

January 26, 2023

Address & Legal Description

302 Eckhardt Avenue West

Lot 1 District Lot 4 Group 7 Similkameen Division Yale
(Formerly Yale-Lytton) District Plan 2757 Except Plan H468

Subject & Proposal

Land Use Contract No. 3380 Discharge Bylaw No. 2023-02

"Land Use Contract No. 3380 Discharge Bylaw No. 2023-02" would discharge Land Use Contract Bylaw No. 3380 from the title of 302 Eckhardt Avenue West to allow the approved office building development to proceed before all Land Use Contracts in the Province are automatically terminated on June 30, 2024.



Council Consideration:

A Public Hearing has been scheduled for **6:00 pm, Tuesday, February 7, 2023** in Council Chambers, Penticton City Hall, 171 Main St.

The Public Hearing is being held both in-person and electronically. All meetings and public hearings will be live streamed via the City's website at: www.penticton.ca/city-hall/city-council/council-meetings. Select the 'Watch Live' button.

Information:

You can find the staff report to Council and Land Use Contract No. 3380 Discharge Bylaw No. 2023-02 on the City's website at www.penticton.ca/publicnotice or scan the QR code to the right.

Please contact the file manager Steven Collyer at 250-490-2507 or steven.collyer@penticton.ca with any questions.



Public Comments:

Any person whose interest may be affected by the proposed bylaw:

1. May participate at the Public Hearing via Zoom or telephone. Please visit www.penticton.ca/publichearings for details and the Zoom link.
2. Submit written comments by mail or email no later than 9:30 am, Tuesday, February 7, 2023, to:

Attention: Corporate Officer, City of Penticton
171 Main Street, Penticton, B.C. V2A 5A9
Email: publichearings@penticton.ca

Please ensure the following is included in your correspondence:

Subject: 302 Eckhardt Ave. W.

3. May appear in person.

No letter, report or representation from the public will be received by Council after the conclusion of the February 7, 2023 Public Hearing.

Please note that all correspondence submitted to the City of Penticton in response to this Notice must include your name and address and will form part of the public record and will be published in a meeting agenda when this matter is before the Council or a Committee of Council. The City considers the author's name and address relevant to Council's consideration of this matter and will disclose this personal information. The author's phone number and email address is not relevant and should not be included in the correspondence if the author does not wish this personal information disclosed.

Audrey Tanguay
Planning & Licencing Manager



Council Report

penticton.ca

Date: January 17, 2023
To: Donny van Dyk, Chief Administrative Officer
From: Steven Collyer, Planner II
Address: 302 Eckhardt Avenue West

File No: RMS/302 Eckhardt Ave W

Subject: Land Use Contract No. 3380 Discharge Bylaw No. 2023-02

Staff Recommendation

THAT Council give first reading to "Land Use Contract No. 3380 Discharge Bylaw No. 2023-02", a bylaw to discharge Land Use Contract Bylaw No. 3380 from the title of Lot 1 District Lot 4 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 2757 Except Plan H468, located at 302 Eckhardt Avenue West;

AND THAT Council forward "Land Use Contract No. 3380 Discharge Bylaw No. 2023-02" to the February 7, 2023 Public Hearing.

Proposal

"Land Use Contract No. 3380 Discharge Bylaw No. 2023-02" would discharge Land Use Contract Bylaw No. 3380 from the title of 302 Eckhardt Avenue West to allow the approved office building development to proceed before all Land Use Contracts in the Province are automatically terminated on June 30, 2024.

Background

Land Use Contract Bylaw No. 3380

On September 16, 1976, Council approved "Land Use Contract Bylaw No. 3380" which enabled the conversion of the existing home on the property into a restaurant in the RD (Two Dwelling District) zone in effect at the time.

The Land Use Contract contains the following provisions:

- A public dining room (exclusive gourmet restaurant), which may include a licensed lounge, is the only permitted use on the property;
- The building shall retain its existing architecture, character and non-commercial appearance;
- Construction of certain landscaping and fencing elements;
- Authorized works must have been completed within 2 years of the contract;

- The municipality may discharge and terminate this Land Use Contract twenty-five (25) years after its commencement (September 16, 2001).

Land Use Contracts

Land Use Contracts were used across B.C. from 1971 to 1978 as a land use development tool and was a contract between a municipality and developer outlining development conditions in exchange for specific land use approvals. Land Use Contracts were registered on the land title, and could only be amended or discharged by a manner specified in the contract, or by bylaw at any time with the agreement of the local government (after a public hearing) and the landowner(s). The Land Use Contract enabling legislation was repealed in 1978 so after that date no new Land Use Contracts could be created, however many Land Use Contracts remain in place to this day.

All properties within the City of Penticton have been assigned an underlying zone in Zoning Bylaw 2021-01, including those properties that are governed by a Land Use Contract. Although all properties regulated by a Land Use Contract have an underlying zone, this zone has no effect on the land uses, density or building siting until the Land Use Contract is discharged or terminated. If a property sits within the boundaries of a Land Use Contract, all land use regulations are set out in the Land Use Contract. Once the Land Use Contract has been discharged or terminated, the underlying zoning for the property automatically comes into effect.

Automatic Land Use Contract Termination in 2024

In 2014, the provincial government changed the *Local Government Act* to automatically terminate all Land Use Contracts on June 30, 2024. Section 533 of the *Local Government Act* allows land use contract uses to continue as 'non-conforming' unless discontinued for a period of 6 or more months. If a development proposal is outside the scope of the land use contract, the contract must be discharged (by mutual agreement between the City and property owner) or terminated (City-led) prior to a building permit being issued to authorize the works.

Given the proposed office development on the subject property is beyond the scope of the Land Use Contract, the property owner and developer have requested the Land Use Contract be discharged. Once the Land Use contract is discharged, the underlying zoning for the property, which allows the office use will come into effect. City Council may adopt a bylaw to discharge the Land Use Contract only after a public hearing is held, in accordance with Provincial legislation.

Development Variance Permit and Development Permit

On December 6, 2022, Council approved "Development Variance Permit PL2022-9405" and "Development Permit PL2022-9404" to vary the C1 zone front yard setback requirement from 3.0m to 2.0m and approve the form and character of a proposed 3-storey office building on the subject property.

Staff have since received a legal opinion that the current Land Use Contract does restrict the permitted uses to only allow a restaurant as long as the Land Use Contract is in place. This does not allow the building permit application for the proposed office building to be submitted until after June 30, 2024, when all Land Use Contracts in BC are automatically terminated as per the Local Government Act. The applicants are wishing to develop sooner than 2024 and as such they have requested that the Land Use Contract be discharged (Attachment 'A').

Analysis

All Land use Contracts in BC will be terminated as of June 30, 2024. A Land Use Contract can be discharged by bylaw prior to that date with the consent of the landowner and the City. Following Council's approval of the Development Variance Permit and Development Permit for the subject property on December 6, 2022, the applicants have requested that the Land Use Contract be discharged from title of the property (Attachment 'A').

Staff consider that the discharge of the Land Use Contract is supportable given that the underlying C1 zoning on the property, which will come into effect once the Land Use Contract is discharged or terminated, allows an 'office' as a permitted use. Discharging the Land Use Contract cleans up the title of the property prior to the new office development proceeding. The Land Use Contract was entered into in 1976 and allowed the City to terminate it as early as 2001, however the City had not taken this action as there was previously no direction from the land owner to remove the Land Use Contract.

Council should be aware there is no option to extend Land Use Contracts beyond June 30, 2024, given that date is set by Provincial legislation and there would be no authority for Land Use Contracts to be in effect or valid beyond that date.

Land Use Contracts were originally approved by bylaw following a Public Hearing. As such, a Public Hearing is required prior to discharging a Land Use Contract before the June 30, 2024 automatic termination date. Therefore, staff recommend that council give first reading to "Land Use Contract No. 3380 Discharge Bylaw No. 2023-02" and forward the bylaw to the February 7, 2022, Public Hearing to gather any public feedback prior to making a final decision on this matter.

Alternate Recommendations

Council may choose to not discharge the Land Use Contract and keep it in effect until the contract is automatically terminated by the Province in 2024. This would effectively delay the commencement of construction on the office building until mid-2024, at which time the development could still commence construction within the 2-year timeline of the approved and issued development variance permit and development permit.

1. THAT Council deny first reading of "Land Use Contract No. 3380 Discharge Bylaw No. 2023-02".

Attachments

Attachment A – Request Letter from Property Owner and Developer

Attachment B – Land Use Contract No. 3380 Discharge Bylaw No. 2023-02

Respectfully submitted,

Steven Collyer, RPP, MCIP
Planner II

Director of Development Services <i>BL</i>	Chief Administrative Officer DvD
------------------------------------------------------	---------------------------------------------------

Attachment A - Request Letter from Property Owner and Developer

City of Penticton
171 Main Street, Penticton
BC V2A 5A9

Attention: Blake Laven, Direct of Development Services

December 16, 2022

RE: Request for Removal of Land Use Contract – 302 Eckhardt Ave. West, Penticton

Dear Mayor, Council and Director of Development Services

We are writing to you to thank you for approving our Development Application and in conjunction with that approval, request the Termination of the Land Use Contract associated with 302 Eckhardt Ave.


This Land Use Contract was registered on the property in 1976. Clause #20 provides that the Municipality may discharge and terminate this Land Use Contract twenty-five (25) years after its commencement. As such, as are asking that you terminate this Land Use Contract so that we can apply for our building permit and commence development of this property as per your recent approval of our Development Application.

Yours Truly,

DocuSigned by:

2D4AE282485549F...

Current Property Owner
Argyle Enterprises Ltd.



Developer
Deborah Moore

The Corporation of the City of Penticton

Bylaw No. 2023-02

A Bylaw to authorize the discharge of a Land Use Contract

WHEREAS the Council of the City of Penticton adopted Bylaw No. 3380, being "Penticton Land Use Contract Bylaw No. 1, 1976", approving and authorizing the execution of a Land Use Contract registered with the Land Title Office;

AND WHEREAS the owners of the parcel of land legally described as Lot 1 District Lot 4 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 2757 Except Plan H468, located at 302 Eckhardt Avenue West, has requested that the Land Use Contract be discharged from title to that parcel;

AND WHEREAS Council has the authority to discharge a land use contract pursuant to section 546 of the *Local Government Act*;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Land Use Contract No. 3380 Discharge Bylaw No. 2023-02."

2. **Purpose:**

2.1 The Land Use Contract registered in the Land Title Office under number L54599 shall be discharged from title to the land legally described as Lot 1 District Lot 4 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 2757 Except Plan H468, located at 302 Eckhardt Avenue West.

2.2 The Mayor and Corporate Officer of the City of Penticton are authorized to execute such documents on behalf of the City as may be necessary for the purpose aforesaid.

READ A FIRST time this _____ day of _____, 2023

A PUBLIC HEARING was held this _____ day of _____, 2023

READ A SECOND time this _____ day of _____, 2023

READ A THIRD time this _____ day of _____, 2023

RECEIVED the approval of the Ministry of _____ day of _____, 2023

Transportation on the

ADOPTED this _____ day of _____, 2023

Notice of intention to proceed with this bylaw was published on the ____ day of _____, 2023 and the ____ day of _____, 2023 in an online news source and the newspaper, pursuant to Section 94.2 of the *Community Charter*.

Approved pursuant to section 52(3)(a) of the *Transportation Act*
this _____ day of _____, 2023

for Minister of Transportation & Infrastructure

Julius Bloomfield, Mayor

Angie Collison, Corporate Officer