



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: May 25, 2020

SUBJECT: Land Use Contract Discharge
Lake Okanagan Resort
Central Okanagan West Electoral Area

Voting Entitlement: *Custom Vote – Electoral Areas & West Kelowna Fringe Area – 1 Director, 1 Vote*

Purpose: To seek Board approval to bring forward a Community Services initiated amendment to discharge Land Use Contract No. 225, along with an amendment to the zoning bylaw to apply an equivalent zone.

Executive Summary:

Land Use Contracts (LUC's) are land-use regulatory tools, similar to site-specific zoning bylaws, enacted under legislation established in the 1970's. All LUC's in the Province of British Columbia will automatically be terminated on June 30, 2024, under the *Local Government Act* (LGA). The Regional District of Central Okanagan is moving forward with bylaws to discharge LUC's and apply the equivalent land use designation or zone to the parcels. Of the nine that affect the RDCO, LUC No. 225 for Lake Okanagan Resort is the next identified LUC to be presented to the Regional Board. Further, on July 29, 2019, the Regional Board directed staff to work with New Town Architecture and Engineering Inc. (New Town) to bring forward a proposal for termination of the LUC and a concurrent zoning bylaw amendment.

Despite the Board's direction, Planning staff has received an application from New Town for a partial termination of the Lake Okanagan Resort LUC. There is no ability to process a partial LUC termination under Section 548 of the LGA. Under Section 546, an amendment may be possible however, the Regional Board has not previously been in support of an amendment to the LUC and prior to June 30, 2022, all local governments that have jurisdiction over land subject to a LUC must provide zoning.

RECOMMENDATION:

THAT the Regional Board direct Planning staff to commence a RDCO initiated amendment to terminate (discharge all lands) Land Use Contract No. 225 along with an amendment to the zoning bylaw.

AND THAT Planning staff close Application Z20/01 and Z20/02.

AND FURTHER THAT Planning staff are authorized to issue a full refund of the application fee for Z20/01 and Z20/02 to the applicant.

Respectfully Submitted:



Todd Cashin
Director of Community Services

Approved for Board's Consideration

Brian Reardon, CAO

Prepared by: Danika Dudzik, Senior Planner

Implications of Recommendation:

Strategic Plan:	Proceeding with the termination of LUC No. 225 and subsequent amendment bylaws is in keeping with the Regional Board Strategic Priorities 2019-2022 with respect to "Sustainable Communities", "Economic Development", and "Environment".
Policy:	<p>Proceeding with the termination of LUC No. 225 and subsequent amendment bylaws is in keeping with:</p> <ul style="list-style-type: none">• Regional Growth Strategy Bylaw No. 1336• Rural Westside Official Community Plan Bylaw No. 1274• Land Use Contract Discharge Priority endorsed by the Regional Board on October 9, 2014.
Legal/Statutory Authority:	Proceeding with the termination of LUC No. 225 and subsequent amendment bylaws complies with <i>Local Government Act</i> , Part 14, Division 16 – Discharge and Termination of Land Use Contracts.

Background:

Land Use Contracts (LUC's) are land-use regulatory tools, similar to site-specific zoning bylaws, enacted under legislation established in the 1970's. All LUC's in the Province of British Columbia will automatically be terminated on June 30, 2024, under the *Local Government Act*. Properties located within LUC's are not governed by the Regional District's Zoning Bylaw No. 871 or Joe Rich Rural Land Use Bylaw No. 1195.

Prior to June 30, 2022, all local governments that have jurisdiction over land subject to a LUC must provide zoning. As per the October 9, 2014, staff report to the Board (Land Use Contract Discharge Priority), the intent is for the Regional District to move forward with bylaws to discharge the LUC's and apply the equivalent land use designation or zone to the parcel(s). Of the nine LUC's that affect the RDCO, five have been discharged. LUC No. 225 which encompasses Lake Okanagan Resort is the next identified LUC to be presented to the Regional Board.

Further, on July 29, 2019, the Regional Board passed Resolution No. 159/19 which directed Planning staff to work with the applicant; New Town Architecture and Engineering Inc. (New Town) to bring forward a bylaw to terminate the existing Land Use Contract in accordance with the Land Use Contract Discharge Priority, along with amendments to the zoning bylaw to provide that the lands will be appropriately zoned (see attached minutes). At the time, the Board provided specific instruction to bring forward a proposal for termination of the Lake Okanagan Resort LUC which was precipitated by a submission by New Town for a development permit regarding works associated with a proposal to construct fourteen two-level, duplex chalets located at the south portion of the property.

It is recognized that under LUC's, development rights exist despite any zoning provisions which may contradict use and development provisions; however, these rights must conform with various aspects of the LUC and associated site plans. Although recognized under the LUC, the subject area for the proposed duplex chalets was not contemplated in the site plan, Schedule B-96-9 of the LUC. As such, the proposed development did not conform to the LUC and the Board was not in support of an amendment to the LUC.

Land Use Contract No. 225:

Lake Okanagan Resort is currently developed with various seasonal residential accommodation units and recreational facilities (e.g. clubhouse, swimming pools, tennis courts, marina, boat launch, and golf course). The existing structures were sited in accordance with LUC No. 225 and subsequent amendments (Bylaw No. LUCA-81-3 and Bylaw No. LUCA-95-44) which were to be developed as a "recreational country club".

While the majority of the lands and seasonal accommodation units are owned by Lake Okanagan Resort (2013) Ltd., there are also numerous private owners that own strata units. Currently there are 219 units developed throughout Lake Okanagan Resort comprised of varying forms of commercial resort accommodation.

Under the LUC, the following uses are permitted:

- recreational country club and resort hotel
- club house
- swimming pools and whirlpools
- tennis courts
- beaches
- marina
- nine-hole golf course
- residential accommodation (including not more than 18 housekeeping units, 10 guest units and 5 summer recreational chalets)
- residential accommodation for maintenance staff
- single family residential accommodation for club manager
- garage and maintenance building
- boat launch
- restaurant
- golf cart storage and locker room building

The combined total number of rental units shall not exceed 500. Further, the LUC indicates that no units shall be used or occupied as the principal, permanent or ordinary residence of any persons, family or household, with the exception of the single-family residence for the Manager, maintenance staff and permanent resident security staff.

The original LUC for Lake Okanagan Resort was approved by the Regional Board in September 1978 and registered in the Land Title Office in December 1978. The LUC was modified in May 1980. The LUC was amended again in November 1997 by Bylaw No. LUCA-95-44 – Regional District of Central Okanagan Land Use Contract Amendment Bylaw.

The 1997 amendment made significant changes to the LUC, including the replacement of the existing site plan with a revised site plan: Revised Schedule B-96-9. Section 10 – Uses – of the 1997 amended version of the LUC provided that the Landowner would not change the development of additional units in any way or alter the development concept of the Resort “except as outlined in this amendment of [the LUC]”. Significantly, section 12 – Siting – of the amended LUC provides that no building, facility or structure shall be constructed “except in compliance with the specifications, plan and site plan set out in Revised Schedule “B-96-9” hereto.”

The version of section 12 prior to the 1997 amendment had the additional words: “or as approved by the Regional District” following the reference to the Schedule B site plan, which arguably would have permitted the Regional District to approve variations to the site plan without having to go through the formality of amendment by bylaw. The removal of those additional words by the 1997 amendment removes the ability of the Board to draw on the power under s. 546 (2)(c) to amend a LUC “in the manner specified in the land use contract.”

The LUC specified that Schedule B is the overall general plan of development for the lands and that the final detailed plans and specifications for buildings, structures, recreational facilities, roadways and beach development shall be prepared by professional planners engaged by the landowner considering suitability of terrain, engineering, environmental and economical factors and aesthetic qualities to achieve the most well designed and attractive layout with the minimum disturbance of the natural terrain and tree cover. The site was to be addressed in a comprehensive and holistic manner.

Legal/Statutory Provisions:

Although the Municipal Act provisions authorizing local governments to enter into LUC's were repealed in 1978, owners of land may still develop their land in accordance with a LUC despite any zoning provisions which may contradict the use and development provisions of the LUC. The Legislature provided authority for the amendment and discharge of LUC's through a bylaw with the agreement of both the landowner and local government or in the manner specified in the LUC. More recently, the Province amended the *Local Government Act* to provide that all LUC's will terminate on June 30, 2024. As part of the same legislative amendments, local governments were given additional authority to unilaterally terminate LUC's. However, s. 548 (3)(b)(i) provides that any bylaw terminating a LUC may not take effect until one year after adoption, essentially giving affected landowners a further one-year window to bring forward any development that conforms to the LUC.

Current Applications:

New Town Architecture and Engineering Inc. has made the following applications on behalf of Lake Okanagan Resort (2013) Ltd. (owner):

Application 1 (RDCO File: Z20/01)

- To amend the Official Community Plan future land use designation on the subject property from Resort Study Area to Large Holdings; and
- To rezone the site from RU1 Rural 1 to RU2 Rural 2.

In accordance with the bylaw amendments, the applicant intends to develop a vineyard estates component of the Lake Okanagan Resort properties to allow for the subdivision of 10 rural residential parcels to accommodate a winery, supporting vineyards, and limited number of single family dwellings.

Legal Description: Lot 6, Plan 30301, District Lot 3547, ODYD

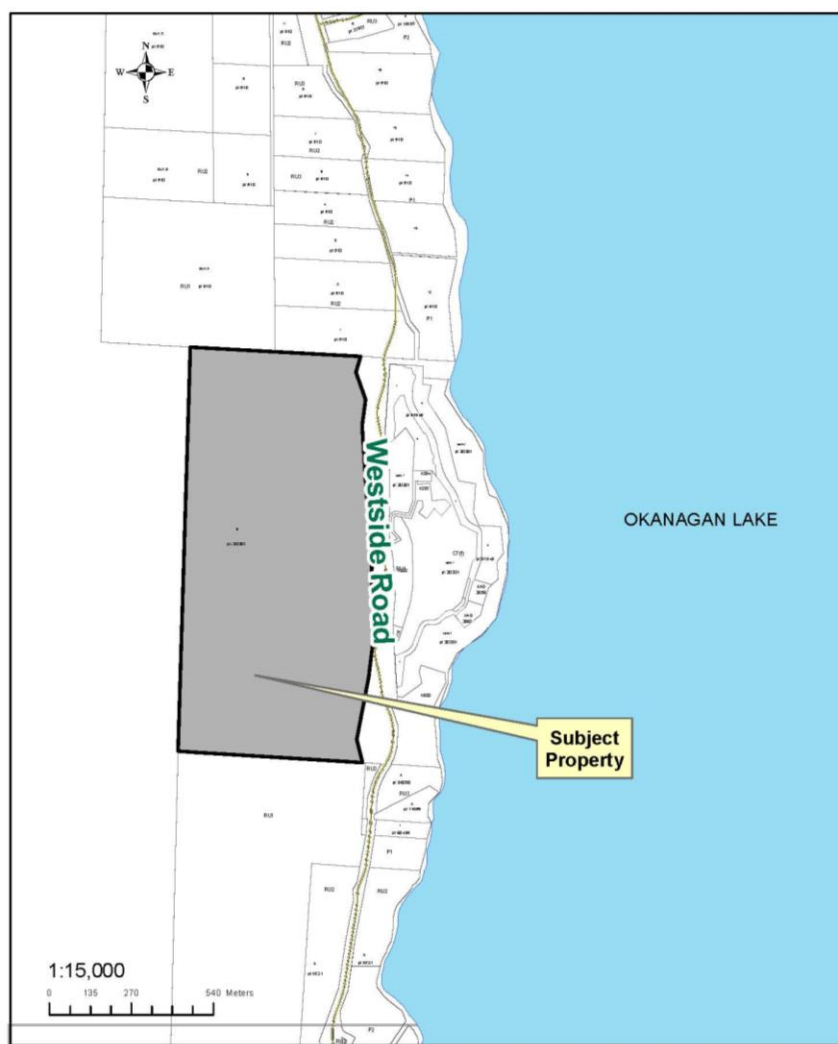


Figure 1: Subject Property (Z20/01)

Application 2 (RDCO File: Z20/02)

For part of the lands under LUC 225 (see Figure 2)

- To amend Chapter 6 Residential of the Rural Westside Official Community Plan to recognize a variety of site-specific residential uses that complement commercial tourist accommodation within Lake Okanagan Resort in the form of single and multi-dwelling units;
- To terminate a portion of the Land Use Contract No. 225 and zone the affected subject properties as C7 Tourist and Resort Commercial. This does not include three of the strata plans that are part of the developed lands as owners did not want to be included in the submission; and
- To amend the Permitted Uses Table for the C7 Tourist and Resort Commercial zone, Section 11.7.1 by adding a new subsection 11.7.1.21 – On Lot 1, District Lot 3547, ODYD, Plan KAP30301, Except Plan 32216, KAP61751 & KAP89299, and Lot 4 and an undivided 220/268 Share in Lot 1, District Lot 3547, ODYD, Plan KAP91945, and Common Property Strata Plan KAS294 & Strata Lots 1-12, District Lot 3547, ODYD, Strata Plan K294, and Common Property Strata Plan KAS287 & Strata Lots 1-18, District Lot 3547, ODYD, Strata Plan K287, and Common Property Strata Plan KAS3867 & Strata Lots 1-24, and an undivided 24/268 share in Lot 1, District Lot 3547, ODYD, Strata Plan KAS3867, and Common Property Strata Plan KAS520 & Strata Lots 1-99, DL 3547, ODYD, Strata Plan K520 the following additional uses are permitted: Single Detached House, Apartment Housing, Townhome Housing.



Figure 2: Subject Properties (Z20/02)

Regional Board Strategic Priorities 2019-2022

RDCO's strategic priorities, developed by the Regional Board, speak to important goals, services and needs on which the Board wishes to focus the organization's attention and resources. Sustainable Communities, Economic Development, and Environment have been identified as priorities which are all impacted by changes to land use. The discharge of all lands under Land Use Contract No. 225 along with an amendment to the zoning bylaw to provide that lands will be appropriately zoned is in keeping with these priorities. The LUC lands were to be developed as an integrated resort and any severance from this will have an impact on the character of the area, servicing, and the environment.

Regional Growth Strategy Bylaw No. 1336

Our Land goal is to manage the land base effectively to protect natural resources and limit urban sprawl.

Policies Include:

- Support logical and sequential growth patterns that minimize urban encroachment into rural areas. (Policy No. 1)
- Proposals for new growth areas should consider the impacts on existing services and facilities in the community. (Policy No. 2)
- Support the protection of the rural areas that offer a rural lifestyle choice. (Policy No. 3)
- Ensure there is an appropriate supply of land used for economic opportunities, public facilities and infrastructure and protection of natural environment for the region's projected population growth. (Policy No. 13)

Our Economy goal is to develop and enhance a positive business environment in the region to achieve a dynamic, resilient and sustainable economy.

Policies Include:

- Encourage and support related economic development initiatives that address the needs and challenges in the Region (Policy No. 2)
- Promote land development patterns that support a diverse regional economy. (Policy No. 11)

Our Water Resources outlines that water is an essential resource for people, the economy, and for the natural environment.

Policies Include:

- Consider water resources in land use planning decisions (Policy No. 1)

Our Ecosystems goal is to be responsible stewards of natural ecosystems to protect, enhance and restore biodiversity in the region.

Policies Include:

- Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems (Policy No. 3)
- Protect natural environments, parks and water systems, as these systems are essential to the quality of life in the Okanagan that support active and healthy lifestyles (Policy No. 7)

Rural Westside Official Community Plan Bylaw No. 1274:**Chapter 3 Natural Environment**

- Policy No. 3.2.1.1 “The Regional District will continue to protect Environmentally Sensitive Areas on private land”.
- Policy No. 3.2.1.2 “Provide and protect vegetated leave areas to water courses, control soil erosion and sediment in run-off water, control the rates of run-off to minimize impacts on the lake, prevent the discharge of deleterious substances into the lake”.
- Policy No. 3.2.2.3 “Consider the rarity and uniqueness of the particular habitat as it relates to the remaining habitat in the OCP area. Development should avoid sensitive areas and be designed to retain important ecosystem features and functions. Responsiveness to this information will be a very important consideration in the approval of an application”.

Chapter 4 – Natural Hazards

- Policy No. 4.2.2 “The susceptibility of an area to mud flows, debris flows, debris torrents, erosion, land slip, rock falls, subsidence or avalanche may be assessed at the time of development application”.

Chapter 7 - Commercial, outlines that the North Westside area has historically been perceived as a rural and resort area. There have over the years been a number of large scale commercial resort developments and commercial recreational resorts proposed. To date only a few have actually developed, one of which is Lake Okanagan Resort. Build out of these commercial resort areas concerns residents in the area given the condition of Westside Road.

- Policy No. 7.3 “Direct resort development to those areas identified on Future Land Use Map 8 and evaluate each proposal on the following criteria:
 - a) capability of handling on-site domestic water and sewage disposal, or availability of community water or sewer;
 - b) capability of the natural environment and topography to accommodate the development;
 - c) impact on adjacent land uses and the character of the existing area;
 - d) Where feasible, any improvements to Westside Road should include sufficient shoulders to permit safer pedestrian opportunities;
 - e) availability of essential services (e.g. fire protection);
 - f) susceptibility to natural hazards including but not limited to, flooding, soil instability, rock fall or moderate or higher forest fire risk;
 - g) environmental impact where the land parcel contains lakes, marsh lands, and watercourses; and
 - h) visual quality assessment where the resort development is proposed on hillsides and other visually sensitive areas.”

Site Context:

Lake Okanagan Resort is located between Caesar’s Landing and Wilson’s Landing within the Central Okanagan West Electoral Area. The subject properties total an area of +/- 35.62 ha (88.03 acres). Various covenants, easements and statutory right of ways are registered on title of the properties within Lake Okanagan Resort.

The subject lands affected by the Rural Westside Official Community Plan Aquatic Ecosystems, Terrestrial Ecosystems, Wildfire, and Hillside Development Permit Areas.

Additional Information:

Location:	Adjacent to Westside Road (west) and Okanagan Lake (east) in Central Okanagan West Electoral Area
Legal Descriptions:	<ul style="list-style-type: none"> • Lot 1, District Lot 3547, ODYD, Plan KAP30301, Except Plan 32216, KAP61751 & KAP89299 • Lot 4 and an undivided 220/268 Share in Lot 1, District Lot 3547, ODYD, Plan KAP91945 • Common Property Strata Plan KAS294 & Strata Lots 1-12, District Lot 3547, ODYD, Strata Plan K294 • Common Property Strata Plan KAS287 & Strata Lots 1-18, District Lot 3547, ODYD, Strata Plan K287 • Common Property Strata Plan KAS3867 & Strata Lots 1-24, and an undivided 24/268 share in Lot 1, District Lot 3547, ODYD, Strata Plan KAS3867 • Common Property Strata Plan KAS520 & Strata Lots 1-99, District Lot 3547, ODYD, Strata Plan K520 • Common Property Strata Plan KAS3858 & Strata Lots 1-24, and an undivided 24/268 share in Lot 1, Plan KAP91945 both in District Lot 3547, ODYD • Common Property Strata Plan KAS322 & Strata Lots 1-22, District Lot 3527, ODYD, Strata Plan K322 • Common Property Strata Plan KAS316 & Strata Lots 1-18, District Lot 3547, ODYD, Strata Plan K316
Civic Addresses:	2789 N Westside Road, 2787 N Westside Road, 2785 N Westside Road, 2783 N Westside Road, 2775 N Westside Road, 2761 N Westside Road, 2759 N Westside Road, 2771 N Westside Road, 2751 N Westside Road, 2753 N Westside Road, 2757 N Westside Road, and 2741 N Westside Road
Area of Land Affected:	+/- 35.62 ha (88.03 acres)
Land Use Contract:	Land Use Contract No. 225
OCP Designation:	Commercial Resort
Existing Use:	Commercial Tourist Accommodation and associated uses (seasonal residential accommodation units and recreational facilities)
ALR:	Not within the ALR
Fire Protection:	Wilsons Landing Fire Protection Area
Water Purveyor:	Private System
Sewage Disposal:	Onsite
Surrounding Uses:	North: Crown land South: Rural Residential East: Okanagan Lake West: Westside Road / Resort Study Area

Summary:

The current proposal by New Town is for a partial termination of the LUC. There is no ability to process a partial termination under Section 548 of the *Local Government Act*. Under Section 546, an amendment, that is discharge for a portion of the lands may be possible however as indicated above, the Regional Board has not previously been in support of an amendment to the LUC for Lake Okanagan Resort and the current direction is to bring forward a proposal for termination of the LUC and a concurrent zoning bylaw amendment. Notwithstanding the phasing

concept, lands within the LUC were to be developed as an integrated tourist resort site; land use was never contemplated separately. To only discharge a portion of the LUC would be contrary to the overall development concept.

Under the *Local Government Act*, local governments have been provided with authority to unilaterally terminate LUC's. The recommendation from Planning staff is to commence a RDCO initiated amendment for the entire site to terminate Land Use Contract No. 225 along with an amendment to the zoning bylaw to provide that lands will be appropriately zoned (using the existing LUC to guide this process).

Subsequent to the discharge of Land Use Contract No. 225 and zoning amendment, the Regional Board may consider future amendment applications.

Alternative Recommendation:

Should the Board choose not to support the staff position, the following alternate recommendation is provided:

THAT the Regional Board direct Planning staff to work with the applicant to bring forward an amendment to the Land Use Contract under s. 546 (2)(a) with the agreement of both parties (RDCO and the owner of the subject property).

Considerations not applicable to this report:

- *General*
- *Financial Considerations*
- *Organizational Issues*

Attachment(s):

- Subject Properties & Orthophoto Maps
- Minutes of the Regional Board Meeting, July 29, 2019
- Land Use Contract Discharge Project staff report, October 9, 2014
- Development Permit Application (DP-18-13) staff report, July 29, 2019
- Land Use Contract No. 225