



Committee of the Whole Report

For the Meeting of February 20, 2020

To: Committee of the Whole **Date:** February 13, 2020
From: Karen Hoes, Director, Sustainable Planning and Community Development
Subject: **Accommodating Air Space Parcels in the Zoning Regulation Bylaw**

RECOMMENDATION

That Council give first and second readings to the attached Zoning Regulation Bylaw Amendment Bylaw No. 20-029, to clarify the treatment of air space parcels under zoning regulations by excluding air space parcels from the definition of Lot and to add a general regulation that deems air space parcels to form part of the Lot at ground level, and direct staff to advertise and schedule a public hearing to consider third reading and adoption of this bylaw.

LEGISLATIVE AUTHORITY

In accordance with Section 479 of the *Local Government Act*, Council may regulate within a zone the use of land, buildings and other structures; the density of the use of the land, building and other structures; the siting, size and dimensions of buildings and other structures; as well as, the uses that are permitted on the land, and the location of uses on the land and within buildings and other structures.

EXECUTIVE SUMMARY

The purpose of this report is to present Council with information, analysis and recommendations on proposed zoning amendments to permit air space parcel subdivisions. Air space parcels are lots created through three-dimensional subdivision plans under Part 9 of the Land Title Act (LTA). They are a relatively new form of subdivision that is becoming more common, especially within larger mixed use developments. Air space subdivision allows for greater separation of legal ownership of different components of a development and avoids some of the governance difficulties associated with strata ownership within mixed use buildings. For example, air space parcels can provide the ability for a developer to secure separate commercial leases without involvement of the residential component of the development. Similarly, where a mixed-use building contains affordable rental units, those units can be located within their own airspace parcel that can be owned and operated by a non-profit housing provider, without the involvement of the commercial owners.

The City's Zoning Bylaw 2018 that applies to Downtown's Old Town and Central Business Districts already permits air space parcels; however, Zoning Regulation Bylaw No. 80-159 which applies to the rest of the city does not. In order to facilitate this, Zoning Regulation Bylaw Amendment Bylaw No. 20-029 (Attachment A) has been prepared.

These zoning bylaw amendments ensure that air space parcels will be regulated in the same manner as those that are subject to Zoning Bylaw 2018, resulting in a consistent approach across the city that supports a more streamlined process for the review of development applications, and provides greater autonomy and clarity related to the ownership and operation of residential and commercial portions of a building.

The proposed amendments do not confer any additional development rights on a property. Approval of the proposed Zoning Regulation Bylaw Amendment is also subject to a public hearing that provides opportunities for public feedback.

PURPOSE

The purpose of this report is to present Council with information, analysis and recommendations on proposed zoning amendments to permit air space parcel subdivisions.

BACKGROUND

Air space parcels are lots created through three-dimensional subdivision plans under Part 9 of the Land Title Act (LTA). They are a relatively new form of subdivision that is becoming more common, especially for large and complex developments that include different uses, such as developments mixing residential and commercial uses. Air space subdivision allows for greater separation of legal ownership of different components of a development and avoids some of the governance difficulties associated with strata ownership within mixed use buildings. However, because each air space parcel is considered to be an entirely separate lot under the LTA, it would normally be treated as a separate lot under zoning. This means that each air space parcel would be entitled to full development rights under the zoning, but would also have to comply with all applicable regulations such as setbacks and density limits. Because air space parcels usually are created to follow the form of the building, it is often impossible for the development to comply with zoning rules without site-specific adjustments to the applicable zoning.

On July 26, 2018, Council approved the new Zoning Bylaw 2018 that applies within the downtown core area, while the Zoning Regulation Bylaw applies in all other areas of the city. Zoning Bylaw 2018 includes updated provisions to address air space parcel subdivisions. However, the Zoning Regulation Bylaw does not include these same regulations which has resulted in the need for site-specific rezonings to accommodate air space parcels for properties that are subject to the Zoning Regulation Bylaw. This has resulted in varied regulations and an inconsistent approach for accommodating air space parcels within Victoria.

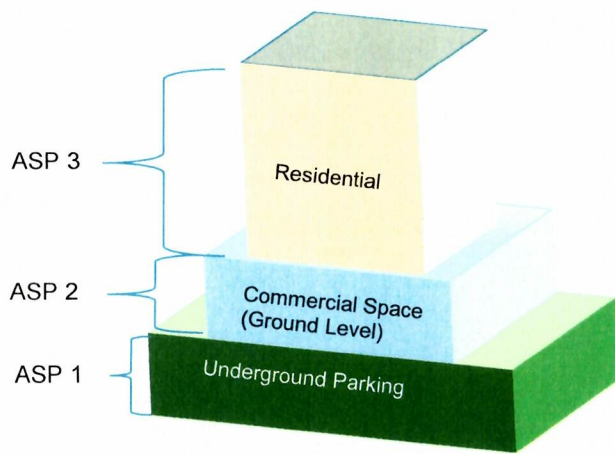
ISSUES AND ANALYSIS

Legal Basis for Air Space Parcels

Part 9 of the Land Title Act provides 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”.

In general terms, an air space plan can include multiple air space parcels (comprised of air, land or a combination of both) within a 3-D profile (volumetric parcel). The volumetric parcel may then contain a proposed building and its elements such as mechanical equipment, setback areas or parking.



Illustrative example of a mixed-use development with separate air space parcels for the underground parking, ground floor commercial space and upper level residential.

Increased Use of Air Space Parcels

The use of air space parcel subdivisions within urban areas such as Victoria's downtown core area is becoming more common, especially within mixed-use buildings that have different types of owners for the different parts of these buildings. Air space parcels provide the ability to recognize the residential and commercial portions of a building as separate entities which can result in benefits for the residential and commercial owners. For example, this can provide the ability for a developer to secure separate commercial leases without involvement of the residential component of the development. Whereas, if the commercial units were part of a typical building strata then all units, including the commercial units, would form part of the strata corporation, and the decision-making on issues that affect the strata can become complicated based on the apportionment of votes and voting procedures.

Similarly, where a mixed-use building contains affordable rental units, those units can be located within their own airspace parcel that can be owned and operated by a non-profit housing provider, without the involvement of the commercial owners. Therefore, air space parcels provide greater autonomy between the residential and commercial portions of a building and they do not preclude the ability to establish a residential strata corporation, rather the residential strata would be contained to the residential portions of the building.

Application of Zoning Regulations

The air space parcel regulations contained in Zoning Bylaw 2018 are predicated on the premise that air space parcel subdivision should not create any increased development entitlement; therefore, the regulations ensure that each proposed parcel is treated by the zoning regulations as if it were part of the parcel located at ground level. This means that all development on the site, including within all related air space parcels, must comply with the applicable zoning regulations for matters such as uses, density, building height, setbacks, site coverage, parking, etc. This approach also precludes zoning regulations from being duplicated at the ground level and within the air space parcel. For example, if the zoned maximum building height is 18 metres, the entire development including the physical building and the volumetric air space parcel(s) must not exceed the maximum building height as measured from grade. Therefore, the creation and application of an air space parcel does not alter the existing zone or convey any additional development rights. However, these types of regulations are not currently included in the Zoning Regulation Bylaw and result in the need for site-specific rezonings.

Proposed Zoning Bylaw Amendments

To regulate air space parcels in a consistent manner across the city, staff propose amendments to the Zoning Regulation Bylaw to include regulations similar to those contained in Zoning Bylaw 2018. This includes a revised definition of 'Lot' that excludes an air space parcel to ensure that zoning regulations for a lot are not repeated or duplicated for the air space parcel. This approach is further reinforced by the proposed general regulation that clarifies that the zoned regulations for the ground level lot extend to the air parcel.

Current definition:

- **"Lot"** means a single area of land, designated and registered at the Victoria Land Title Office as not more than one parcel of land, and if a parcel of land is divided by a lane or otherwise, each division thereof constituting a single area of land shall be deemed to be a separate lot, and includes a strata lot in a bare land strata plan but does not include any other strata lot.

Proposed definition:

- **"Lot"** means a single area of land, designated and registered at the Victoria Land Title Office as not more than one parcel of land, and if a parcel of land is divided by a lane or otherwise, each division thereof constituting a single area of land shall be deemed to be a separate lot, and includes a strata lot in a bare land strata plan but does not include any other strata lot **or an air space parcel**.

Proposed General Regulation (**New**)

- For the purposes of this bylaw, an air space parcel is deemed to be part of the same lot as the parcel at ground level.

Consultation

Since the proposed zoning bylaw amendments do not relate to a specific development application and are primarily administrative in nature to provide alignment with the *Local Government Act* and consistency among the City's bylaws, staff recommend that notice of the public hearing is advertised in the local newspaper and on the City website. On-site sign posting is not required where ten or more properties are affected by a City-initiated Zoning Regulation Bylaw amendment. Information will also be made available in the City's Development Centre so that landowners and developers are aware of the new regulations. Staff also propose to send a notification of the proposed zoning amendment to all Community Association Land Use Committees and the Urban Development Institute prior to the public hearing.

OPTIONS AND IMPACTS

Option 1: Amend the Zoning Regulation Bylaw (Recommended)

This option will better accommodate air space parcels, streamline development processes for mixed-use developments, and ensure they are regulated in a consistent manner across the city.

Option 2: Do not amend the Zoning Regulation Bylaw

This option will result in air space parcels continuing to require site-specific rezonings outside of the Old Town and Central Business Districts, which may require a longer and more costly review process for the applicant with additional staff resources expended to process applications. Additionally, it would maintain an inconsistent approach between the two zoning bylaws.

Accessibility Impact Statement

The proposed zoning amendments do not have any impacts on accessibility.

2015 - 2018 Strategic Plan

This project supports objective four: Prosperity and Economic Inclusion, which identifies an ongoing action related to continuing to improve processing times and process improvements and build better understanding of the development processes.

Impacts to Financial Plan

The proposed zoning amendments will not have impacts to the Financial Plan.

Official Community Plan Consistency Statement

This project is consistent with the Official Community Plan which supports the role of the Zoning Bylaw to help implement plan objectives, land uses, built forms and densities (policy 6.3).

CONCLUSIONS

Amending the Zoning Regulation Bylaw to permit air space parcels will ensure a consistent approach across the city, help streamline processes for mixed-use developments, and improve bylaw clarity and interpretation.

Respectfully submitted,



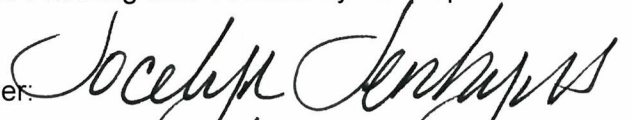
Robert Batallas, Senior Planner
Community Planning Division

Att.



Karen Hoese, Director
Sustainable Planning and Community Development

Report accepted and recommended by the City Manager:


Date: Feb 14, 2020

List of Attachments

- Attachment A: Zoning Regulation Bylaw Amendment Bylaw No. 20-029.