

# REPORT TO COUNCIL



**Date:** February 1, 2021

**To:** Council

**From:** City Manager

**Department:** Development Planning Department

**Application:** LUCT20-0002 / Z20-0061      **Owner:** Miltco Investments Limited, Inc.No. 0111450

**Address:** 2690 Hwy 97 N      **Applicant:** The City of Kelowna

**Subject:** Land Use Contract Termination and Rezoning Application

**Existing OCP Designation:** SC – Service Commercial, IND – Industrial and PARK – Major Park / Open Space (public)

**Existing Zone:** A1 – Agriculture 1 and C10 – Service Commercial

**Proposed Zone:** A1 – Agriculture 1 and C10 – Service Commercial

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## 1.0 Recommendation

THAT Land Use Contract Termination Application No. LUCT20-0002 to terminate LUC75-76 from Lot B District Lots 124 and 125 and of Section 27 Township 26 ODYD Plan KAP92754 Except Plan EPP58799, located at 2690 Hwy 97 N, Kelowna, B.C. be considered by Council;

AND THAT Rezoning Application No. Z20-0061 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of portions of Lot B District Lots 124 and 125 and of Section 27 Township 26 ODYD Plan KAP92754 Except Plan EPP58799, located at 2690 Hwy 97 N, Kelowna, B.C. from the A1 – Agriculture 1 zone to the C10 – Service Commercial zone as shown in Map "A" attached to the Report from the Development Planning Department dated February 1, 2021 be considered by Council;

AND THAT the Land Use Contract Termination Bylaw and Rezoning Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT the notice sign requirements under Council Policy No. 367 be altered to allow for placement on the City of Kelowna's boulevard;

AND FURTHER THAT final adoption of the Rezoning bylaw be considered subsequent to the approval of Ministry of Transportation and Infrastructure.

## 2.0 Purpose

To proceed with early termination of Land Use Contract 75-76 and to consider an application to rezone the subject property.

### **3.0 Development Planning**

Staff are recommending the Land Use Contract (75-76) be terminated and for the subject property to be rezoned. Portions of the property has the underlying zone of A1 – Agriculture 1 and is not appropriate for the current land use, which is automotive sales. This use is currently permitted in the Land Use Contract, under the former Zoning Bylaw 4500's C12 – Sales Lot zone. The Zoning Bylaw has since been updated and obtains different uses, requirements and zonings.

The lot in question is a hooked parcel, with a portion of the parcel north of Enterprise Way and a portion of the parcel south of Enterprise Way. The portion of the parcel north of Enterprise Way is zoned A1 – Agriculture 1, while the portion of the parcel south of Enterprise Way is partly zoned A1 and partly zoned C10 – Service Commercial. Staff recommend that the portion of the parcel south of Enterprise Way zoned A1 be rezoned to C10, such that the entire portion of the parcel south of Enterprise Way be zoned C10.

Further, Staff recommend that the portion of the parcel north of Enterprise Way not be rezoned, but instead remain A1. The reason for this is that this portion of the parcel is within the riparian area of Mill Creek wherein development is prohibited under provincial law. To reinforce this, there is a no-build and no disturb covenant of the property. As this portion of the property cannot be further developed, it should not be rezoned.

### **4.0 Proposal**

#### **4.1 Background**

Land Use Contracts were a tool regularly used in the 1970's before it was eliminated on November 15th, 1978. The purpose of the tool was to allow local governments to arrive at agreements with specific developers to grant development rights over and above what was allowed under current zoning. This was typically done in exchange for commitments by developers to help finance the infrastructure costs of development.

Issues have arisen, specifically with the continued application of land use contracts as they supersede any subsequent bylaw dealing with land use and development including: Zoning Bylaws, Development Cost Charge Bylaws, and Development Permits. The Local Government Act was amended in 2014 stating all land use contracts in the province will be terminated as of June 30th, 2024. Land use contracts will remain in force until that date unless terminated early by the municipality. By June 20th, 2022, local governments must have appropriate zoning regulations in place to replace land use contracts upon their termination. However, LUC terminations (unlike LUC discharges) do not apply when Council adopts the bylaw. Terminations require a one-year grace period as outlined by the Local Government Act.

#### **4.2 Project Description**

Local governments must provide notice to each owner that the termination of land use contract is occurring and must provide notice of what the new zoning regulations apply to the land. The municipality must also send an additional letter within 30 days of adoption, informing the owners and providing information about the Board of Variance. Due to the file being Staff initiated, Staff suggest Council Policy #367 development signage requirements be altered to allow for the development signs to be placed on the City of Kelowna's boulevard, rather than on the subject property.

4.3 Site Context

The subject property has a total area of 11,906m<sup>2</sup> and is located on 2690 Hwy 97 N. The property has been designated SC – Service Commercial, IND – Industrial and PARK – Major Park / Open Space (public) in the Official Community Plan. The surrounding area is a mix of SC – Service Commercial, IND – Industrial, COMM – Commercial and PARK – Major Park / Open Space (public).

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C10 – Service Commercial and A1 – Agriculture	General Service Commercial Businesses, Car Rental, Mill Creek and Rail Trail
East	C10 – Service Commercial and C9 – Tourist Commercial	Hotel and Gas Bar
South	C10 – Service Commercial	Car Dealership
West	C10 – Service Commercial and P3 – Parks and Open Space	Car Dealership, Mill Creek and Rail Trail

**Subject Property Map: 2690 Hwy 97 N**



5.0 **Current Development Policies**

5.1 Council Policy No. 282 – Strategy for Elimination of Remaining Land Use Contracts

Council Policy No. 282. Includes the following statement:

That the City of Kelowna initiate proceedings to discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by Council with regard to affected contracts.

5.2 Kelowna Official Community Plan (OCP)

Chapter 4: Future Land Use

Service Commercial: Developments for the provision of business support services and other commercial uses requiring extensive on-site storage. Building densities would be consistent with the provision of the C10 zone of the Zoning Bylaw.

**6.o Application Chronology**

Date of Application Received: August 5<sup>th</sup>, 2020

Date of Owner Notification: October 1<sup>st</sup>, 2020

**Report prepared by:** Tyler Caswell, Planner I

**Reviewed by:** Dean Strachan, Community Planning & Development Manager

**Approved for Inclusion:** Terry Barton, Development Planning Department Manager

**Attachments:**

Attachment A: Map 'A' – Proposed Rezoning