

REPORT TO COUNCIL



Date: December 6, 2021

To: Council

From: City Manager

Department: Development Planning

Application: LUCT21-0004

Owner: Lambert and Paul Construction

Address: 1939 - 1959 Kirschner Rd

Applicant: City of Kelowna

Subject: Land Use Contract Termination

Existing OCP Designation: Mixed Use (Residential / Commercial) (MXR)

Existing Zone: C10 – Service Commercial

1.0 Recommendation

THAT Land Use Contract Termination Application No. LUCT21-0004 to terminate LUC76-1052 from Lot B District Lot 129 ODYD Plan 22938, located at 1939 – 1959 Kirschner Rd, Kelowna, B.C. be considered by Council;

AND THAT Council Waive the development sign requirement under Public Notification & Consultation for Development Applications Policy No. 367;

AND FURTHER THAT the Land Use Contract Termination Bylaw be forwarded to a Public Hearing for further consideration.

2.0 Purpose

To proceed with the early termination of Land Use Contract LUC76-1052 on the subject property.

3.0 Development Planning

Staff are recommending the Land Use Contract (LUC76-1052) be terminated and allow the underline zoning to dictate land use and development regulations. The underlying zone is C10 – Service Commercial zone. The current uses on site are retail store – service commercial, household repair services and business support service. These uses are currently permitted under the Land Use Contract as well as the underline C10 zoning. As a result, unlike other land use contracts, none of the existing business will be put into a non-conforming status. Although the C10 – Service commercial zone does not match the Future Land Use of MXR – Mixed Used (Residential / Commercial), this is the most appropriate zone as it permits all the existing uses and is

consistent with the context of the neighbourhood. This specific land use contract only affects this single property.

4.0 Proposal

4.1 Background

Land Use Contracts were a tool commonly 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 local government. 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 Notification

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. Staff are recommending Council Notification Policy #367 development signage requirements be waived for this Land Use Contract Termination application. Development Signs, in this case, are not recommended as the land uses and density on site will not be affected by this termination.

4.3 Site Context

The subject property has a total area of 5,287m² and is located at 1939 – 1959 Kirschner Rd. The property has been designated MXR – Mixed Use (Residential / Commercial) in the Official Community Plan and the surrounding area is a mix of MXR – Mixed Use (Residential / Commercial), SC- Service Commercial and PARK – Major Park / Open Space (public). The subject property is located within the Capri-Landmark Urban Centre.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C10 – Service Commercial	Retail Stores, Service Commercial
East	C10 – Service Commercial	Retail Stores, Service Commercial
South	C10c – Service Commercial (Retail Cannabis Sales)	Cannabis Retail
West	C10PL – Service Commercial (Liquor Primary)	Liquor Primary Establishment

Subject Property Map: 1939 – 1959 Kirschner Rd



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

5.2 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.

6.0 Application Chronology

Date of Application Accepted: October 29, 2021

Date of Owner Notification: November 5, 2021

Report prepared by: Jason Issler, Planner I

Reviewed by: Dean Strachan, Community Planning & Development Manager

Reviewed by: Terry Barton, Development Planning Department Manager

Approved for Inclusion: Ryan Smith, Divisional Director, Planning & Development Services