

# Memo



**Date:** March 10/10  
**File:** LUC09-0003/Z09-0044/OCP09-0013  
**To:** City Manager  
**From:** Community Sustainability Division  
**Subject:** Dilworth Mountain Land Use Contract Discharge

Report Prepared by: Luke Turri

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## **Recommendation:**

THAT Council direct staff to move forward with the proposed rezoning, OCP amendment and Land Use Contract discharge for LUC 74-57 (Dilworth Mountain Estates);

AND THAT Council endorse the property owner notification plan, as outlined in Community Sustainability Division report dated March 10, 2010.

## **Background:**

In 1978, a Land Use Contract (LUC 74-57) was executed between Daon Developments and the City of Kelowna which identified the terms of development for all of Dilworth Mountain. This LUC is a comprehensive agreement which references maximum development thresholds, identifies "Neighbourhood" and "Park and Open Space" areas, and outlines standards for service utility infrastructure development and maintenance. Emil Anderson Construction took over the lands and the Land Use Contract after the development of the Omineca and Cascade neighbourhoods, and remains the developer today. LUC 74-57 expired December 31, 2008, and the contract is now eligible to be discharged. The development regulations outlined in the contract remain applicable until the time of formal discharge.

Staff are proposing to discharge the LUC as provided for within Section 50 of LUC 74-57 (see below). While the LUC provides the opportunity for the City to initiate this discharge, removing the Land Use Contract is also consistent with the civic objective to discharge LUC's as per Council Policy #282: "Strategy for Elimination of Remaining Land Use Contracts."

Currently, all properties included within the Dilworth Land Use Contract have underlying zoning and development standards that are obsolete. Discharging the Land Use Contract eliminates the operational and logistical challenges that arise when dealing with these outdated regulations. This will provide clarity for both City staff and residents alike.

As per the LUC, formal discharge can only be achieved after the properties are rezoned to conforming uses under the current Zoning Bylaw. Presently, the majority of the area is zoned A1 - Agriculture 1, which was the underlying zoning in 1978. To enable each individual property to conform to Zoning Bylaw No. 8000, the following zones are proposed to be applied to the area:

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- Each single-family lot is to be zoned RU1h - Large Lot Housing (Hillside Area). This encompasses the majority of the residential units on the mountain, approximately 845 lots.
- Multi-family/strata development areas are to be zoned accordingly:
  - RM3 - Low Density Multiple Housing: 2325 Silver Place, 2300 Silver Place, 2213 Waddington Court, 2450 Selkirk Drive, 588 Harrogate Lane, 2425 Mount Baldy Drive, 995 Dilworth Drive, 971 Monashee Place and 880 Christina Place
  - RM4 - Transitional Low Density Housing: 980 & 983 Dilworth Drive and 2495-2527 Mount Baldy Drive
- C5 - Transition Commercial: Future commercial site at 795 Dilworth Drive

The rezoning is necessary to make all of the current properties conforming under Zoning Bylaw No. 8000. Given historic build-out, the development potential for some properties remains unchanged compared to what is identified under the current LUC.

### Zoning Regulation Changes - Single Family Lots:

Under the LUC, development on single family lots is regulated by the R-1a Single Family Residential zone of the former Zoning Bylaw No. 4500. The proposed RU1h - Large Lot Housing (Hillside Area) zoning would provide conformity to the existing Zoning Bylaw.

The following table describes the changes associated with this application for single family properties, (representing the majority of properties):

	R-1a	RU1h
Site Coverage	35%	40%, (50% including driveways and parking areas)
Front Yard	6.0m	3.0m; 6.0m from back of curb or sidewalk to a garage or carport having vehicular entry from the front
Max. Floor Area of Accessory Buildings	70m <sup>2</sup>	The lesser of 14% of the lot area or 90m <sup>2</sup>
Max. Number of Accessory Buildings	2	Regulated by total footprint/site coverage.
Allowable secondary uses	Day care centres for no more than five (5) children	<ul style="list-style-type: none"> <li>• Bed and breakfast homes</li> <li>• Care centre, minor (see below)</li> <li>• Group homes, minor (see below)</li> <li>• Secondary suite (RU1s zone) only</li> </ul>

- Bed and breakfast homes allow the accessory use of a residence in which temporary overnight accommodation and breakfast is provided to tourists up to a maximum of four (4) sleeping units with a maximum of two (2) guests per unit. The licensed operator of the bed and breakfast home must reside in the dwelling.
- Care centre, minor is typically associated with daycares (up to 10 children) and preschools (up to 15 children) which are licensed under the *Community Care Facilities Act*.
- Group home, minor is typically associated with care services licensed under the *Community Care Facilities Act* for up to six (6) persons requiring professional care, guidance and supervision. Residents would share common kitchen facilities and be assisted by up to four (4) staff. A Housing Agreement filed in the land title office on the subject property is required as a condition for a group home use.

These secondary uses are allowed within the majority of single family zones within the City, but were not contemplated in former Zoning Bylaw No. 4500. These uses provide services to the community without altering the single family character of neighbourhoods. The uses would need to comply with any additional parking, access and landscaping standards as per the Zoning Bylaw.

### Secondary Suites

The existing Land Use Contract did not allow for secondary suites. The discharge of the LUC and subsequent rezoning to the RU1h zone would not allow secondary suites outright; however, property owners would have the ability to rezone to the RU1hs -Large Lot Housing with Secondary Suite (Hillside Area)

zone. This would be a Council directed process, and would require a separate application through the Land Use Management Department. Each property would be considered by Council on a site-specific basis, as is typical of other single family neighbourhoods within the City.

#### **Zoning Regulation Changes - Non-single family uses:**

The multi-family projects within Dilworth Mountain Estates have already been built to their highest and best use as per the Land Use Contract, and the zoning changes proposed for these properties would simply allow these developments to conform to Zoning Bylaw No. 8000.

As per Council's direction to discharge Land Use Contracts where feasible, staff will be facilitating the application moving forward, including a concurrent rezoning application. Procedurally, an Official Community Plan amendment application will also be required to accommodate the rezoning, and will be completed in conjunction with the rezoning and discharge applications.

#### **Existing Policy:**

Executing the Land Use Contract discharge process would be congruent with the civic objective to discharge LUC's as per Council Policy #282: "Strategy for Elimination of Remaining Land Use Contracts." Council's adoption of this policy requires:

- that a Land Use Contract be discharged for any contract where there has been a change in use or density from what was originally intended by the Land Use Contract;
- that where the City of Kelowna had entered into a Land Use Contract that contains a cancellation clause contingent on failure to develop and use the lands, the City proceed to discharge the Land Use Contract;
- that the City of Kelowna initiate proceedings to discharge Land Use Contracts that have provisions enabling the City to unilaterally discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by Council with regard to affected contracts;
- that staff negotiate with owners of land under Land Use Contracts that only enabled the subdivision of land, to discharge contracts where the subdivision has been completed;
- that priority be given to terminate Land Use Contracts having a significant financial impact or those Land Use Contracts that enable development contrary to the fulfillment of community objectives.

#### **Legal/Statutory Authority:**

Section 930.2(c) of the Local Government Act states that land use contract may be amended or discharged "in the manner specified by the land use contract".

Part 50 (Discharge) of LUC 74-57 states:

*"Upon completion of the subdivision of the entire development area as contemplated by this Agreement, including the installation of all the works required to be installed and providing that there are zoning categories in the Zoning Bylaw of the City that would not make the agreed use of any of the residential or commercial and community areas non-conforming and providing those areas are appropriately so zoned upon the application of the City this Agreement may be discharged from the records of the Land Registry Office and this Agreement and every covenant herein contained, except Sections 29,31, 32, 33 and 34 shall cease and be determined and be of no further force or effect."*

As the subdivision of the entire development area has been completed, the rezoning of the subject properties to conform to the current Zoning Bylaw would allow for the formal discharge of LUC 74-57.

#### **Communications Considerations:**

The mailing/delivery of notices to surrounding owners and tenants, as well as the posting of development notice signs as outlined in the Development Applications Procedures Bylaw is not required if 10 or more parcels owned by 10 or more persons are the subject of the bylaw alteration. Staff does not feel that notification to property owners outside of the boundaries of the LUC is necessary given the nature of the application.

Nevertheless, ample notification and explanation to affected property owners is proposed through the following communication plan:

- Property owners will receive an informational package including a formal letter outlining the process and timing (including pertinent dates), as well as a fact sheet answering commonly asked questions. Property owners may also inquire with the Land Use Management Department.
- Each strata corporation would receive a letter specific to their multi-family project.
- A public open house would be held prior to Initial Consideration, enabling residents to speak with City staff and clarify any questions they may have before a Public Hearing.
- The Public Hearing required for the rezoning and OCP amendment applications would also provide property owners with an opportunity to address Council with their opinions.

**Internal Circulation:**

Office of the City Clerk  
Community & Media Relations Department

**Considerations not applicable to this report:**

Financial/Budgetary Considerations:  
Personnel Implications:  
Technical Requirements:  
External Agency/Public Comments:  
Alternate Recommendation:

Submitted by:



S. Gambacort  
Director, Land Use Management

Approved for inclusion:



J. Paterson  
GM, Community Sustainability

CC:     Manager, Real Estate Services  
          Manager, Development Engineering Branch  
          Manager, Parks & Public Space  
          Subdivision Approving Officer  
          Director, Community & Media Relations  
          City Clerk

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**Attachments:**  
LUC 74-57 - Affected Properties Map

