

To: Chief Administrative Officer **Date:** June 19, 2023
From: Hardev Gill, Planner 2
Subject: **Amendments to Zoning Bylaw 5949-2020 to include Air Space Parcels**

Recommendation(s)

1. That Zoning Bylaw Amending Bylaw 6202-2023-5949(126) be granted first and second readings to allow air space parcel subdivisions within the City of Mission; and
2. That a Public Hearing be scheduled for a date to be determined.

Purpose

This report introduces amendments to Zoning Bylaw 5949-2020 to allow for air space parcel subdivisions within Mission.

Background

The City is processing its first request for an air space parcel (ASP) subdivision. Specifically, for the mixed-use commercial / residential development by Elevate located at 31895 Lougheed Highway.

Air space parcels are lots created through three-dimensional subdivision plans under Part 9 of the Land Title Act (LTA). They are a form of subdivision that is becoming more common, especially for large complex developments that include different uses, such as mixed-use developments. This type of subdivision allows for creativity when it comes to legal ownership of different components of a building or overall development and evades some of the difficulties associated with governing strata ownership within mixed-use buildings.

Staff has received legal input from the City's Solicitor consisting of an analysis as well as a recommended approach to consider air space parcel subdivision within the City. As such, Staff is acting on them by proposing a text amendment to the Zoning Bylaw (Attachment A).

Discussion and Analysis

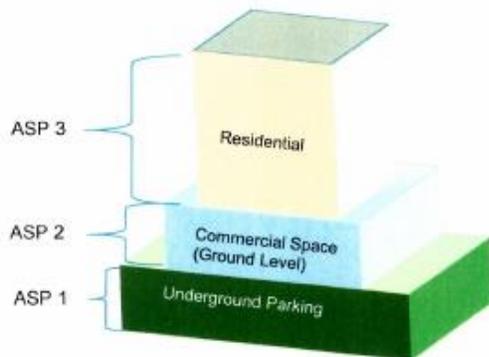
As the Zoning Bylaw does not contemplate ASPs and ASPs constitute a separate "lot", the zoning regulations would be replicated for the ground parcel and for each parcel. For each ASP that is created, the individual ASP is subject to the applicable zoning land use regulations for uses, lot area, density, setbacks, lot coverage, floor space, height of buildings, indoor amenity space, outdoor amenity space and off-street parking.

Since ASPs would be treated as a distinct lot under the Zoning Bylaw, each ASP would be entitled to the full development potential of the parcel's applicable zone. This can create inadvertent outcomes such as increased density entitlements for ASPs, as now the ground parcel and ASP is entitled to the maximum density permitted under the applicable zone. Therefore, site-specific rezonings may be required to accommodate proposed ASP subdivisions since the zoning regulations are drafted in relation to ground parcels.

In general terms, an air space plan can include multiple air space parcels (comprised of land, air, or a combination of both) within a volumetric parcel (also known as a 3-D profile) – see **Figure 1** below. A volumetric parcel may then contain elements such as mechanical room, elevator shafts, setback areas, or off-street parking.

To create air space parcels, an air space subdivision plan is first prepared by a BC Land Surveyor and approved by the Approving Officer.

Figure 1: Illustrative Example of a Mixed-Use Air Space Parcel Subdivision



Zoning Text Amendment Versus Policy

The City regularly creates policies such as policies regarding land development. While a policy can be effective in increasing transparency and streamlining the development application review process, bylaw amendments would still be required to avoid site-specific rezonings to accommodate proposed ASPs. As an alternative to addressing ASPs on a case-by-case basis, bylaw amendments can ensure a consistent and efficient approach for all proposed air space subdivisions.

Such amendments would reduce administrative challenges and streamline similar mixed-use applications in the future. Treating the ground parcel and connecting air parcels as a single lot would permit development that is consistent with what was envisioned for the ground parcel under the current zoning. It would also be consistent with the Official Community Plan and broader City policies that are in support of the current zoning.

Comparative research was conducted on nearby municipalities that regulate air space parcels and the following five municipalities: the municipalities are as follows: City of Richmond, City of White Rock, City of Coquitlam, City of Victoria, and District of North Vancouver.

Proposed Zoning Bylaw Amendment

To regulate the approvals for air space parcels in a consistent manner across the city, staff propose a text amendment to Zoning Bylaw. This includes an amended definition of “Lot” and including a definition of air space parcel consistent with how the term is defined under the *Land Title Act*.

Current definition of “**Lot**”:

“means a parcel of land registered in the New Westminster Land Title Office”

Proposed definition of “**Lot**”:

“means a parcel of land registered in the New Westminster Land Title Office but, for the purpose of this Bylaw, an Air Space Parcel shall be deemed to be part of the same Lot as the parcel at ground level”.

Definition of “Air Space Parcel” (new):

“means a volumetric parcel, whether or not occupied in whole or in part by a building or other structure, shown as such in an air space plan.”

Legislative Authority

Part 9 – Air Space Titles of the Land Title Act (LTA) provides information regarding the legal basis for air space parcels.

The Act defines an “air space parcel” as:

“A volumetric parcel, whether or not occupied in whole or in part by a building or other structure, shown as such in an air space plan”.

The Act defines an “air space plan” means a plan that:

- a. Is described in the title to it as an air space plan,
- b. Shows on it one or more air space parcels consisting of or including air space, and
- c. Complies with the requirements of section 144 of the LTA.

Financial Implications

There are no specific financial implications associated with the proposed zoning text amendment.

Communication

The Development Liaison Committee (DLC) has been informed of the proposed bylaw amendment, but the item has not been formally referred. Staff recommend that Council direct staff to refer this proposed Zoning Bylaw 5949-2020 amendments to the DLC for comment.

Options and Impacts

Option 1: Amend Zoning Bylaw 5949-2020 (Recommended by staff)

This option would reduce administrative challenges, streamline development processes, and ensure ASPs are regulated in a consistent manner across the city.

Option 2: Do not amend the Zoning Bylaw

This option would result in air space parcels requiring site-specific rezonings and variances which may result in longer and a more cost prohibitive approach to the development application review process for the applicant as well as additional staff resources expended to process such applications.

Report Prepared by: Hardev Gill, Planner 2
Reviewed by: Robert Publow, Manager of Planning
Approved for Inclusion: Mike Younie, Chief Administrative Officer

Attachment(s)

Attachment A: Zoning Bylaw Text Amendment Bylaw