



Governance and Priorities Committee Report

For the June 4, 2015 Meeting

To: Governance and Priorities Committee **Date:** May 7, 2015
From: Robert Woodland,
Director of Legislative and Regulatory Services
Subject: Air Space Parcel – 2300 Dowler Place

Executive Summary

The purpose of this report is to seek Council authorization to acquire an air space parcel (ASP) from the Province of BC.

The ASP above the City's fee simple lot at 2300 Dowler Place is currently owned by the BC Transportation Financing Authority. It was created in 1982 so that it could be leased to Island Farms for the construction of a service conduit over Queen's Avenue as it existed at that time. The infrastructure, part of their dairy processing plant, was allowed to pass over the road provided no part of it was lower than six metres above the ground.

The ASP is located above a City owned lot at 2300 Dowler Place which is formerly part of Queen's Avenue. This lot is leased to Agropur Co-operative as part of the Island Farms dairy processing plant fronting on to Blanshard Street. A location plan and a lease plan are attached in Schedule A and Schedule B respectively.

Agropur has asked the Province to transfer the ASP to the City. The Province has agreed to do so, and it is recommended that the title is transferred to the City since the City is already Agropur's landlord for the bare land lease. The land lease between the City and Agropur would then be modified so that it includes the ASP.

Recommendations

1. That Council authorizes the Mayor and Corporate Administrator to execute and register the documentation required, in a form satisfactory to the City, to transfer ownership of the air space parcel with PID 001-042-173 from BC Transportation Financing Authority to the City.
2. That Council authorizes the Mayor and Corporate Administrator to execute an agreement modifying a lease dated January 1, 2009 between the City and Agropur Co-operative, as renewed and modified by an agreement dated January 1, 2013, in a form satisfactory to the City, such that the lease includes the air space parcel identified with PID 001-042-173.
3. That Council authorizes City staff to make an application to the Land Title Office to discharge Charge S127509 from the air space parcel with PID 001-042-173 after the City becomes the registered owner of that property

Respectfully submitted



Neil Turner
Property Manager



Robert Woodland
Director of Legislative and
Regulatory Services

Report accepted and recommended by the City Manager:



Date:

May 28, 2015

Purpose

The purpose of this report is to seek Council authorization to acquire an air space parcel from the Province of BC.

Background

An air space parcel (ASP) is a three dimensional "box" of air space, which is defined in the *Land Title Act* 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 owner of an ASP has a right to construct and occupy the area within the boundaries of the three dimensional parcel.

The ASP in question is located above a City owned lot at 2300 Dowler Place which is formerly part of Queen's Avenue. The ASP was created in 1982 by the Province and it is currently owned by the BC Transportation Financing Authority. This is a somewhat unique situation, as two separate land titles exist in respect of the land at 2300 Dowler Place:

- The fee simple lot located at ground level; and
- an air space parcel in the form of a "box", the lowest plane of which is approximately six metres above the ground.

Agropur, and its predecessor, Island Farms, have leased the fee simple lot (land) from the City since 1987 as part of its dairy processing plant fronting on to Blanshard Street. The lease was last renewed January 1, 2013 for a term of five years at the fair market rent of \$45,000.00 per annum. A location plan and a plan of the land lease are attached in Schedule A and Schedule B respectively.

In addition, Agropur and its predecessor have leased the ASP from the Province for nominal rent since 1982. The ASP was created specifically so that it could be leased to Island Farms for the construction of a service conduit over Queen's Avenue (as it existed at that time). The physical infrastructure located within the ASP is part of their dairy processing plant and passes over the former road with no part being lower than six metres above the ground.

Issues and Analysis

Agropur has asked the Province to transfer the ASP to the City. The Province has agreed to do so and has provided the City with an executed form to register the transfer of ownership with the Land Title Office. This appears to be a logical thing to do since since the City is already Agropur's landlord for the fee simple lot (land) lease. Aside from minor registration fees for the transfer, there is no cost to the City for doing so.

In anticipation of the City acquiring ownership of the ASP, Agropur and the City have agreed to modify the existing land lease so that the land lease includes the ASP at no additional rent. The City would then apply to the Land Title Office to discharge any redundant charges to the ASP title while under Provincial ownership.

Because the lease of a two dimensional area of bare land is normally deemed to extend "to the heavens and the centre of the earth" (other than any rights reserved such as easements, SRWs or mineral rights), adding the ASP to the existing bare land lease does not create any additional value. Therefore, continuing the nominal rent for the air space parcel is supportable and the fair market rent for the modified land lease remains \$45,000.00 per annum.

Options and Impacts

Since the City is already Agropur's landlord for the bare land at 2300 Dowler Place, it seems logical that the City should become their landlord for the ASP also. There does not appear to be

any liability associated with acquiring title to the ASP since the parties have agreed to discharge the former lease between the Province and Agropur. The ASP also provides an additional measure of control over the aerial dairy infrastructure above 2300 Dowler Place.

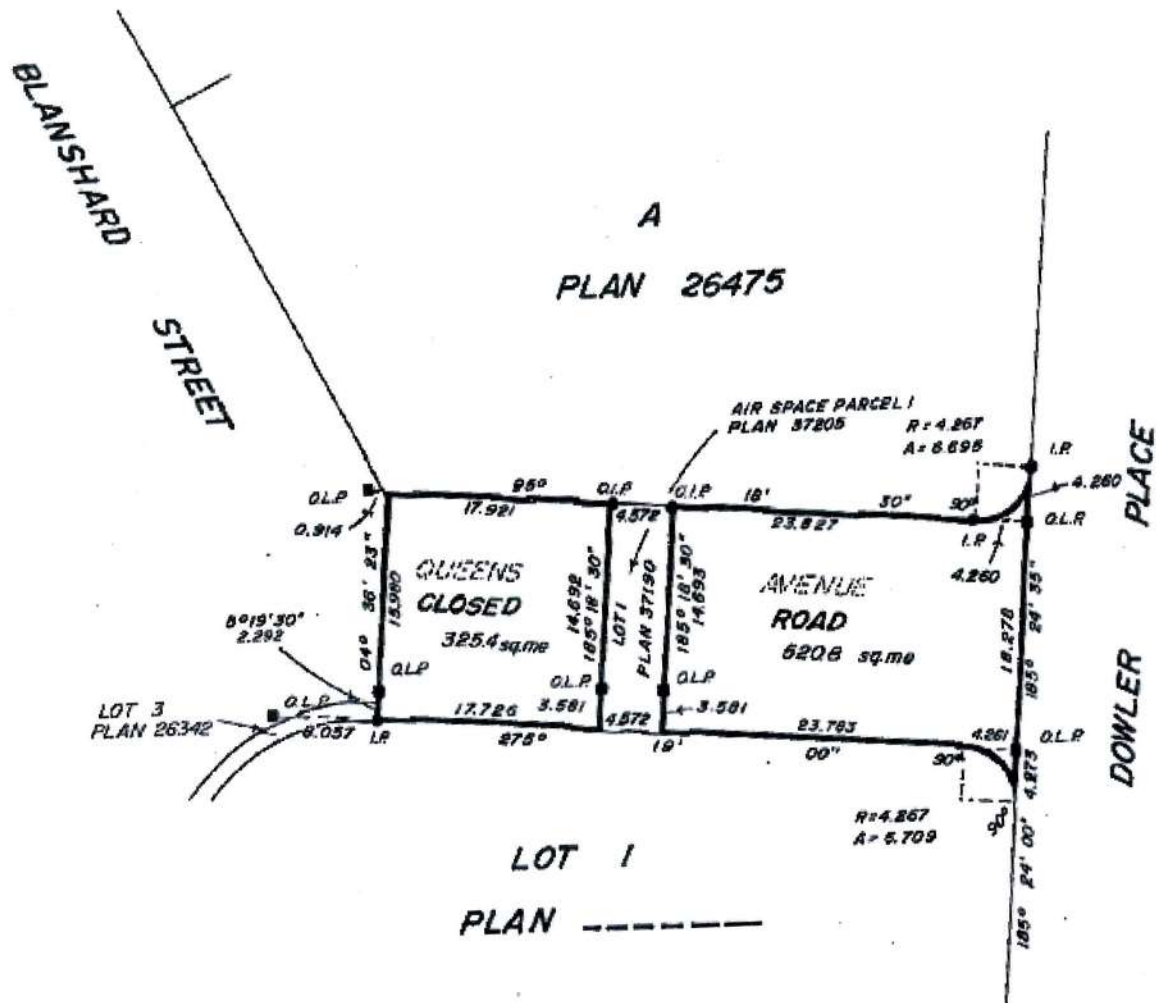
Recommendations

1. That Council authorizes the Mayor and Corporate Administrator to execute and register the documentation required, in a form satisfactory to the City, to transfer ownership of the air space parcel with PID 001-042-173 from BC Transportation Financing Authority to the City.
2. That Council authorizes the Mayor and Corporate Administrator to execute an agreement modifying a lease dated January 1, 2009 between the City and Agropur Co-operative, as renewed and modified by an agreement dated January 1, 2013, in a form satisfactory to the City, such that the lease includes the air space parcel identified with PID 001-042-173.
3. That Council authorizes City staff to make an application to the Land Title Office to discharge Charge S127509 from the air space parcel with PID 001-042-173 after the City becomes the registered owner of that property

**Schedule A
Location Plan**

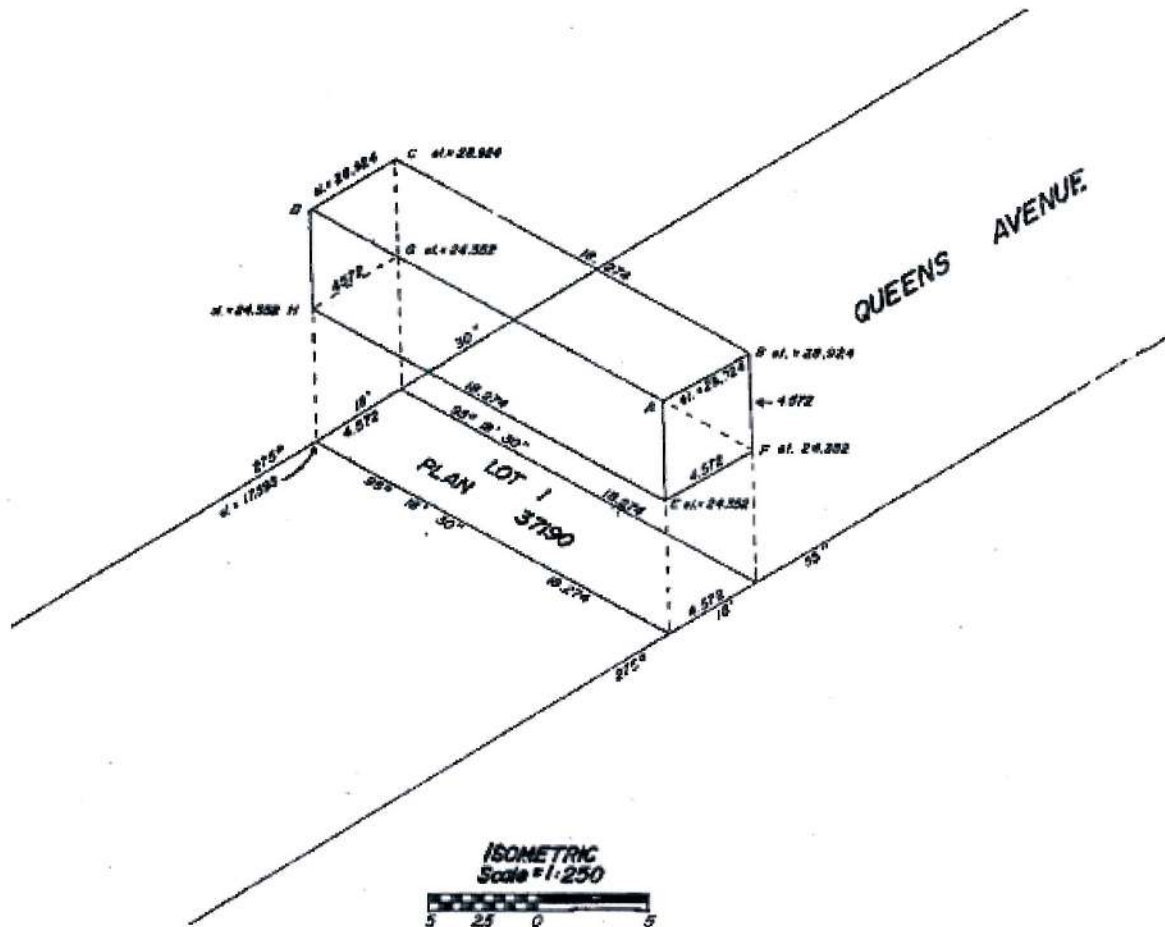


Schedule B
Area of Land Lease



Schedule C

AIR SPACE PLAN OF LOT 1 PLAN 37190 , SECTION 3, VICTORIA DISTRICT , EXCEPT THEREOUT ALL SPACE BELOW THE 24.352 METRE PLANE AND ABOVE THE 28.924 METRE PLANE OF GEODETIC DATUM



Minister of Transportation and Highways

[Signature]
Authorized Signatory

Authorized Signatory

BOOK OF REFERENCE		
Air Space Parcel Number	Air Space Parcel corners	Volume Cubic Metres
Air Space Parcel Number 1	A, B, C, D, E, F, G, H	382.0

ELEVATION GEODETIC

The Geodetic Elevation was derived from City of Victoria Benchmark No. 25 - 123 a monument at Queens and Dowler Streets (Elevation 18.807 metres Geodetic)