to rebuild in the event of a fire;
- Tourist accommodation as a permitted use in Horstman Estates;
- Rezoning Application File No.001172;
- Discharge of covenant no. GC125596; and
- Request for additional information.

Staff Review:

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

Inclusion of maximum GFA in the proposed revised RS3 Zone

Four members of the public provided comments regarding the inclusion of the maximum GFA in the proposed revised RS3 Zone (Residential Single Family Three). It was expressed that this change to the RS3 Zone is unnecessary as maximum GFAs are already prescribed in the development covenant registered on title.

There is a development covenant registered on the titles of all the Horstman Estates lots as charge no. GC125596. This covenant provides design criteria for the Horstman Estates subdivision and site specific restrictions for each strata lot including maximum GFAs. The covenant will remain on title and continue to regulate the development of Horstman Estates and is attached to [Administrative Report No. 22-046](#) as Appendix F.

Section 3 of the existing RS3 Zone states: "The maximum permitted floor space ratio (fsr) is 0.35." However, the covenant further restricts the maximum permitted density by establishing a maximum gross floor area limit for each lot in the entire Horstman subdivision, including both portions subject to existing RS3 zoning, as well as the portions currently subject to the LUC. For some properties the maximum GFA permitted by the covenant is less than that determined by applying an FSR of 0.35. To address the effect of the covenant and to provide clarity and transparency between the two documents, the maximum GFAs within covenant no. GC125596 are proposed to be added to the revised RS3 Zone. Regrettably, this change to the zone was added to the proposed zoning subsequent to the letter delivered to owners. However, this proposed change to the RS3 Zone does not ultimately change the maximum GFA permitted, as it is already specified by the covenant registered on title.

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

Applicability of Part 5, section 26 (GFA Exclusions) of the Zoning Bylaw

Two members of the public requested confirmation that Part 5, section 26 of the Zoning Bylaw pertaining to GFA exclusions for in-ground basement floor areas would apply to the density provisions in the proposed revised RS3 Zone. One member of the public also suggested that the applicability of Part 5, section 26 should be specified within the RS3 Zone to provide assurance.

Part 5, section 1 of the Zoning Bylaw specifies that: "Except as otherwise specified in this Bylaw, the following regulations in this Part apply to all zones". As such, once the Blackcomb Land Use Contract (LUC) is terminated and the replacement zoning takes effect, Part 5, section 26 of the Zoning Bylaw will apply to all properties within Horstman Estates. The applicability of Part 5, section 26 is not specified in any other zone and it would be considered redundant to reference this section specifically in the RS3 Zone. Per the provisions under this section, all detached dwelling and duplex dwelling buildings in the municipality are eligible for the in-ground basement floor area exclusion.

To use the GFA exclusions outlined in Part 5, section 26 after the LUC is terminated and the replacement zoning is in effect, property owners within Horstman Estates would need to submit a covenant modification application for the Resort Municipality of Whistler's (RMOW's) consideration. Council has previously generally authorized approval of any such covenant modifications whereby the regulations of the current Zoning Bylaw are applied in place of a previous version of the Zoning Bylaw, which is referenced in the existing covenant.

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

Ability to rebuild in the event of a fire

One member of the public noted a concern with rebuilding as existing should properties within Horstman Estates experience a fire and a total loss.

The density provisions in the proposed revised RS3 Zone have been developed to provide for the existing approved development and consistency with the covenant. Additionally, protections for any potential non-conforming structures are afforded under section 529 of the *Local Government Act*. Staff recommend that owners undertake their own assessments or seek advice as necessary as the RMOW is unable to provide any guarantees and assurances

with regard to the replacement zoning.

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

Tourist accommodation as a permitted use in Horstman Estates

One member of the public expressed that tourist accommodation is an existing permitted use within Horstman Estates under both the Blackcomb LUC and the original RS3 Zone and requested that tourist accommodation is included as a permitted use for Horstman Estates. In particular, the submission made the argument that the original intention of the development was to permit both residential and tourist accommodation use. The submission further made the argument that an amendment to the RMOW's zoning to add a definition of residential to clarify distinctions between residential and tourist accommodation use (Bylaw No. 814, 1990) resulted in the municipality's zoning bylaw precluding the tourist accommodation use for the RS3 Zone, and was the basis for the municipality's position to also determine the use is not permitted for the portion of Horstman subject to the LUC. References were also made to a rezoning that was completed for the Snowridge Crescent Bareland Strata (VR2049) adopted by Bylaw No. 1725, 2005 in 2006. A copy of the report to Council for this rezoning (Report #05-140) is provided for Council reference in Appendix C.

A second member of the public, who identified themselves as the Chair of the Horstman strata, also addressed the issue of tourist accommodation, and indicated that there was support to add the use as a permitted use to the zone and the strata would take it upon itself to further address this use through strata bylaws.

Staff provides the following analysis and recommendation in response to these submissions.

Per the LUC and the existing covenant, Horstman Estates is comprised of single residential buildings. A single residential building is defined as:

"a building consisting of one dwelling unit (other than a mobile home) which is occupied or intended to be occupied seasonally or permanently by one family or six or fewer unrelated persons living together as a single domestic unit provided that where permitted in the Zone a Single Residential Building may contain an Auxiliary Dwelling Unit having a floor area not exceeding the lesser of one-third of the aggregate floor area of the building or 80 square metres."

Per the Zoning Bylaw "residential" means "a fixed place of living, excluding any temporary accommodation, to which a person intends to return when absent". This definition was added to the RMOW zoning bylaw by Bylaw No. 814, 1990 and was intended to further distinguish between residential and tourist accommodation uses within the community.

It has been the municipality's interpretation that both these definitions do not provide for tourist accommodation use and it is the basis for the municipality's position to not permit tourist accommodation or approve any business licence application for tourist accommodation within the Horstman Estates subdivision.

The submission is correct in that in 1999 the RMOW initiated rezonings for a number of properties in the Blackcomb Benchlands, Whistler Creek and adjacent to Whistler Village, to add tourist accommodation as a permitted use, for properties where owners had the

understanding that they were permitted this use when they bought their unit, however, the existing zoning referred only to residential use and the definition of this use which had been added to the zoning bylaw, did not permit this use. These rezonings were further to Council Policy G-20, Tourist Accommodation Rezoning Policy, which was adopted by Council May 31, 1999. A copy of this policy is included in Appendix D. The policy supported rezoning identified properties to new Residential Tourist Accommodation zones that permitted temporary accommodation (tourist accommodation) of the dwelling when not in use by the owner for residential purposes. All of the identified properties were multi-family residential developments. Each of these properties were ultimately rezoned through municipally initiated rezonings, with a prerequisite requirement for a 75 per cent vote of strata owners in favour of the rezoning.

At the time, owners in the Snowridge Crescent development did not favour a rezoning and choose not to participate in the process. As indicated above, the property was subsequently rezoned in 2006 through an owner-initiated rezoning that was supported by the municipality.

With respect to Horstman Estates, this property was also not included in the blanket rezoning process advanced by Policy G-20. At the time, there was not agreement within Horstman Estates regarding tourist accommodation use, and the RMOW had received requests to enforce against this use from neighbouring property owners within the Horstman strata. As there was disagreement as to the status of this use within the strata, a rezoning was never advanced for Horstman Estates to address the tourist accommodation use. Given the municipality's interpretation of the LUC and RS3 zoning, the municipality's position has continued to be that the use is not permitted.

Given this history and the following policy considerations, staff recommends that Council support a rezoning process to add tourist accommodation as a permitted use for all properties in the Horstman Estates, subject to an application from the strata owners of strata VAS2482:

- The lands are designated Resort Lands;
- The lands are in close proximity to the Blackcomb Base and the ski slopes of Blackcomb Mountain; and
- The zoning would contribute to the diverse supply of visitor accommodations within the resort community with a unique high end product offering in a visitor oriented location.

The recommended rezoning process would demonstrate and ensure that there is support for the tourist accommodation use by a majority of the owners within the Horstman Estates subdivision.

With respect to the proposed bylaw that is currently before Council, staff recommend no changes as a result of this submission.

Consideration of rezoning application File No.001172

One member of the public noted that a rezoning application was submitted to remove a property from the Blackcomb LUC and noted concerns that this application will be negatively affected by the proposed bylaw.

A rezoning application was received on December 21, 2020 with regard to 4918 Horstman Lane. The application is to discharge the Blackcomb LUC from and apply the RS3 Zone to the property.

Staff note that should Council adopt the proposed bylaw, the termination of the LUC and effect of the zone will take place one year from the date of adoption.

Should the applicant choose to follow through with their application, the RMOW will process the application as per the requirements of the *Local Government Act* and the Land Use Procedures and Fees Bylaw No. 2019, 2012.

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

Discharge of covenant no. GC125596

One member of the public stated that the covenant was intended to automatically discharge on December 31, 2009 (referencing section 9 of the covenant), and that the covenant should be discharged.

Covenant no. GC125596 was registered on the titles of all Horstman Estates lots. Section 9 of this covenant states:

This covenant shall not be released, discharged or amended without the written consent of Blackcomb Skiing Enterprises Ltd. and W.L.C. Developments Ltd. provided such consent shall not be necessary or required after the earlier of the lands charged by the Land Use Contract being fully developed as contemplated by the Land Use Contract or December 31, 2009.

Staff note that this covenant is still registered in favour of the RMOW and any discharge or modification is subject to RMOW approval. This clause of the covenant referenced above related only to Blackcomb Skiing Enterprises Ltd. and W.L.C. Developments Ltd. the original parties to the development. This clause does not result in the automatic discharge of the covenant. Following the LUC termination process, covenant no. GC125596 will remain on title and continue to regulate the development of Horstman Estates.

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

Request for additional information

One written submission requested additional information and the deferral of decision-making regarding the proposed bylaw.

The notice and timing given to owners is consistent with other LUC termination files and meets the requirements for notice set out in the *LGA*. Information regarding the LUC termination process and documents related to LUC00004 were made available on the RMOW webpage and staff were responsive to inquiries.

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 comments. Staff recommend that the proposed bylaw be given third reading and adoption without further revision.