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Municipal Finance Policy Branch
College Park 13th Floor, 777 Bay St
Toronto, ON M7A 2J3

Attn: Ministry of Municipal Affairs and Housing

Re: COMMENTS ON THE PROPOSED CHANGES TO SUPPORT STANDARDIZING OF PARKLAND REQUIREMENTS UNDER THE PLANNING ACT
Proposed *Building Homes and Improving Transportation Infrastructure Act, 2026* and Related Regulatory Changes
ERO No. 026-0312
Committer: Build Urban Inc.

We represent Build Urban Inc. (“**Build Urban**”), a collection of urban developers from across the Waterloo Region who strive to offer technical expertise to government committees, education and thought leadership through white papers, and provide new and fresh perspectives in order to build partnerships in urban development.

On behalf of Build Urban, we welcome the opportunity to provide comment and feedback on the proposed legislative changes under the proposed Bill 98, *Building Homes and Improving Transportation Infrastructure Act, 2026* as it relates to developer-identified encumbered lands for parkland in the *Planning Act*, RSO 1990 c P 13 (“**Planning Act**”) and related regulatory changes. Prescribed criteria for developer-identified parkland have been long-awaited since their introduction in Bill 23, *More Homes Built Faster Act, 2022*. We are pleased to see the Legislature move closer to having these provisions and regulations come into force.

Build Urban’s submission first addresses the proposed amendments to the Planning Act and then concludes with recommendations on the proposed regulations.

Bill 98, *Building Homes and Improving Transportation Infrastructure Act, 2026*

1. *Developer-Identified Parkland Conveyance Should be Included in Sections 51.1 and 53 of the Planning Act for Subdivision of Land and Consents*

The regime for developer-identified encumbered lands for parkland set out in subsections 42(4.30-4.39)

of the Planning Act should apply to the same effect with necessary modifications to section 51.1 of the Planning Act for subdivision of land. The parkland dedication regime set out in the Planning Act permits a municipality to impose conditions for the taking of land for parks, or cash-in-lieu thereof, through three sections: section 42 in the context of development or redevelopment of land; through section 51.1 in the context of subdivision of land; or section 53 for consent applications (through reference to section 51.1). These are all similar mechanisms but engaged at different stages of development.

Yet, the permissions for developer-identified lands are only proposed to apply to section 42 for development or redevelopment of land. The goal of these legislated changes is to broaden eligibility for parkland to high-quality encumbered lands.¹ There is no policy basis to support differential treatment of section 42, 53, and 51.1. Limiting this new framework to section 42 is arbitrary and disconnected from the policy objective.

Furthermore, both sections 42 and 51.1 include a mechanism that allows the Minister-ordered encumbered land within transit-oriented community land to be conveyed to the local municipality for park or other public recreation purposes and for that land to count towards any parkland requirement. Therefore, the groundwork is set for encumbered land to count towards parkland obligations for both sections. Developer-identified land is the logical extension of that mechanism. Applying these amendments to both sections, as well as section 53 by way of incorporating section 51.1, better achieves the objective of increased access to high-quality encumbered and publicly accessible spaces for parkland purposes.

Build Urban urges consideration of the following addition to section 51.1 to effect this change:

Identification of land re reconveyance to municipality

51.1 (2.5) An owner of land proposed for a plan of subdivision may, at any time before draft plan approval, identify, in accordance with such requirements as may be prescribed, a part of the land that the owner proposes be conveyed to the municipality to satisfy, in whole or in part, a requirement of a by-law passed under this section and subsections 42(4.30) – 42(4.39) apply with necessary modifications.

2. Municipality Required to Consider Prescribed Criteria

The municipality should be required consider whether the land meets prescribed criteria when evaluating whether to accept the conveyance of land. Upon appeal, as set out in the subsection 42(4.38), the Tribunal is directed to consider whether the land meets the prescribed criteria, and if it finds that it does, is obliged to order that the land be conveyed to the local municipality. Subsection 42(4.32) as it currently reads, and with the proposed amendments, does not require the municipality to undertake a similar exercise.

These provisions allow the municipality greater discretion to refuse conveyance of developer-identified

¹ Media Briefing, Building Homes and Improving Transportation Infrastructure Act, Ministry of Municipal Affairs and Housing, Ministry of Transportation, March 30, 2026, online: <https://news.ontario.ca/assets/files/20260330/0024d7673bffcdfb29522bf80ad5ec4c.pdf>

lands but establishes a clear scope of powers for the Tribunal on appeal of the same issue. This may have the effect of slowing down development due to disputes and appeals over whether the municipality will agree to accept conveyance of encumbered lands. While its reasonable for the municipality to have some degree of discretion in accepting the conveyance, the exercise of that discretion must be guided by the prescribed criteria. Otherwise, the prescribed criteria are meaningless.

Build Urban recommends the following additional language in red to the proposed subsection 42(4.32) to effect this change.

Agreement re interest in land

(4.32) ~~In considering whether to accept the conveyance of land described in clause 4.31 (a) or an interest in land described in clause 4.31(b) the municipality intends to~~ **shall consider whether the land identified in accordance with subsection (4.30) meets the prescribed criteria, and if it does,** may require the owner of the land to enter into an agreement with the municipality that provides for the land to be used for park or other public recreational purposes.

3. Factor for Counting Lands Should be Increased to 1.0

Developer-identified parkland should be multiplied by a factor of 1.0 to more appropriately and fairly account for the benefit of these lands, whereas the proposed amendments directs that the lands be counted towards any parkland requirement by multiplying the land by a factor of 0.7, or such larger factor as may be determined by the municipality.

The minimum factor is likely going to become default for most municipalities. A discounted rate risks devaluing the developer-identified parkland scheme. Developer-identified lands are to be permanent and maintained in perpetuity, which is a benefit that exceeds 100% value of the lands. If a proposal meets the prescribed criteria, that confirms that the lands are capable of functioning as a park and should be given full credit accordingly. There is no policy reason to support an arbitrary, discounted rate. A factor of 1.0 better offsets the trade-off between the obligations of the developer and the benefit to the municipality and community.

4. Powers of Tribunal to Determine the Rate at Which Lands are Counted

If the factor for counting lands is not increased to 1.0, the Tribunal should be given the power to evaluate the rate at which the municipality counts the developer-identified lands. Developers are left with no redress if they dispute or disagree with the factor applied by the municipality. As such Build Urban recommends that the Tribunal be granted the power to determine the appropriate rate for such conveyances.

Build Urban recommends the following further amendment to subsection 4.38 in red to effect this change:

Order by Tribunal

(4.38) The Tribunal shall consider whether the land identified in accordance with subsection (4.30)

meets the prescribed criteria and, if it does, the Tribunal shall order that the land,
(a) be conveyed to the local municipality for park or other public recreational purposes; ~~and~~
(b) shall be deemed, subject to subsection (4.38.1), to count towards any requirement set out in a by-law passed under this section that is applicable to the development or redevelopment, despite any provision of that by-law, and
(c) shall be counted towards any requirement set out in the by-law by multiplying the area of such land by a factor as may be determined by the Tribunal.

Proposed Regulations

5. Prescribed Criteria Must be Flexible

The prescribed criteria for developer-identified land should be sufficiently flexible to account for parkland use that does not propose structures and/or tree plantings, and to allow for compliance with municipal by-laws and other access restrictions outside of the owner's control.

The proposed regulations exclude "lands that would not accommodate fill and/or soil depths to accommodate structural footings ... or tree plantings" from eligibility. Structures or tree plantings are not necessary features of parkland. By limiting eligibility in this manner, the regulations will have the effect of arbitrarily and unfairly limiting potential developer-identified parkland. Build Urban recommends that this restriction be more narrowly tailored to the proposed park use, such that the list of ineligible lands include: "lands that would not support **the proposed** park use ..."

The proposed regulations further exclude lands that are "not accessible to public at all times." Some lands may be subject to restrictions that limit access to public spaces that are outside of the owner's control, such as municipal by-laws that close public parks overnight. Build Urban urges the regulations to include an explicit exception for access restrictions outside of the owner's control.

6. Prescribed Criteria Must Account for Mitigation Measures

The prescribed criteria should allow for consideration of mitigation measures when determining whether the land is comfortable to facilitate public use. It is reasonable that the regulations require the lands be comfortable in order to be eligible for parkland. However, there are many measures that can contribute to comfort of a space, including wind barriers, or structures and plantings to provide shade. Build Urban recommends that the regulations be drafted in such a way that requires consideration of any proposed mitigation measures when determining whether lands are sufficiently comfortable to be eligible for parkland.

Conclusion

Build Urban appreciates the opportunity to provide comment on the proposed legislative changes under the proposed Bill 98, *Building Homes and Improving Transportation Infrastructure Act, 2026* as it relates to developer-identified lands for parkland and related regulations. We look forward these sections coming into force by way of an order by the Lieutenant Governor in Council in due course and without further delay.

If you have any questions, please contact the undersigned.

Yours truly,

A handwritten signature in black ink that reads "Jennifer Meader". The signature is written in a cursive style with a large, prominent initial "J".

Jennifer Meader
JM/jd