

AN EXPLORATION INTO THE CREATION OF 'PRIVATELY OWNED PUBLICLY
ACCESSIBLE SPACES' IN TORONTO, ONTARIO

by

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Master of Planning in Urban Development
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ABSTRACT

An exploratory research investigation into the creation of ‘privately owned publicly accessible spaces’ (POPS) in Toronto, Ontario and a critical review of the process used to secure these spaces and the subsequent agreements made. This paper seeks to answer if land use planners are able to better mediate the use of POPS as a means of providing open space to communities in high-density areas. This report includes the timeline illustrating the development of Toronto’s POPS program followed by a discussion on Toronto’s increase growth and development and the suitability of POPS as a contributing strategy for diminishing new park and open space assets and a high level breakdown of the legal mechanisms currently in place to help facilitate new POP spaces. Interviews with individuals from both the public and private sectors were conducted, which produced a generalized model outlining how POPS in Toronto are secured.

Key Words:

Privately owned public space, public realm, open space, privatization, city building, growth and intensification.

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1.0 Introduction

This research investigation looks at the development of ‘privately owned publicly-accessible spaces’ (POPS) and the planning framework that supports their creation within the boundaries of the City of Toronto in Ontario Canada. POPS are seen as a means to overcome the fiscal challenges preventing the local government from establishing new park and open spaces. As such, it is important to understand the successes and challenges of POPS development as a growing population begins to significantly influence Toronto’s land use planning decisions.

The following investigation seeks to answer the research question, “*as land use planners, are we able to better mediate the use of ‘privately owned publicly accessible space’ (POPS) as a means of providing open space to residents in high-density areas in the City of Toronto?*”. In conjunction to the primary question, the following sub-questions will also be answered through this investigation, which include,

- How are POP spaces created in Toronto and what does that process model look like?
- Are there elements of this model that prevent a unified vision of these spaces from being achieved?
- Is there a commonality between how the private and public sector view the purpose and intent of POP spaces within the City of Toronto?
- What motivates private developers to create POPS and the City to participate in this ad-hoc approach to public good delivery?

The purpose of this exploratory research is to examine the process of developing ‘privately owned publicly accessible spaces’ (POPS) in Toronto and evaluate how this process is carried out through the land use planning system. Using key informant interviews with developers working in the downtown core as well as Toronto planning staff, a process evaluation will produce an understanding of the strengths, weaknesses and the ways in which to improve the POPS deal made between the public and private sector. The by-product of this exploratory research will be a high level understanding of the POPS agreement, in addition to an understanding of the motivations of both the private developers and the local government to participate in this ad-hoc approach to public good delivery.

The first part of the paper will explore the topic of POPS, what cities use them and what they look like and how they are used in Toronto. Moving forward, the second part will provide a general and high level policy and legal context for POPS followed by a concise literature review and finally, the projects methods. The next part will include findings from the participant interviews and a brief commentary on what these findings mean for future studies of the topic. Finally, the report will conclude with some directive next steps and a conclusion.

2.0 Background

2.1 Parks and Open Space in Toronto

As a mega metropolitan area, the City of Toronto has a dynamic and complex parks and open space system that transcends from the downtown core out towards the inner suburbs of North York, Etobicoke and Scarborough. Specifically, urban open spaces are the un-built areas within the city, which include parks, playgrounds, public squares, pedestrian malls, lots and the open, landscaped spaces around buildings (Bureau of Municipal Research, 1971). Open and public spaces, along with parks are keystone contributors to our city's public realm. According to the City of Toronto (2016f), the public realm constitutes the spaces that cultivate civic life and social interactions and include, but is not limited to, streets, laneways, parks, squares and privately owned publicly accessible spaces (POPS). The focus of this report is on POPS. While developers within the city have been constructing privately owned public spaces for decades, the formal acknowledgment of these spaces within the urban landscape and their use as a tool to create new high quality spaces and public realm improvements is relatively new. A formal POPS program was adopted by Toronto City Council in 2014 and includes a signage system, online database and a set of design guidelines (City of Toronto, 2014a). It is important to note that the City has said that POPS are complimentary to the parks network and the intention is not to use POPS to replace parks (City of Toronto, 2014b). The following section of the report is going to explore the concept of POPS, where they are found and how they manifest in Toronto's urban landscape.

2.2 What are POPS?

'Privately owned publicly accessible spaces' (POPS), also referred to as 'privately owned public space(s)' or 'bonus space(s)' is a type of public space that is owned and operated by the private sector (Németh, 2009). Developers often create these spaces as an extension of their redevelopment project. In doing so, the construction, maintenance and operational responsibilities are typically exchanged for density or floor area (FAR) bonuses with municipal governments (Németh, 2009). As such, the rules and regulations that govern these spaces are conventionally left to the discretion of the entity managing the space (Németh, 2009).

Jerold Kayden (2000), an academic who has shaped our understanding of privately owned public space, refers to these spaces as the “law’s oxymoronic invention” (Kayden, The New York City Department of City Planning & The Municipal Art Society of New York, 2000, p.vii). The creation of bonus spaces is part of a much larger land-use planning trend seen in large metropolitan areas; public-private partnerships (Kayden et al., 2000). The resources, skills and expertise of the private sector has been utilized by local governments to “address urban concerns” that simply cannot be appeased by the public sector alone (Kayden et al., 2000, p.vii). As we embark on this new age of public space provision it is important to understand the dichotomy that exists within Toronto between the public and private sector and their understanding of what POPS are, the role that these spaces play in the city and the ways in which these groups can work together on these spaces. As a familial form of public space, POPS can contribute to place-making by enhancing local identity, existing as a node for social interaction and facilitating community building and empowerment (UN Habitat, 2015).

2.3 Examples of POPS

Privately owned public spaces are typically found in large metropolitan urban centers that have embedded in their planning framework the policies that facilitate the exchange of density for public/community contributions or amenities (Moore, 2013). In North America, Vancouver and New York are examples of cities that create POPS through a similar regime of a negotiated exchange. The primary difference between Vancouver’s and New York’s approaches is that Vancouver’s Community Amenity Contribution policies allows for more than just open space to be exchanged while New York’s incentive zoning is geared towards bonus spaces.

City of Vancouver

Within the City of Vancouver, POPS can be created using a Community Amenity Contribution (CAC) as part of the rezoning process (City of Vancouver, 2011). According to the City of Vancouver, CACs are the “in-kind or cash contributions provided by property developers when City Council grants development rights through rezoning” (City of Vancouver, 2016). This model uses the value of the proposed height or

density grant and through negotiations between the public and private sector, a CAC is secured and the agreement is included in the new zoning by-law (City of Vancouver, 2011). Here, a CAC could constitute as a park space, library, community centre or neighbourhood housing (City of Vancouver, 2016). Interestingly, Vancouver delineates CAC's by predefined areas which have their own policies and a predetermined value rate per square foot of bonus space (City of Vancouver, 2015). As such CAC policies may be city-wide or area-specific, depending on where the project falls within the city (City of Vancouver, 2015). The rest of the city adheres to the traditional CAC rezoning policies. Standard rezoning projects, which are those that maintain the permitted size and density, "have a fixed rate target CAC" of \$3.00 per square foot (City of Vancouver, 2015, p.3). Alternatively, projects considered non-standard rezoning are negotiated (City of Vancouver, 2015). Not entirely prescriptive, creating CAC boundaries does create more guidance and structure to securing new public amenities. POPS examples out of the City of Vancouver include Cathedral Park (556 Richards Street), Library Square (north & south) and Pacific Center Plaza (Rahi, Martynkiw & Hein, 2012).

City of New York

In New York, what is referred to as incentive zoning was integrated into the zoning by-law in 1961 as part of the zoning reform (Nemeth, 2009). In short, a maximum 20% bonus floor area ratio was granted to developers if they were to provide a publicly accessible space (Nemeth, 2009). As such, these spaces have also been referred to as "bonus plazas" in the New York City context (Nemeth, 2009). In New York, incentive zoning is the main form of POPS procurement, and similar to Toronto, the City tends to permit these spaces in high-density residential and commercial districts (City of New York, 2016a). As well, the City approved amendments in 2007 and in 2009 to Article III of the Commercial District Regulations of the new Zoning Resolution to include design and operation standards for POPS (City of New York, 2016b). Much like Toronto, these design guidelines were likely introduced to instil an element of consistency in the urban landscape when it came to these bonus spaces to avoid gaping concrete holes in the public realm. Examples of some of New York's spaces include, One Worldwide Plaza, located at 825 Eighth Avenue in Manhattan (**Figure 1**).



Figure 1: One Worldwide Plaza, New York City POPS

(Source: Advocates for Privately Owned Public Space, The Municipal Art Society of New York, & Jerold S. Kayden, 2012b)

The plaza fronting 1251 Sixth Avenue/1251 Avenue of the Americas in downtown Manhattan (**Figure 2**).



Figure 2: 1251 Plaza, New York City POPS

(Source: Advocates for Privately Owned Public Space, The Municipal Art Society of New York, & Jerold S. Kayden, 2012a)

And one of the most well known POPS, tucked away between buildings along 53rd Street in Manhattan, Paley Park. (**Figure 3**). The park is small, but the water wall, seating and greenery make it an excellent example of an urban oasis in downtown.



Figure 3: Paley Park, New York City POPS
(Source: Enciu, 2011)

These spaces exemplify a selection of the approximate 530 POPS that are present within New York’s urban landscape (Kayden et al., 2000; Nemeth, 2009).

Within the City of Toronto, a POPS may be secured through the Site Plan Application or more commonly, through a Section 37 Agreement. The City of Toronto’s POPS take a multitude of forms including small landscaped spaces (i.e. 76 Davenport Road, **Figure 4**), plazas (i.e. 77 Adelaide Street, **Figure 5**) and walkways (i.e. the pedestrian walkway connecting Bloor Street and Critchley Lane in Yorkville, **Figure 6**) (City of Toronto, 2014b; City of Toronto, 2016g). Other notable examples of Toronto’s privately owned public spaces include the Rose Garden, part of the Four Season’s Hotel at Bay Street and Yorkville Avenue, the open plaza within College Park (444 Yonge Street), the plaza surrounding 2 Queen Street East (northeast corner), the plaza fronting King Street at the base of the Scotia Bank Tower (40 King Street West), the open plaza surrounding 832

Bay Street (**Figure 7**) and the pedestrian connection between Front Street and Bremner Boulevard, around the CN Tower (City of Toronto, 2016g).



Figure 4: 76 Davenport Road
(Source: Untitled image of 76 Davenport Road POPS)



Figure 5: 77 Adelaide Street



Figure 6: Pedestrian laneway connecting Bloor Street and Critchley Lane in the Yorkville neighbourhood



Figure 7: 832 Bay Street

An in-depth discussion on how these spaces are created and secured will be discussed later in the report.

2.4 Toronto & POPS

The City has defined POPS as a “specific type of open space which the public [is] invited to use, but remain privately owned and maintained” (City of Toronto, 2014b, p.1). Approximately 400 potential POPS have been identified by Toronto Planning Staff, not including those proposed in new developments (Keesmaat, 2013). Within the City, these spaces can take the form of plazas, gardens, courtyards and walkways and are secured through both Section 37 Agreements as well as Site Plan Agreements (City of Toronto, 2014b; Keesmaat, 2013). As of 2014, the City has secured more than 100 POPS for Torontonians (City of Toronto, 2014b).

2.4.1 Toronto POPS: Timeline

As previously mentioned, the use of density bonus agreements have been used to obtain new public and open green space for the City of Toronto. Until 2014, there was an absence of formal provisions to mediate the design of privately owned publicly accessible spaces or a strategy for defining and identifying existing and future POPS in Toronto. The legality surrounding outdoor plazas in Toronto was a grey area that came into full view in 2010 when RioCan, a major management and development company, purchased the Yonge Eglinton Centre at the northwest corner of Yonge Street and Eglinton Avenue in Ward 22 in 2007 (Perkins, 2013). In order to understand this significance of this event and it’s relationship to the POPS conversation, online research was required of old news paper articles that chronicled the event. As a growing epicentre of business and population, RioCan ceased the opportunity to redevelop the outdated center and enclose the outdoor plaza adding 40,000 additional square feet of retail space over 3-floors (Gee, 2012). A local opposition group formed (the YES Coalition) and the local community was enraged by the proposal as this plaza was seen as a meeting space for students, local employees and residents wanting to take a break outside (Gee, 2012). Through a legal analysis of the property, it was found that in purchasing the land, RioCan was under no obligation to keep this a publicly accessible space (Gee, 2012). There was no formal agreement made between the original owners and the City to keep the open space in perpetuity and no reports of council minutes that said that the land was to remain open according to background research conducted by City Planning (Keefe, 2010). On March

31, 2010, City Council voted to approve RioCan’s zoning by-law amendment sealing the fate of the centre’s open plaza (City of Toronto, 2010). According to the staff report for the redevelopment, a portion of the southeast corner of the property and the roof was secured for public access in the Section 37 Agreement (Keefe, 2010). This space is not formally referred to as a POPS within this agreement. Upon identifying the importance of privately owned public spaces in the city and the deficiency in protection and recognition measures, in 2012 current Ward 22 Councilor Josh Matlow spearheaded the City’s reform of POPS (City of Toronto, 2012b). This journey lasted approximately 20 months (almost two years) and brought the conversation of public space and open space provision to the forefront of municipal conversation. The timeline of events starting in 2012 leading up to today’s political involvement in POPS is found in **Table 1**.

Table 1: Development of Toronto’s POPS Program (2012-2014)

November 27, 2012	Councilor Josh Matlow put forth a motion that was seconded by Councilor Adam Vaughan (City of Toronto, 2012b). Matlow made two recommendations to Council, which was to identify all privately owned public spaces in the City and to formulate a signage strategy for new and existing spaces (City of Toronto, 2012b). His motion contained two rationales, the first being the increase in multi-unit high rise developments in the City required accessible public space and that citizens were not using existing publicly accessible spaces because they simply did not know they could (City of Toronto, 2012b). Councilor Matlow’s motion was put forth as an initiative to protect and promote Toronto’s privately owned public spaces (City of Toronto, 2012b). Council adopted the motion (City of Toronto, 2012a).
June 3, 2013	The Chief Planner released the staff report to the Planning and Growth Management Committee that contained a response to Council’s 2012 direction on POPS (Keesmaat, 2013). Within this report, an initial summary of the POPS identified is included as well as signage and design guideline strategies (Keesmaat, 2013).
June 20, 2013	The Planning and Growth Management Committee recommended that City Planning research existing privately owned public spaces in the city that required signage as well as work with the Legal Services Division to develop the signage template (specifically the wording) and to develop draft design guidelines for new POPS (City of Toronto, 2013). These recommendations were based on the findings in the June 3 rd report (City of Toronto, 2013). Essentially, the Planning and Growth Management Committee approved of what was in the report and recommended that City Council approve the report (City of Toronto, 2013).

July 16, 2013	City Council approved the recommendations of the Planning and Growth Management Committee (City of Toronto, 2013).
May 22, 2014	The Chief Planner released the staff report to the Planning and Growth Management Committee that contained more details related to the proposed POPS strategies; the Draft Urban Design Guidelines for Privately Owned Publicly-Accessible Spaces, the interactive POPS website, signage and the new standard to have POPS signage be a standard in all new and existing development applications that include POPS (Keesmaat, 2014c).
May 28, 2014	A community consultation meeting took place with key stakeholders and community members. Groups invited to the meeting included members of the Building Industry and Land Development Association (BILD), the Confederation of Resident and Ratepayer Associations, the Financial District BIA and Ward Councilors (Keesmaat, 2014c). The consultation was a success with city staff receiving positive feedback on their initiatives (guidelines, signage and website) from the attendees (Keesmaat, 2014c).
June 19, 2014	The Planning and Growth Management Committee recommended to Council to approve the Draft Urban Design Guidelines for Privately Owned Publicly-Accessible Spaces as well as the proposed standard to require POPS signage in current and future development applications that include POPS (City of Toronto, 2014a).
July 8, 2014	City Council adopted the Draft Urban Design Guidelines for Privately Owned Publicly-Accessible Spaces and the standard for current and future development applications that include POPS to include provisions related to signage (City of Toronto, 2014a).

The amount of time in which the City took action on POPS is quite remarkable. In less than two years, the City was able to produce a database, a signage system and approve a set of design guidelines for new privately owned publicly accessible spaces. The City's quick response to the motion of Councilor Matlow is indicative of the relevancy this type of public space provision with contemporary development in Toronto. Moving forward, it is important to understand the role the city plays in the development of POPS.

2.4.2 Key Elements of the City's POPS Program

As mentioned in the previous section, City Council approved City Planning's proposed interventions to make POPS more discernable within the urban public landscape. The key elements that make up the City's POPS program include the creation of a sign template, an interactive online map/database and a set of urban design guidelines (City of Toronto, 2014a). Stepping back and looking at these initiatives in the context of what POPS are, it is interesting to see how the city has assimilated themselves into a process that is intended to be at arms length of the local government. Spaces that are intended to be owned and maintained by the private sector still have a degree of public oversight (City of Toronto, 2014b). The following section will describe the aspects of the City's POPS program.

Signage

In 2014, City Planning revealed a template for the components that will be posted in all new and existing POP spaces. The sign was created as a "method of identifying and promoting public use of POPS" (Keesmaat, 2014c, p.5). In the cases of existing POP spaces, City Planning Staff contacted property owners about the new signs (Keesmaat, 2014c). However, much like new POP spaces, the City does not pay for the creation or installation of the signs but rather has designated it the applicant's responsibility to have the sign created in the form that best matches the character of the space (Keesmaat, 2014c). City Planning Staff will provide the template and the location of the sign to the applicant during the application review stage. According to Chief Planner Jennifer Keesmaat (2014c), the location of the sign on the property will be entrenched in the site plan agreement, drawing and the Section 37 Agreement (if one is made). Signage is an appropriate way to notify the public of POPS and the subsequent details regarding its use which fulfills Councilor Matlow's initial proposition to City Council.

Online Database & Map

Within the same year, City Planning unveiled their online database and interactive map which shows the location of existing POPS as well as future spaces marked by distinct pins and colours (Keesmaat, 2014c). The map is one of the strategies proposed by City Planning to make citizens more aware of Toronto's POPS (Keesmaat, 2014c). According

to City Staff, the website would be updated frequently as new POPS are proposed and secured however there is no mention as to how frequently the website would be updated and how citizens would be notified that new POPS has been secured (Keesmaat, 2014c).

‘Privately Owned Publicly Accessible Space’ Urban Design Guidelines

Also in 2014, City Council approved the urban design guidelines for POP spaces; a 40 page document that contains the City’s rationale and arguments for the importance of public and green space in Toronto. Within this document, the City outlines three distinct roles for POPS; to enhance and compliment Toronto’s open space network, to enhance the buildings programming and to compliment cultural heritage (City of Toronto, 2014b). Within Section 2.2 of the guide, ‘Enhancing Building & Site Program’, POPS are encouraged to be planned appropriately and with a specific purpose and function for the immediate building and the adjacent area (City of Toronto, 2014b). One interpretation of this section is that its purpose is to safeguard the community from dead, wasted concrete spaces that are made public to fulfill the requirements for the density bonus. With this provision in place, the City can expect to obtain well-designed and functional spaces from developers and builders.

These guidelines resemble other design documents produced by the City in that illustrative pictures and sketches accompany the design suggestions. There are four key chapters to these guidelines; Chapter 3 Open Space Classifications, Chapter 4 Design and Chapter 5 Elements. Chapter 3 highlights the types of spaces that the City considers to be open space. This chapter is important because it allows the city to achieve an element of consistency in terms of design and character (City of Toronto, 2014b). Each class of space is paired with provisions related to location & scale, uses & programming, edges & access and landscape & amenities (City of Toronto, 2014b). Through these guidelines, the city maintains a sense of involvement in how these spaces are designed so that they coincide with the larger vision for Toronto’s urban landscape. As well, Chapters 4 and 5 contain the design elements and features that are typically found in conventional public spaces. It appears as though the inclusion of these chapters is a way for the City to get developers to ‘brand’ their spaces public through the elements that are commonly associated with good public spaces such as seating, art, lighting and materials (City of

Toronto, 2014b). In doing so, the city is enforcing the elements that are known to be in publicly accessible and inviting spaces.

It is clear through the POPS program that the City considers these important spaces and is looking to achieve consistent design, understanding and use of these spaces across all sectors. The program was only rolled out in 2014, and is still within its preliminary stages.

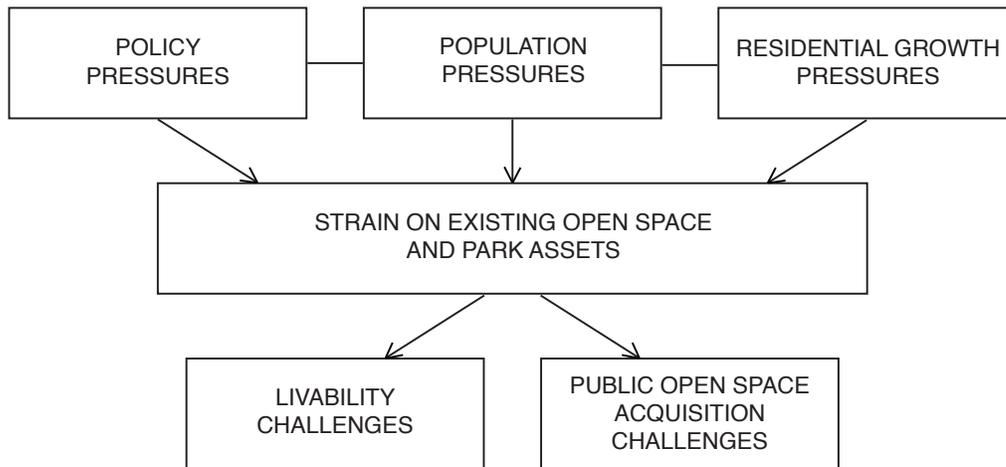
3.0 POPS role in a Growing City

3.1 Overview

The City of Toronto is rapidly growing and with that growth must find new ways to efficiently and effectively make use of the available, buildable land within its municipal boundaries. The repercussions of this growth have been well documented by the City as well as public space and park interest groups. The conversation, however, regarding Toronto's challenges with open space and parks is one that has been going on for decades as seen in the report published by the Bureau of Municipal Research in 1971. While its statistics are grossly outdated and since its publication the former City of Toronto has amalgamated, the messages and concerns are just as relevant today as they were in the 70s. The authors call attention to Toronto's uneven distribution of local parks, the rising costs of downtown properties influencing the City's purchasing capacities of new parks, the low accessibility rates of urban open and park space and the core reasons open space is important to the health of urban centers (Bureau of Municipal Research, 1971). The authors spoke to the most imperative question, "what priority do parks have in Toronto" and attributed the answer to two overarching factors, money and competing land values (Bureau of Municipal Research, 1971, p.14). The messages coming out of this report remind us that no planning problem is a new problem, but the context in which it effects our City evolves over time.

Through this section, the connection between the growing gap in public and open space availability and provision and POPS will be brought forward. The existing pressures on our urban open space and parkland system will be identified the role POPS play in mediating the social and economic strains these pressures have on our urban open spaces will be discussed. **Figure 8** illustrates this narrative.

Figure 8: Inputs and Outputs of Policy and Growth Pressures



3.2 Regional Level Growth Policies

Undoubtedly, Toronto has undergone significant population and density changes since the early 2000's. The downtown core has evolved into a landscape of towering glass buildings, busy streets and crowded roadways. While the physical ramifications of intensification and growth are more visible in the core, other areas of Toronto are starting to see an increase in development applications and dense residential and mixed-use proposals. This increase has been partially catalyzed by regional policies that are encouraging growth and intensification in 'urban settlement areas'¹ (Ministry of Infrastructure Ontario, 2013). The *Growth Plan for the Greater Golden Horseshoe* identified 25 'Urban Growth Centres', areas in which intensification should occur (Burchfield & Kramer, 2015). The Neptis Foundation defines intensification as development that is directed to existing built up areas, opposed to Greenfield development (Burchfield & Kramer, 2015). Within this plan, 'Urban Growth Centers' are to support a portion of the population and employment growth with strategic institutional, cultural and transit investments funnelling into these areas (Smitherman, 2008). There are 17 Centres found within the Greater Toronto Hamilton Area (GTHA) and **Table 2** highlights the growth patterns in these areas between 2001 and 2011 (Burchfield &

¹ Term used in the *Growth Plan for the Greater Golden Horeseshoe 2013 update* to refer to urban and rural settlement areas such as cities, towns, villages and hamlets within municipalities that has a mix of land uses, development and has been designated to have development in corresponding official plans (Ministry of Infrastructure Ontario, 2013, p.56).

Kramer, 2015). Of the 17, City of Toronto contains 5 areas targeted for intensification; ‘Downtown Toronto’ (DT), ‘Etobicoke Centre’ (EC), ‘Yonge-Eglinton Centre’ (YEC), ‘North York Centre’ (NYC) and ‘Scarborough Centre’ (SC) (Smitherman, 2008).

Table 2: Population and Dwelling Growth in the Greater Toronto Hamilton Area ‘Urban Growth Centres’

Growth Centre	Population			New Dwellings		
	2001	2011	Change	2001	2011	Change
Downtown Toronto	157,310	209,770	+52,460	87,480	131,260	+43,780
North York (Toronto)	36,570	63,830	+27,260	16,840	32,060	+15,200
Yonge-Eglinton Centre (Toronto)	15,550	19,870	+4,320	10,260	13,220	+2,960
Etobicoke Centre (Toronto)	13,980	18,950	+ 4,970	6,300	9,310	+3,010
Scarborough Centre (Toronto)	9,800	19,970	+10,170	4,090	9,280	+5,190
Mississauga City Centre	60,380	79,780	+19,400	23,600	34,850	11,250
Downtown Brampton	14,910	16,340	+1,430	6,170	8,020	+1,850
Downtown Burlington	12,190	13,420	+1,230	6,530	7,320	+790
Richmond Hill/Langstaff	10,450	16,900	+6,450	3,480	6,240	+2,760
Downtown Pickering	9,140	8,960	-180	3,520	3,760	+240
Downtown Hamilton	8,640	9,440	+800	5,180	5,700	+520
Downtown Oshawa	8,060	7,860	-200	4,030	4,180	+150
Downtown Milton	4,620	4,890	+270	1,850	2,190	+340
Markham Centre	3,550	9,490	+5,940	1,050	4,300	+3,250
Newmarket Centre	2,290	2,230	-60	750	830	+80
Vaughan Metro. Cent.	2,060	2,130	+70	620	640	+20
Midtown Oakville	1,100	1,320	+220	390	600	+210
GTHA TOTAL	370,586	505,148	+134,562	182,132	273,749	+91,617
CITY OF TORONTO TOTAL	233,210	332,390	+99,180	124,970	195,130	+70,160

Source: Burchfield & Kramer, 2015.

The City of Toronto saw a substantially higher population increase in the Growth Centres (approximately 99,000) when compared to other areas (Burchfield & Kramer, 2015). This growth made up for 73.7% of the population increase within these centres in the whole GTHA area (Burchfield & Kramer, 2015). From this data it can be inferred that the City of Toronto is experiencing substantial growth pressures.

Regional planning policies are putting pressure on The City of Toronto and specifically the Downtown core to intensify. Looking at these policies from a open space perspective,

this may induce a degree of pressure on the development community to maximize, in an efficient way, the land that they have. As a result, you see the land in built-up areas become saturated with big and large scale developments to achieve maximum density for the growing population. Returning to the question posed in the Bureau’s 1971 report, do competing land uses have an impact on how we prioritize open space? Provincial policies have instigated a game-changing factor into how we imagine the potential embedded in downtown real estate. Next, we identify the pressures a growing population has on open space systems looking at growth at both a municipal and area level.

3.3 Growth in the City of Toronto

Toronto, with its rich culture, innovative creative hubs and financial districts has become an attractive place for people to live, work and play. Looking more specifically at the Growth Centres within the City of Toronto, it is evident that the Downtown experienced more population and dwelling development in comparison to the other centres (see **Table 3**) (Burchfield & Kramer, 2015).

Table 3: City of Toronto Growth Centres (Population)

	DT	YEC	SC	EC	NYC
Population in 2001	157,310	15,550	9,800	13,980	36,570
Population in 2011	209,770	19,870	19,970	18,950	63,830
Population Change	+52,460	+4,320	+10,170	+4,970	+27,260
Proportion of pop'n growth in Urban Centres (%)	41	3	8	4	21
Proportion of GTHA pop'n growth (%)	5	<1	1	<1	3

Source: Burchfield & Kramer, 2015.

Downtown Toronto accounted for 41% of the total population growth in Urban Centres found within the GTHA and 5% of the overall population growth in the GTHA area (Burchfield & Kramer, 2015). Other areas in Toronto showing signs of growth are the major corridors and avenues like Yonge and King Street (Ontario Ministry of Finance, 2015). According to ‘*Downtown Toronto, Trends, Issues, Intensification*’ a report published by the City Planning Department, Toronto’s Downtown population has grown to over 200,000 people, which is more than 2 times more than what the 1976 Center Area Plan for Toronto anticipated (Ostler, 2014). The rate of population growth in the

downtown is about 4 times greater than the rest of the city (Ostler, 2014). The number of residential development applications either approved or under review, could result in a potential Downtown population of 376,000 residents (Lintern & Voumvakis, 2015). As Toronto grows, as does the demand for housing. For example, 18 towers were approved Downtown at a 2014 City Council meeting (Garrett, 2015). Within the span of four years (May 2011-June 2015), 26,220 new dwelling units were completed Downtown (Lintern & Voumvakis, 2015). As of 2011, the predominant housing form was almost equal in the downtown between condominium units (47%) and non-condominium units (53%, i.e. single family, at grade homes, rental apartments etc.) (Ostler, 2014). There's a vertical shift in the reality of what downtown living is. As of June 30th, 2015, there were approximately 76, 687 units either proposed or under construction within the Downtown (Lintern & Voumvakis, 2015). According to **Table 4** (see below), there was more than two times the amount of development of new dwellings in the Downtown in comparison to Yonge and Eglinton, Scarborough, Etobicoke and North York.

Table 4: City of Toronto Growth Centres (Dwellings)

	DT	YEC	SC	EC	NYC
Dwellings in 2001	87,480	10,260	4,090	6,300	16,840
Dwellings in 2011	131,260	13,220	9,280	9,310	32,060
Dwelling Change	+43,780	+2,960	+5,190	+3,010	+15,200
Proportion of dwelling growth in Urban Centres (%)	49	3	6	3	17
Proportion of GTHA dwelling growth (%)	10	1	1	1	3

Source: Burchfield & Kramer, 2015.

However, when speaking of city growth, it is also important to make note of the other Centers outside of Downtown that may not be experiencing population growth at the same intensity but none the less experiencing similar ramifications on the public realm and liveability. As a reminder, the Centres are the 4 areas identified in the *Growth Plan* besides the Downtown expected to accommodate growth and development. Within these Centres, the average number of residential units per project is 533, which is actually higher than Downtown (465 units) (Toronto City Planning, 2015). In a 2015 publication, City of Toronto noted that the Centre with the most development is the Yonge-Eglinton Centre (Toronto City Planning, 2015). Yonge and Eglinton is the largest secondary plan

area with the Yonge-Eglinton Centre experiencing a 73% population increase (based on 1991-2011 Census data) (City of Toronto & City Planning, 2016). There are 21 applications under review within the Secondary Plan area and 24 applications that have been approved or are under construction as of 2015, which when combined could bring an estimated 12,296 new residential units to the area (City of Toronto & City Planning, 2016). Much like Downtown, many major corridors, avenues and thoroughfares bisect the Yonge-Eglinton Centre which present opportune, large scale mixed-use sites.

At the pace at which the City is growing, it is important to understand the importance of make-shift communal space and outdoor amenities and their role in assisting mediating living expectations from that of a conventional house and backyard towards one of greater heights.

3.3.1 A Growing Interest in Downtown Living

Not only is the downtown being targeted for intensification from the Provincial level, but there is also a growing interest among people to live and work downtown. Toronto is often frequented by commuters and tourists but the city's core also is an incubator for education, science, technology, and innovation. Through interviews, the City found that living in walking distance to social and cultural amenities as well as transportation networks drew new and held existing residents to the downtown core (Ostler, 2014). One of the problems that has arisen from rapid development is the ability to supply public services infrastructure that coincides with a strong and prosperous neighbourhood (Garrett, 2015). The rate of growth and intensification has surpassed the City's ability to improve and enhance the park and open space system in Toronto (Ostler, 2014). As such, challenges related to liveability and quality of life in Toronto's dense areas have arisen and it is now up planners and urban policy makers to explore remediation strategies.

3.4 Liveability, Infrastructure and Fiscal Issues at Large

Existing provincial policy, local policy and the subsequent growth within Toronto has resulted in strained parks and open space networks. In a report written by Jake T. Garrett (2015) from Parks People, some of Toronto's existing park and open spaces were not originally designed to accommodate the amount of people we see using them today. With

the downtown population projected to reach over 370,000 residents, it could be inferred that the overuse and crowding of existing open spaces and the absence of new spaces may impact the health and liveability of Toronto's core (Lintern & Voumvakis, 2015). This is because the public realm plays a pivotal role in the Downtown's liveability and user experience (Ostler, 2014). Moreover, two of the issues identified in the '*Downtown Toronto, Trends, Issues, Intensification*' report that should be addressed with infrastructure include the availability of what the Planning Department called 'breathing space' and the public realm quality (Ostler, 2014). This report cites quality and quantity of public space, connectivity to buildings and land uses and design, programming and maintenance quality as the three fundamentals of public realm success. (Ostler, 2014). It appears that in rapidly growing, dense areas of the city, the quality of our public realm has been constrained by municipal resources and capabilities while quantity has been jeopardized due to population demand.

Looking to the City, they have been unable to keep up with the demands for new open space and parkland. Only 242 hectares of new park space was created between 1998 and 2014 with the City's park creation rate reportedly at 9.2 hectares per year (Lorinc & Noble, 2015). Now, the City does not warrant all the blame for the lack of new parks and open space in Toronto. In short, the City has two options for parkland as outlined in Section 42 of the Planning Act, to purchase new land with the money given to them from developers via cash-in-lieu payments or to accept dedication of new parkland from developers in new developers (City of Toronto, 2016a)². In today's market however, land values have paralleled Toronto's growth which has resulted in downtown properties going between \$30-60 million dollars per acre, or about \$7,400-14,826 per square meter (Ostler, 2014). Purchasing land for new parks and open space by the City gets called into question as staggering land prices create a challenge to park planners in Toronto who are bound to policy that require the purchase of lands at fair market value (Ostler, 2014).

² Parkland can be acquired by the City's Parks and Recreation Department either through land dedication or by purchasing land using the money from cash-in-lieu payments, also called a 'Parks Levy Fee' (City of Toronto, 2016a). The value of the levy is determined via percentage of the market value of the lands and is put in one of many reserve fund accounts; Parkland Acquisition Reserve Funds, Parkland Development Reserve Funds and the Alternative Parkland Dedication Reserve Fund (City of Toronto 2016a; Rossini & Patterson, 2013). During the three year period between 2011 and 2014, developers paid around \$298.5 million dollars in cash-in-lieu payments (Lorinc & Noble, 2015).

This policy prevents the City from purchasing lands that are marketed above the assessed value; the ceiling price the City can pay for a piece of land (Lorinc & Steep, 2015). In light of today's real estate market, this creates significant challenges for the City's Parks Department to buy new property (Lorinc & Steep, 2015). An investigation done by the popular planning magazine *Spacing* found that since 2009, less than \$1 million has been spent to purchase new parks between the three wards that constitute the Downtown – Wards 20, 27 and 28 (Lorinc & Noble, 2015). In contrast, *Spacing* also reported that between 2010 and 2014, the annual dedication of parkland from developers was around 0.64 hectares (Lorinc & Steep, 2015). From this, we see that the City is not receiving substantial dedications from the private sector. The alternative, would be to use cash-in-lieu payments to purchase and build new parks. However, given the challenges associated with the fair market value policy, there is a disconnect between what is spent and what private sector contributes from their developments. Between 2010-2013, the city spent \$25.9 million on new parkland across the city (Lorinc & Noble, 2015). To put this value in perspective, developers contributed almost \$298.5 million in cash-in-lieu payments between 2011-2014 in Toronto (Lorinc & Noble, 2015). Collaborative projects and public-private partnerships are seen as the contemporary solutions to the City's parkland acquisition challenges.

3.5 A Shift in Parks and Open Space Dialogue

Garrett (2015) brings attention to the growing interest into alternative avenues of funding and designing urban parks and open space. Firstly, collaboration with the private sector to finance public goods, services and infrastructure is common in large urban centers (UN Habitat, 2009). This municipal financing tool is referred to as 'public-private partnerships'. These are the arrangements made between the government and the private sector (including non-governmental bodies and non-profit sector) in which the private sector would build, manage, operate and finance a new public facility on behalf of the local government (Fussell & Mellanby, 2009). Secondly, in Toronto, new park and open space typologies are emerging. Two examples include the West Toronto Rail Path and June Callwood Park. The Rail Path, completed in 2009 exemplifies an urban linear park hidden away in former industrial land in west Toronto (Brown + Storey Architects, 2011).

Only 2 kilometers in length, the pathway has successfully connected neighbourhoods and existing avenues and does not look like a conventional green pathway (Brown + Storey Architects, 2011). In contrast, June Callwood Park, a small urban park constructed south of Fort York, is the newest urban oasis for the buildings that tower over the space emphasising design and art (Calvet, 2014). This urban public park made use of an underutilized space and enhanced neighbourhood character and connectivity.

With this in mind, environment in which planners are working in has called for alternative solutions to bridge the gap in provision of parks and open space in Toronto. POPS is an urban design tool that could fill this gap. Again, POPS are not intended to be a replacement for park space (City of Toronto, 2014b). That being said, POPS offer a unique opportunity to harness current development trends to enhance the public realm and increase dense neighbourhood liveability. First, POPS are on the radar of the City. In 2013, the City of Toronto conducted a consultation with condominium residents on issues related to city planning and condominium living (Swerhun, R.E. Millward & Associates Ltd., regionalArchitects., & Halsall Associates, 2014). Green space and the public realm were identified as issues by the participants and the consultants recommended that the city “prioritize the provision of such spaces during the review of new development applications” and make sure these spaces are “readily accessible from the street” (Swerhun et al., 2014, p.13). Further more, the staff report written by the Chief Planner based on the consultants report did not include POPS as one of the recommendations to City Council but rather acknowledged that POPS is an existing city initiative to help with green space concerns and public realm provision (Keesmaat, 2014b). Secondly, POPS are loosely grounded in the private-public financing model, which is appealing given the current fiscal constraints confronting the City. However with POPS, these spaces are under the ownership of the private sector (developer or condo board) but the public is permitted to use this space as if it was a conventional, city provided public space.

3.6 Concluding Thoughts

POPS are currently viewed as community benefits but as this paper will show, they are far more than that – they are complex, complicated and contested spaces. As planners we

need to return to basics and understand the current ways in which these spaces are being used and why the public sector is pushing for them and why the private sector is providing them. Since development does not show signs of slowing down, it is important that planners and policy makers understand POPS in Toronto so that they maximize the viability of these spaces.

4.0 Planning Policy & Upcoming studies

This section will discuss where the development of open space, green space and the public realm are encouraged in Provincial and local planning policy. As discussed below, the promotion of public open space can be found through in provincial policy including the *Planning Act (PA)*, the *Provincial Policy Statement (PPS)* and the *Growth Plan for the Greater Golden Horseshoe (GGGH)*. As a creature of the province, Toronto is required to conform their Official Plan policies to provincial plans. The current *Official Plan* for the City of Toronto includes sections that touch on the importance of public open space and how these should manifest in the City.

4.1 Existing Planning Policy

Provincial Policy Statement

Public open spaces are associated with healthy, liveable and sustainable communities in the *Provincial Policy Statement* and are further encouraged and promoted in land use and development patterns within cities (Policy 1.1.1b) (Ministry of Municipal Affairs and Housing, 2015). Similarly, to promote healthy and active communities the PPS encourages, “*a full range of equitable distribution of **publicly-accessible built and natural settings** for recreation, including facilities, parklands, open space areas, trails and, where practical, water-based resources*”. (Policy 1.5.1b) (Ministry of Municipal Affairs and Housing, 2015).

Growth Plan for the Greater Golden Horseshoe

While the *Growth Plan* was discussed earlier in this report for the population projections for the City of Toronto, this plan does play an important role in the conversation around public space in growing and intensifying areas within the Greater Golden Horseshoe. One of the guiding principals of this plan is for cities to build compact, vibrant and complete communities (Ministry of Infrastructure Ontario, 2013). According to the plan’s definition of a complete community, it is one that meets people’s daily needs through the provision of community infrastructure (among other things), which are the “*lands, buildings and structures that support the quality of life for people and communities*”, such as open space for residents (Ministry of Infrastructure Ontario, 2013, p.48). As well,

the plan contains policy directions for creating community infrastructure that supports growth and the creation of complete communities (Policy 3.2.6(2)). Open space is also referred to in Policy 2.2.2(h),

*“Encouraging cities and towns to develop as complete communities with a diverse mix of land uses, a range and mix of employment and housing types, **high quality public open space** and easy access to local stores and services”* (Ministry of Infrastructure Ontario, 2013, p.14)

In addition to Policy 2.2.3(7c) in the context of areas that have been encouraged to intensify built-up areas,

*“Intensification areas will be planned and designed to provide **high quality public open spaces** with site design and urban design standards that create attractive and vibrant places”* (Ministry of Infrastructure Ontario, 2013, p.16)

In conclusion the *Growth Plan*, a provincial planning document, contains policies that acknowledge open space as a contributor to healthy and complete communities.

Official Plan

Privately owned publicly accessible spaces is only explicitly referenced in Toronto’s *Official Plan* once within Section 3.2.3 Parks and Open Spaces,

*“The City’s Green Space System, made up of parks and open spaces, the natural heritage system and a variety of **privately managed but publicly accessible spaces**, is an integral part of our quality of life and social well-being”* (Keesmaat, 2015, p.3-28)

Nonetheless, there are a number of policy sections that do encourage and promote the enhancement, creation, location and development of new parks and open spaces; Section 2.3.2 Toronto’s Green Space System and Waterfront, Section 3.1.1 The Public Realm and finally, Section 3.2.3 (Keesmaat, 2015). Touching on the importance of these spaces for those living within the downtown, the plan also promotes accessibility and mobility within the public realm and discusses the role parks and open spaces have in support of the public realm (Keesmaat, 2015). From a planning perspective, the *Official Plan* policies in place the development and creation of new public spaces and open spaces as a means of connecting, supporting framing and defining Toronto’s public realm (Keesmaat, 2015).

4.2 Upcoming Studies

TOcore

Initiated by the City Planning Division, the unprecedented rate of growth and development within the core warranted intervention and the creation of a comprehensive plan and preventative strategies to ensure that the vitality and potential of Downtown Toronto would not be jeopardized (City of Toronto, 2016d). *TOcore* is important to this report because it addresses the problem that is at the root of the POPS conversation – downtown intensification. One of the key strategies is to improve Toronto’s parks and open spaces by developing a ‘Parks and Realm Plan’ (City of Toronto, 2016d; City of Toronto, 2016f). Notably within this study, POPS are associated with the public realm, further solidifying the distinction that these ad-hoc public-private spaces are not to be associated with park or park strategies (City of Toronto, 2016f). In December of 2015, City Council approved the first phase of the study which encompassed numerous recommendations, one of which included the development of a parks and open space plan for the downtown core (City of Toronto, 2016e; Lintern, & Voumvakis, 2015). POPS were not referred in the approved Staff Report, however the public realm was mentioned in recommendation 5A, “undertake a public life study” and 5C, “inform and support placemaking initiatives” (Lintern, & Voumvakis, 2015, p.41). Moving forward, it will be interesting to see where POPS fit into the results of the *TOcore* study.

5.0 Current Legal Mechanisms to Secure and Create POPS

In the City of Toronto, privately owned public spaces can be created through Section 37 Agreements or through Site Plan Agreements (Keesmaat, 2013). In Toronto, the use of Section 37 is most prominent in the downtown, within major centers and along avenues (Moore, 2013). In order to understand how POPS are made in Toronto, it is important to understand the policy that allows for the provision of POP spaces by the private sector.

5.1 Site Plan Control Overview

Site Plan Control Applications and Site Plan Agreements are usually one of the last steps of the development process, securing the look, design and technical features of the proposal (City Planning Division, 2011). These applications accompany a proposal for an as-of-right development³ or after a Zoning By-law (ZBA) or Official Plan Amendment (OPA) has been approved (City Planning Division, 2011). Site Plan Control Applications undergo a pre-application meeting, review by Councilors, City Divisions, Agencies, Boards or Commissions, community consultation and council approvals⁴ (City Planning Division, 2011). The approval process for Site Plans are more complex as this is the stage where the plans are legally secured on title (City Planning Division, 2011). Approvals occur in two stages, illustrated in **Table 5**.

³ As of right refers to a development proposal that complies with the existing zoning mandates and Official Plan designations.

⁴ The process as discussed in the context of this paper has been simplified. There are additional steps for when an application or the Site Plan Agreement has been appealed to the OMB or if the Ward Councilor would like to see the application “bumped-up” (City Planning Division, 2011, p.D-2).

Table 5: Site Plan Application Approval Process

Stage 1	The Director of Community Planning issues the Notice of Approval Conditions (NOAC) (City Planning Division, 2011). This document contains the pre and post approval conditions the developer or builder are required to meet. In conjunction with these conditions, the applicant must enter into a Site Plan Agreement ⁵ and post finance securities for certain conditions of approval (City Planning Division, 2011).
Stage 2	The final approval is a result of the Director of Community Planning issuing a Statement of Approval (City Planning Division, 2011). This will be issued and the application approved when the Agreement has been successfully entered and registered on title (City Planning Division, 2011).

Source: City Planning Division, 2011

In short, the Site Plan Control process is legal mechanism to ensure that the design, concept and intent of the development holds true during the construction process.

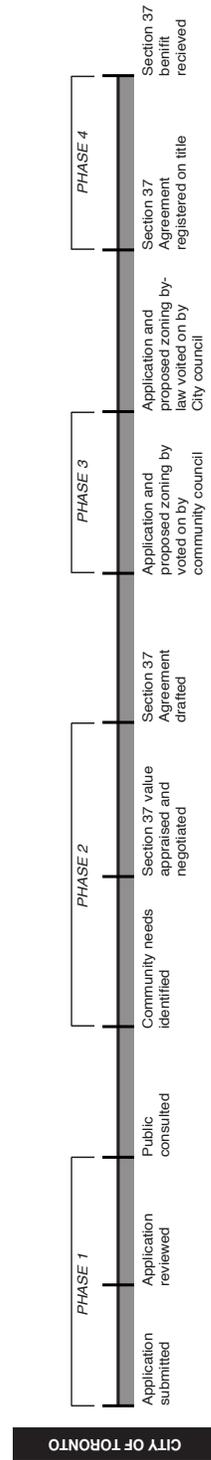
5.2 Section 37 Overview

Within the City of Toronto, the City can extract funding or physical assets from development applications via development charges, which help fund city wide improvements, or parkland contributions which are intended to benefit the entire city and local communities and/or Section 37 benefits, which are intended for only local improvements or benefits (City of Toronto, 2014c). The City favours the use of Section 37 because it allows for precise and tactical investments to be made to address the specific needs of local neighbourhoods (City of Toronto, 2014c). Section 37 Agreements, also referred to as a density for benefit agreement, is an arrangement where community benefits are provided by a private entity in exchange for the city’s approval for a zoning by-law that permits a height or density that would not, under normal circumstances, be admissible (City Planning Division Policy and Research Section, 2007). The City of Toronto defines ‘community benefits’ as the public benefits provided by a developer to an area in which the development is located either through in-kind contributions (a physical asset) or in the form of cash-in-lieu, often designated to a particular group or project. (City Planning Division Policy and Research Section, 2007). Community

⁵ Site Plan Agreements are legally registered on title and any previous titles for that site can be amended or removed while drafting up the new agreement (City Planning Division, 2011).

benefits are negotiated on a case-by-case basis by the Ward Councilor and the developer (City of Toronto, 2014c). The Ward Councilor and City Staff work together to develop Section 37 priorities for the community and are *encouraged*, not required, to work with the local community in identifying the local needs that could be satisfied by Section 37 benefits (City of Toronto, 2014c). See **Figure 9** for a condensed process chart outlining the Section 37 process according to the City of Toronto.

Figure 9: City of Toronto Section 37 Process



(Information Source: City of Toronto, 2014c)

5.2.1 The use of Section 37 in the City of Toronto

The use of Section 37 is permitted and widely used by local officials in Toronto. Under Section 37 of the Planning Act, a municipality must pass a by-law authorizing the exchange unless there is a section within the official plan that authorizes increased height and density (The Government of Ontario, 2015). Toronto's Official Plan includes such provision and the City has created the 'Section 37 Implementation Guidelines'. Having a set of guidelines in place illustrates the active use of this provision by local officials, and the City's attempt to ensure Section 37 is executed consistently across the city. According to an investigation by Aaron Moore (2013), the wards in which he saw a notable concentration of Section 37 Agreements being made was within Toronto's Downtown (Wards 20,27 & 28). Since amalgamation, \$309 million in cash contributions have been secured and an un-quantifiable amount of in-kind benefits (Galdki Planning Associates, 2014). The largest proportion of Section 37 benefits were extracted for parks (21%) with 51% of built amenities located within a maximum 5 minute walking distance from the development and only 5% located more than 30 minutes (Moore, 2012; Moore, 2013). These statistics reflect some of the characteristics of Toronto's interpretation and application of Section 37.

5.2.2 Characteristics and Critiques

In 2014, Gladki Planning Associates undertook a review of Toronto's use of Section 37 by examining cases, OMB hearings and conducting key stakeholder interviews. In conjunction with principals from the guidelines, characteristics and critiques of Section 37's use in Toronto are discussed below,

- Within the City of Toronto there is no citywide formula on the type or degree of community benefits that are required for a development (Principal 2.5, City Planning Division Policy and Research Section, 2007). The process is not standardized and is done on a case-by-case project and will vary across the city depending on the nature of the project, neighbourhood or Ward Councilor (City Planning Division Policy and Research Section, 2007).
- Both the guidelines and OMB outcomes have affirmed the notion that there has to be a clear "nexus" between the development and the community benefit (Gladki Planning Associates, 2014). According to Principal 2.4 of the guidelines, this "nexus" or "relationship" is spoken to in terms of geographic proximity (City

Planning Division Policy and Research Section, 2007). Gladki Planning Associates (2014) recognized the need for enhanced clarification regarding what would constitute as an appropriate geographic relationship.

- As seen in **Figure 2**, while the city has envisioned that the establishment of a roster of community benefits would be established from group collaboration (Ward Councilor, City Staff and the Community), Gladki Planning Associates (2014) found that this isn't the case in practice. There are few area-wide assessments of community needs being done and often needs are assessed when an application comes in (Gladki Planning Associates, 2014). In addition, the negotiation between the Ward Councilor and the developer for these benefits occurs at the end of the application process which inevitably limits the public input (Gladki Planning Associates, 2014). This leads us to believe that these negotiations are exclusive and exclude thorough community input. Gladki Planning Associates (2014) found that City Staff and Ward Councilors were “reluctant to raise the prospect of Section 37 community benefit contributions at the initial community consultation meeting on an application, since this may send the wrong message that there is already an assumption regarding approval, prior to carrying out a full assessment of the merits of the application” (p.8).
- Use of Section 37 in Toronto resulted in a significant time “lag” (years) between the initial benefit negotiations and when the money would be issued and released for those benefits (Gladki Planning Associates, 2014). Only when the zoning permit is issued can the Councilor be issued the Section 37 funds, which in some instances were not relevant to the community needs anymore (Gladki Planning Associates, 2014).
- Section 37 has been highly critiqued for not being a transparent process. As previously mentioned, inclusion of public input on the type of community benefits negotiated in the agreement but also the confusion among the public around the purpose and intent of the community contributions (Gladki Planning Associates, 2014).
- Gladki Planning Associates (2014) found in their review, Councilor follow up of the implementation of the Section 37 Agreement has been poor. This was attributed to weak department coordination and staffing changes (Gladki Planning Associates, 2014).
- Lastly, Section 37 Agreements are not intended to be part of the development but rather something that will accompany the development. Principal 2.1 of the guideline says that the development should represent “good planning” aside from the community benefit (City Planning Division Policy and Research Section, 2007). A project that does not represent sound planning should not be approved by the city as a way to obtain new community assets or the fiscal resources to obtain them (City Planning Division Policy and Research Section, 2007). It is mentioned within the Official Plan as well that contributions required by the

developer under the Planning Act or the Development Charges app can not be considered benefits as those are associated with good planning (Keesmaat, 2015). As such, the benefits coming from a Section 37 Agreement are separate and should stand alone from the development, not help rationalize and justify the proposal.

As illustrated by the above points, Section 37 use in Toronto does not align exactly with the intent the City of Toronto had imagined. Understanding the critiques of the system, along with an understanding of the area that require further clarity will contribute to the analysis of how POPS fit into this process in practice.

6.0 POPS and Section 42, Parkland Dedication

As discussed earlier, the City can obtain parkland either through dedication or from the money provided via cash-in-lieu payments, which is guided by Section 42 of the *Planning Act* (The Government of Ontario, 2015). Section 42 states that a developer or builder is required under law of the municipality to convey a portion of the proposed land for development or redevelopment to the city for park or recreational purposes (The Government of Ontario, 2015). Within Toronto, these parkland levies can be obtained by the City by requiring an amount of land be set aside for parkland dedication or through a cash contribution (cash-in-lieu) (City of Toronto, 2016a). In contrast to the Section 37 process, obtaining parkland from developers is done through a systematic process with defined rates for dedication (5% for residential, 2% for non-residential properties) and fees to be paid (called ‘Parks Levy Fees’) (City of Toronto, 2016a). The money collected from the Parks Levy Fees is deposited into the ‘Parkland Acquisition & Development Reserve Funds’ and is then used to create new parkland or invest in improvements in existing City parks and open spaces (Rossini & Patterson, 2013). These funds are obligatory, meaning that their purpose is bound by legislation or contractual agreements and Council cannot use the money for any other purpose (Rossini & Patterson, 2013). However, the increased interest in creating POPS has changed the perspective on the appropriateness of parkland levies in Toronto. One of the objectives of this investigation is to understand the underlying motivations of the private sector to develop POPS in Toronto given that they remain committed to conventional parkland payments.

7.0 Literature Review

7.1 Public Space

Public spaces are areas within cities that foster recreation and leisure, community and social relationships and places for political activism, displaying concealed conflicts and differences (Kohn, 2013; Francis, Giles-Corti, Wood & Knuiman, 2012; Talen, 2000). Parks, as a type of public space, have been noted to create the opportunities for strengthening social ties between neighbours (Kaxmierczak, 2013). Identifying elements and trends in the physical design of public spaces that shape and influence human behaviour, how people exist in a space, feel and interact with one another has been extensively researched and understood by the likes of Jane Jacobs (1961) and William Whyte (1980). Specifically looking at public spaces in New York, Whyte (1980) worked towards understanding the success of urban spaces based on observed human behaviour. Whyte translated these findings into principals, many of which are still referred to and embodied by practicing planners today.

It has been well studied and confirmed by academic literature that property values and prices will positively increase closer to public open spaces (Compton, 2006; Woolley, 2003). Proximity to urban public spaces and parks have been attributed to increased property values and an increased willingness by buys to pay more for a properties near public open spaces (Compton, 2006). Coined the “proximity principal”, real estate market trends showed that prospective buyers are willing to pay more for a property near a park than one that is not therefore capitalizing on a public amenity (Crompton, 2005; Crompton, 2004). Studies have also found that specific facilities in parks also influence surrounding property values such that passive activities had positive economic effects while parks supporting active recreation had negative effects (Lin, Wu & De Sousa, 2013). Methods of valuing non-market benefits, such as an urban tree or neighbourhood parks, which include the expert evaluation and hedonic pricing methods on property values or the housing market have also been studied (Price, 2003; Jim & Chen, 2010).

7.2 Privatization of Public Space

The critics of the modern design and management public spaces indicate that they are exclusive which can be a result of privatization and commercialization, unsafe and invented or homogenised spaces (Low, Taplin & Scheld 2005; Carmona, 2015). There has been a growing focus on the delivery of parks and public open spaces by non-public entities. The models of ownership has been a topic studied by academics.

Why is Public Space Privatized?

Large centres, like Toronto with a large and growing population face the challenge of funding and securing public amenities. Compact cities and increased densification can negatively effect the creation and provision of new urban green spaces (Haaland & Konijnendijk van den Bosch, 2015). Population pressures pose challenges to fiscal funding and financing complex infrastructure projects in urban centers (UN Habitat, 2009). Other mechanisms such as the consumption of common space or undemocratic governance by Development Districts and Home Owner Associations have positively shifted in favour of the private sector (Kohn, 2004).

How is Public Space Privatized?

The use of public-private partnerships can result in the privatization of public space. Public-private partnerships (P3s) are the arrangements made between the government and the private sector (including non-governmental bodies and non-profit sector) in which the private sector would build, manage, operate and finance a new public facility on behalf of the local government (Fussell & Mellanby, 2009). However, the partnership structures differ in regards to long-term impacts, role in infrastructure decision-making process, the amount of financing/capitol invested and risk capacity of the public or private sector (Hodge & Greve, 2007; Moskalyk, 2008). There are 11 organizational models of P3s, starting from the lowest degree of private sector involvement and degree of private risk to the highest degree of private involvement and risk, the models include; build-design, operation and maintenance, build-finance, build-finance-maintain, lease-develop-operate, design-build-operate, design-build-finance-maintain, design-build-finance-operate, design-build-finance-operate-maintain-build-own-operate and concession (Moskalyk,

2008, p.21). As argued by Murphy (2008), the P3 will be successful if the government establishes an agreement that accounts for all the possible risks and allocates them appropriately based on the skills and expertise of either the private or public sector. The use of public-private partnerships has been studied in Canada, specifically examining and evaluating the timeline of their use, identifying that the ‘second wave’ of P3 use was the most successful as partnerships have been more conservative and stronger risk transfer arrangements have been issued (Siemiatycki, 2015).

Critiques of Privatization

Case studies and research have found that through the privatization of open public space such as urban plazas, private owners have used design and control to inflict private interests (Loukaitou-Sideris, 1993). Private developers has been observed to make spaces intentionally uninviting and that in having control over design can result in the creation of spaces that inherently control user behaviour (Smithsimon, 2008; Németh & Schmidt, 2011). Access to privately owned public spaces can be viewed as a privilege, as the owner possesses the legal holdings over the space, reiterating the fact that these spaces may not be fully public (Banerjee, 2001).

As such, existing literature highlight how privately owned public spaces in New York are managed, created and designed but there is a gap that looks at these elements of POPS in other metropolitans. As such, this exploratory research paper is focused on understanding POPS within the context of Toronto, looking at the backend processes that support the creation of these spaces.

7.3 Types – ‘Privately Owned Public Spaces’

Privately owned public spaces that emerge from municipal exchanges have been studied extensively by Jeremy Németh in collaboration with Stephen Schmidt. Specifically, looking at privately owned public spaces in the context of density bonousing and the legal exchange of community benefits for height or density have been mainly grounded in New York case studies (Németh & Schmidt, 2011; Németh, 2009; Németh & Schmidt, 2007). Needless to say, the conversation of POPS literature would not be complete without acknowledging the work of Jeremy Kayden as mentioned in the opening of this

report. Academics have explored whether these spaces hold true to their name and are indeed public or are subject to more control than their traditional counterparts and if their spatial distribution is a product of satisfying the “haves” versus the “have not’s” (Németh & Schmidt, 2011; Yoon & Srivivasan, 2015). Observational research revealed that in fact privately owned public spaces felt less public as the management styles resulted in the controlled use, behaviour and access of these spaces (Németh, 2009). In fact, management of privately owned public spaces differentiate from traditional publicly owned spaces through their location and quality satisfaction, accountability and oversight and underlying profit motivations that result in exclusion and challenges public visibility and marginalization (Németh, 2009).

8.0 Methods

In order to answer research the question, relevant literature, policy, and primary data was reviewed. As POPS in the formal planning setting is relatively new within the City of Toronto, there was an identified gap in the literature regarding their creation and governance in the city. Primary data was collected in the form of interviews with both private and public sector actors involved in the development and implementation of development projects containing POPS. Interviews revealed first-hand experience creating and securing POPS through the City of Toronto's planning processes and procedures and illustrated the opportunities for improvement and challenges associated with the current regime. Secondary data, which included policy documents, public staff reports and newspapers and academic literature was consulted to contextualize and compliment the findings from the interviews.

8.1 Study Area

The topic of privately owned publicly accessible spaces was limited to City of Toronto in Ontario Canada for this investigation. While there may be examples of privately owned public spaces within other major cities in Ontario, their creation and the involvement of city planning in mediating their design is more prevalent within Toronto.

8.2 Primary Data Collection

A total of five interviews were conducted with individuals working within the private and public sector. First hand accounts of the POPS process will contribute to the overall purpose of the paper which is to further the understanding of how these spaces are secured and how urban planners can play a role in facilitating this process. Primary data revealed the strengths and limitations of this process which revealed areas of remediation for planners and policy makers.

Ryerson's Research Ethics Board approved the research on November 25, 2015 and a supplementary revision was approved January 25, 2016. The sample size was determined through time and resource availability and the number of individuals who responded to recruitment invitations. Representing various perspectives and positions in the

development of POP spaces, these participants brought forth their experience which was used to conceptualize a process model. To be considered as an interviewee for this study, participants from both the private and public sector were included who (i) had a degree of familiarity of the local planning process and had participated in some capacity in the Section 37 or Site Plan Application process (ii) had worked or currently works within the City of Toronto (iii) spoke English⁶ and (iv) had experience working on a project, application or completed project in the City of Toronto that contained a POP space. Similarly, participants were excluded from this investigation included those who (i) were unfamiliar or did not have extensive experience working with the City of Toronto's planning processes and procedures and (ii) had not worked on or had been associated with a development project that contained a POPS. Individuals who participated in this study participated in interviews that were semi-structured and guided by a set of open-ended questions. The intention for selecting these type of questions was to allow for response variability. Participants were granted the ability to ask questions or seek any clarification related to their role in the study and the nature of research and were given the ability to pass on questions, change answers or opt out of the interview.

8.3 Interview Results

Interviews were transcribed using an online tool (<http://otranscribe.com/>) however this was done for analysis purposes only and copies of the transcriptions are not included within this report. Word recognition software was not used on the transcriptions and the data was analyzed manually, identifying themes or trends that emerged from the interview responses. Findings were then synthesized to reflect generalized trends and direct quotes were used for illustration or exemplifiers. To maintain confidentiality, names were omitted from this investigation and direct quotes containing character defining information, application, project or company details were not included.

8.4 Research Limitations & Challenges

Due to time and resource constraints, only a sample of individuals from the public and private sector were interviewed. Local community groups, resident associations, Business

⁶ Recruiting participants who spoke English eliminated the need to hire a translator.

Improvement Area groups and local park and public space activist organizations were not consulted in this study. It is acknowledged that a small sample size would yield only a selection of the perspectives and opinions related to POPS and that in conducting the same investigation with a larger cohort of participants may reveal more observations, beyond what has been reported in this paper. As well, the duration of the interviews were impacted by participants time and availability. Data collection took place during the month of February and concluded on February 26 2016, which limited the number of participants interviewed for this investigation.

Similarly, participants were asked open ended questions as well as unscripted follow up questions to allow for answer flexibility and variability. In doing so, interviews yielded a multitude of answers and interpretations of the questions which limited the study's ability to track qualitative trends. As such, as an exploratory research report, the findings are intended to exist as a stepping-stone for supplementary investigations into this approach to public space and public realm creation in Toronto. This report was constrained by the availability of existing research on POPS in the City of Toronto, which resulted in a very broad investigation into the legal methodology of securing and creating new POP spaces. That being said, the findings in this report are limited in its reproducibility in other municipalities outside of Toronto and Ontario who are governed under different planning legislation and laws. The investigation was focused on the processes and procedures in the City of Toronto that guide and enable new POP spaces to be created by the private sector. As such, the findings are unique to Toronto's planning environment but the observations and preliminary analysis of these may be applicable to other municipalities in Ontario who use Section 37 or who collaborate with the private sector in public good delivery.

Next, the findings and conclusions found in this research report were limited by the nature and expectations for a 'Major Research Paper' (MRP) at Ryerson University. As an MRP, the investigation into Toronto's POPS was constrained by time, scope and funding. Since students are given approximately 8 months to complete their report, the scope of the investigation was limited to what could be done successfully within that time period along with no external funding for the project.

Finally, this report recognizes the challenges of analyzing and working with quantitative data. Interview results were subject to the interpretation of the author, who began this investigation unfamiliar with specific details of some of Toronto's planning processes and procedures and the topic of POPS as it manifests in the City.

9.0 Findings

9.1 Overview

Conversations with interviewees around POPS and their creation within the City of Toronto revealed that these spaces are made on a case-by-case, site-by-site basis and as such, it was challenging to piece together a generalized model for Toronto. Conversely, interviews revealed the key components of creating POPS, the challenges and questions associated with them. These are discussed below, grouped into key themes.

9.2 The Use of Section 37 and POPS

As previously discussed in this paper, POPS in Toronto are mostly secured through Section 37 Agreements. A privately owned publicly accessible open space, prior to speaking with interview participants was believed to be a community benefit secured during the negotiation of a Section 37 density bonus. However, despite this being the generalized understanding of how POPS are created, public and private sector participants revealed that in fact the Section 37 Agreements is only used for legally securing the spaces on title. Having it written in the title removes the ambiguity of whether that space is indeed public with one interviewee saying that,

“... it needs to be written right into the title and as clear as daylight that space is going to be publicly accessible in perpetuity and if you don’t do that then you can expect that a developer down the road is going to try and infill that site...”

A private sector participant also confirmed this,

“... Section 37 doesn’t do anything other than secure it for the city and the property through the site plan zoning process”

Similarly, a participant commented that the Section 37 Agreement,

“...is the only legal mechanism that we use, have, that and taking an easement which we often do as well but it isn’t considered a Section 37 benefit”

Even though POPS are included in the written agreement along with the other negotiated community benefits, they are conceived prior to the benefit negotiations as early in the process as the pre-application meeting. According to an interviewee,

“...we would use the Section 37 Agreement as a legal mechanism to ensure it but it is certainly something that is conceived long before then and its not considered a Section 37 benefit so it is not one of those things that normally one would, a council would ask for as a Section 37 benefit. It’s the only legal mechanism that we use to secure it...”

Through the interviews, POPS were revealed to be an element of the building’s built form, rather than an additive like a community benefit. These spaces are integrated and evaluated as part of the massing of the building, having been “secured”, “tested” and “studied” before the Section 37 conversation begins. As illustrated by a participant,

“... we are having this agreement written so in that agreement, we want to make sure that the POPS which we previously negotiated because remember, we are trading off some open space at grade for maybe redeploying that density elsewhere so that’s something that is going into the overall scale and massing of the building so that once that is set then we and we feel comfortable with the planning aspects then we start the conversation of section 37...”

From this, POPS are seen as an element of built form that contributes to a building exemplifying good planning as opposed to a community feature that is traded for height and density. Looking back to the Guidelines for using Section 37 in Toronto, a proposal should be an example of ‘good planning’ apart from the community benefits that may be incorporated through the Section 37 Agreement (City Planning Division Policy and Research Section, 2007). This concept is understood by the City, when during an interview a participant said,

“... Section 37 benefits are never an argument for approving something, that is not good planning. It has to be good planning first.”

As such, within the realm of Section 37 Agreements, POPS are included as a legal measure but are not considered a community benefit. These spaces are included in the design of the building that needs to be agreed upon, prior to the negotiations of what the city will receive for approving an application that has the height or density above what is legally permitted. However, there may be a disconnect among City staff about POPS being within Section 37 Agreements with one interviewee saying in regards to the proposal of a specific type of POP and how Councilors approach the process differently,

Table 6: Public and Private Sector Motivations (consolidated)

Public Sector	Private Sector
<ul style="list-style-type: none"> • POPS increase and enhance the public realm and neighbourhood livability, notably for areas undergoing intensification and exceeding density targets. • Creating new parkland is expensive for the City, sparking interest in creative alternatives. • POPS can shift a conversation from a quantitative debate to a discussion of development quality, with focus on design and public experience. • POPS produce a tangible benefit for the community from the developer. • POPS add to the public realm, which in turn benefits Toronto. • Partnerships help create new parks, POPS and open spaces and appeal to a city attempting to combat growth with limited funds and fiscal resources. The City sees the value of a tree. • Partnerships are worthwhile because with POPS, they exist as an alternative to parkland that meets the public interests (public realm and the security of public access) and private interests (marketability, functionality, viability and livability of their place). • POPS assist in meeting additional core planning and city building principals. 	<ul style="list-style-type: none"> • POPS are a public amenity the private sector has control over. • POPS allows for more private sector control in their construction in creation, bypassing the delays experienced with City parkland projects. Often left out of the parkland process, an interviewee commented on the delays between when the public space is accessible and when the development is complete. • POPS allow for developers to create below-grade parking, something they can't normally do with dedicated parkland (had to be unencumbered). • The city is asking for POPS. • If you want extra height and density then the City would like a POPS.

When speaking to interviewees from the public sector, POPS were often attributed to being a means to enhance or improve the public realm. It was this idea that grounded their opinion on what the motivation to create POPS was. In Toronto, from the perspective of the public sector (the City), you create POPS to create public realm, which

aligns with the Official Plan policies as well as reflect the design guidelines created for these spaces. In speaking with the nature of downtown and how intensification has called into question the creation of liveable neighbourhoods, the creation of public realm opportunities like open spaces become the backyards to vertical neighbourhoods. Therefore, the motivation for POPS is to “*enhance the liveability of a neighbourhood through a public realm*”. In contrast, from those interviewed from the private sector, there was more variability in the responses in that the motivation comes from the city asking for them or because it allows the developer to maintain control of their own amenities adjacent to their properties or that they create POPS because the City requests it. The interviewee who spoke to this point also said in regards to understanding the intent of these spaces and having a clear understanding their definition and use in the city,

“... that’s a bigger policy question from a developers point of view, we’re looking to understand what the city’s expectation is we want predictability. If we’re going and buying a site and we’re going through a process, we’d like to know up front through the design hey, we’re looking for a POP space, we think there’s a POP space from the city’s perspective could be located here, you’re moving forward with that understanding versus it being used as a tool to leverage something other than its real desire to [outcome] a POP space...”

Finally, when speaking to why the City has recently involved themselves in the creation of POP spaces, a participant alluded to these spaces being, in part, a moral obligation of the city to ensure that among the growth and intensification, they are still providing liveable neighbourhoods for residents. Toronto’s exponential growth and development has raised questions about how much the city can handle and what infrastructure is required to accommodate it. Having not addressed these questions before, the city is “playing catch up” as illustrated by conducting studies and plans such as the *TOcore* project. As illustrated by the participant,

“...given the pace and scale of development, the real concern that are is it compromising the liveability of these neighbourhoods. Those concerns and questions has instilled I think a sort of a moral hands on deck approach to do everything and anything we can do whether its parkland dedication you know, stop [then] with the cash-in-lieu or doing it when we must or whether its you know, saying what other tools do we have at our disposal. POPS done right reduce the parkland dedication and increase the streetscape and the public realm around [the] cycling and pedestrian infrastructure done what ever we can do we have to kind of do it right now”

POPS are design tools that are able to satisfy more than one city priority and thus, have been of interest to the City to explore in regards to use and implementation.

9.3.2 When a POPS is Discussed

Within Toronto, the conversation of a POPS can start at any moment in the development process. Given that POPS can be secured through the Section 37 process, the assumption prior was that this conversation would commence when the Ward Councilor sat down with a developer for community benefit negotiations. However, since they are not considered community benefits by means of a Section 37 community benefit and an element of built form, interviewees said that the conversation about the potential for a POP space could start as early as a pre-application meeting. In conjunction, either the applicant (the private builder or developer) or the City could prompt this conversation, but responses revealed that it is commonly the City bringing forward the idea of a POPS.

9.3.3 Key Actors

On the public sector side, the core groups involved in the creation of a POPS includes City Planning, Urban Design and the Ward Councilor. Alternatively, on the private sector side the applicant (developer) and landscape architect are typically involved. The involvement by other departments is dependent on both the situation and the Ward Councilor. Collaboration with other departments occurs if the site has an element to it that falls within the jurisdiction of another department, such as heritage or parks. Conversely, when the Ward Councilor is involved in the creation of POPS, likely when density bonus agreements are on the table, they may enact an collective approach, collaborating with the right departments or community groups. The caveat to this being that when it comes to the Section 37 process, according to one interviewee,

“...certain Councilors have different approaches to development I am not an architect I'm not an urban designer I'm not a professional planner...so I don't pretend to be those things I mean I have a keen sense of what I think the neighbourhoods are neighbourhoods need as it relates to liveability...”

In regards to the planner, they function as a “quarter back” or “point person”, thus someone who may be coordinating between the urban design department and the applicant/developer.

9.3.4 Role of Urban Design (City of Toronto)

As one of the core actors within the POPS creation process, Urban Design assist in orchestrating the design process between the City and the applicant’s landscape architect and/or architect. It was made clear that Urban design *does not* design the spaces, but rather may propose an idea or concept that is then passed along to the applicant to then take away and work with. According to the interviews, the creative aspect of designing the spaces is left to the developer but the process is inherently collaborative with the City. One interviewee said,

“... the urban designer will get into the details of programming the space with our landscape architects so there’s a collaboration back and forth on that, we come up with the idea they vet it, review it and it goes back and forth”

However, another participant revealed that Urban Design makes the final recommendation of where on the site a POPS should be located. That being said, in speaking from the perspective of the private sector, one interviewee said,

“I think that creative decision needs to stay in the developers hands because ultimately its not the City’s business to tell us what to actually build on our individual properties, they have input on it but they shouldn’t be encumbering people’s land with mandated, like this is essentially a defacto work around a parks system...”

Thus, the urban designer working on a development application will negotiate the design of a space in collaboration with the developer (landscape architect) to best reflect what the city is looking for and what the developer wants. Speaking to the positive experience one participant has had working with private sector developers on POPS, working with landscape architects on these projects results in a,

“... collection of contemporary designed open spaces and [that] each have a unique character [that] is specific to the place but that character also comes from the personalities of the landscape architects that are working on those spaces.”

9.3.5 Determining POPS Suitability for a Site

In the City of Toronto, there is no master plan for POPS. Determining if a POP space is appropriate for a lot comes from the design review process undertaken by Urban Design according to an interview. One interviewee said the lots are “[*assessed*] if open space on the site is desirable and if so what form it should take, so that comes from a review of the context and area...” as well as the “*size of the site and configuration of POPS*”. Another interviewee commented saying that from the private developers side, one could anticipate a POPS if there is room on the site, linking back to the notion of the size of a site factoring into determining the suitability of a POPS. It is this urban design analysis of the area that was said to be the key principal in determining if a POPS is appropriate or not for a property. Through these analysis’s, the type of POPS would be revealed and according to one interview, the type of POP space comes from the site’s conditions rather than from a suggestion from a community planner or Ward Councilor. This analysis is brought on by an application or possibly a proposed idea during a pre-application meeting, rather than an idea plucked from an external ongoing analysis. However, that being said, an exception may be if aspired POPS are found in a larger, broader planning study according to an interviewee. The analysis and presumably the outcome of this analysis, is usually shared with the planner and developer. Furthermore, an interviewee expressed that the City isn’t being formulaic about POPS out of concern that in making a decision on how the urban landscape should be, the end result might be an urban form that was not anticipated or planned. Thus through conversation we understand that from the City’s perspective, POPS emerge out of what is right for a site and a general area.

Given how the City determines POPS generally through and site-specific urban analysis, it was interesting to see how this looked from the perspective of the private sector. One participant expressed the opinion that the appropriate time for the conversation of a potential POPS is in the Section 37 process as opposed to them being found in a secondary or prescient plan or in the Official Plan because the built form and configuration of the buildings within that area have not been determined yet. Also when asked if they were aware of the criteria the City used to determine putting a POPS on a site, the interviewee said that they were not aware the criteria used. In contrast, another

interviewee from the private sector had asked what the principal was for determining a POPS. When asked about the decision that is made regarding a POPS appropriateness for a site, the interviewee said,

“...a POP space can evolve organically through the design process and the evolution of the design. It can evolve through the negotiation process of the give and the take for the increase in height and density and what is that we can give back to the public realm that the city is asking for that the community is looking for, its essentially a needs assessment. So the King-Parliament areas we know that they're park deficient areas, is this something that the city is using to help address that particular issue in a very piecemeal approach...”

This brings up the issue of clarity and a unified understanding between the public and private sector regarding POPS suitability, given that the City does not have a master plan or methodological approach to proposing these spaces.

9.3.6 Negotiating POPS

While POPS are not negotiated as a community benefit, the look and design of these spaces are negotiated between the urban design department and the developer. After putting forward an initial design, the urban designer and the developer's landscape architect will go back and forth until a final design is agreed upon. However, a private sector participant highlighted the contentious nature of these negotiations is an issue/challenge when going through the POPS process. When asked to elaborate on why these discussions were described as contentious, a participant said,

“It really depends on site specific applicability, whether we think its appropriate, its a trade off at the end of the day of the give and take with the City on what they're looking for...”

The private developer and the City may look at the potential embedded in a property differently, leading to the back and forth discussions over what the building should look like with the POP space included. It was noted that the site's current zoning would influence the negotiations. According to one interviewee, if the zoning by-law that is in effect is not current and up to date, then the negotiation is starting off on the wrong foot. If the zoning by-law is not reflective of the area, then the starting point at which to negotiate a POPS is artificial. The example given was if the by-law permitted a 4 storey

building, but the surrounding properties were between 8-12 storeys, then the negotiation is not starting out accurate of the surrounding environment. With a POPS, the developer may be conceding to the city's request for the space in exchange for additional height and/or density. However as pointed out in an interview, if the starting point for a buildings height and/or density is not reflective of current conditions, then it appears as though the conversation and discussion over the height and massing of the building and a POPS would be more challenging.

When speaking to the creation of POPS, the private sector interviewees expressed that once a POPS was decided, there was no resistance and that the outcomes of the POPS process had been positive but the process, speaking to the negotiation, could be challenging. Furthermore, a private sector participant said that if they had land to give over as a POPS then it would be fine, however if the City asked for the space and there was no space or opportunity on site, then they would be unlikely to want to do it because there was no motivation or benefit for them. A public sector interviewee said that the process would be challenging unless the private developer saw a mutual interest,

“... the developer has to see a mutual interest in it unless we're going to play hard ball and in that sense, the points of conflict often come to the point that in my sense, the public interest has to be met which is public access and a really functional useable space, that's not always the starting point for a developer”.

The interviewee was speaking to instances when developers say they'll put a POPS in, but the space will appear to be more of a patio for a bar or café than a public space. The concern was that rather than enhance the public's interest, the space would enhance the developer's bottom line.

In looking at these discussions from another perspective, a public sector interviewee spoke to the positive influence POPS discussions have on the overall development conversation with the public. POPS bring the public conversation around new developments back to one that talks about life at grade and what happens to the public realm once the proposal is built rather than debates over height and density. POPS allow community members to obtain a tangible benefit from the development because in large scale projects, the perception is that the developer is “going to make a ton of money and

they're going to walk away and the community is left with two years of noise and dust and all the adverse effects of construction...". This interviewee was discussing more so the conversation of a POPS space between the developer and the public and how these spaces bring to light topics related to life at the base of the proposed buildings.

9.3.7 Maintenance, Management and Reviews

As mentioned in an earlier section of the report, Site Plan Agreements are made at the end of every development application, whether the application was for an as-of-right development or one that required a zoning by-law amendment or official plan amendment. When creating a POPS, the Site Plan stage is where the fine details of the POPS are secured which may include the type of seating, lighting, landscaping, paving etc. Site Plans are registered on title, which means that the building owner has to keep the POPS to the same standard and look that is outlined in the Site Plan. It is part of the nature of these spaces that maintenance and management is left up to the private sector. The argument was made by an interviewee that a POPS is the condominiums' property so if the owner or board doesn't do anything, in terms of maintenance and management, in the end it's *their* property that will be effected. That being said, the private sector does not face the space operational constraints that the City might face in terms of maintenance, which allows the properties to be kept up to the standard that they want it to be according to one interviewee. The element of "control" was also brought up, in that the private sector is able to maintain control over a space that is inherently theirs.

As with the maintenance, management is left up to the discretion of the private sector with interviews revealing that Section 37 Agreement can be used establish further details related to the POPS management rules, saying that "*more details you get in there early on, the strong position you're in*". However, it was also said that each Councilor may have a different approach or "checklist" for what information should be included in the Agreement. From the private sector perspective, an interviewee said that the City has their regulations that they put into the agreement, related to how the space is regulated, hours of operation and who is responsible for it. Much like the Councilor's checklist, the interviewee said that with the case of the hours of operation, these would vary between locations.

Finally, in terms a review or follow-up of these spaces, the City currently has no formal program in place to ensure that POP spaces are being kept up to a standard. This was confirmed through two of the public sector interviews. While it was acknowledged that it would be a good idea, but the resources, which would include money and staff time, required would be at the mercy of the City’s budget and revenue problem. It was also revealed by an interviewee that they had “*never heard of an instance where a POPS [had] not been maintained well*”. This makes sense when looking at the ownership model of these spaces, as a piece of private property it would be of the best interest of the condominium board or owner to properly maintain the space. One interviewee said, “*because [the POPS] is the front door of the property that it is on and it effects the property values from that perspective*”. Speaking from the private sector, an interviewee said that an issue related to enforcement comes up only when there is a complaint or an outstanding issue escalates.

“The condo board at the end of the day is responsible for the maintenance, its like if you have a single family house and your property isn't being properly maintained then it becomes a municipal licensing and standards issue...”

It is important from the private sector view that the issues are dealt with, if there are any, before it becomes an issue to that magnitude. There is also the element of anticipating issues depending on the environment the building is in. The example given during an interview was a building downtown and people are coming from the bars or clubs and that they may be walking through the space at three o’clock in the morning. It relates back to these spaces being intertwined with the public realm.

9.4 Process Commentary

The subsequent interview findings speak comments related to POPS in Toronto, not specifically associated with creation or the way in which the City obtains these spaces.

9.4.1 The Monetary Value of POPS

In reviewing staff reports associated with proposals containing a POPS, you’ll see that while the other community benefits are paired with a value (i.e. \$50,000 towards local art

programs), the privately owned public space is not. Since POPS are not considered a community benefit in the context of a Section 37 Agreement according to an interviewee, they do come out of the money negotiated between the City and the developer. For example, if \$1,000,000 were negotiated for a development, that money would be divided among all other benefits within the agreement except for the POPS even though it will still appear on the list of items secured in the agreement. These do not receive a cash value. An interviewee made a direct comment towards the monetary value of POPS saying that,

“... it would be to our advantage as [a] city to have a better sense in terms of what the monetary value of POP spaces are and what that means for the overall dollars and cents of a Section 37 Agreement”.

The interviewee made comments regarding increased clarity around the value of POPS as it relates to the overall Section 37 community benefits.

9.4.2 The Social Value of POPS

The idea of what social value or standing these spaces had within the City was addressed in two interviews. Speaking to the valuation of POP spaces, one interviewee said,

“...the value of the POPS is one that often comes up I mean you know this ends up being identified as a community benefit and so in that sense, what are the actual needs of the community and what portion of this should come out of the community benefit or is this just a nice add on that we throw in there...”.

A private sector interviewee brought up the idea of user experience and how the feel and functionality of the open space will influence it being used like an open space. The legality surrounding ownerships and arrangements are irrelevant to the user, adding that users have *“no appreciation of who owns what and what the legal arrangements are relative to the park, its an open space, it feels like that, it functions like that, its used as that...”*. Similarly, mentioning that users would probably not be offended if the space they were using was encumbered, say with parking.

9.4.3 The Absence of Recognition or Credit for POPS

It was brought up in one of the interviews that when asked about challenges or barriers exist for associated with creating POPS, the response was the absence of recognition and/or credit for building POPS by the private sector. There appeared to be concern over the notion of “double-dipping” into parks where as the developer is required to designate parkland or pay cash-in-lieu but may also be providing a POP space. This was cited as the “perfect scenario” in that public space is provided to the City, improved and operated for free. That being said, an interviewee put it in the context of the City parkland provisions,

“... if you’re taking 10% and then saying guess what [land owner] you’re the unlucky one we’re going to put this giant strip of POPS on your property, well that represents an over dedication now and that’s wrong...”

The suggestion was made to integrate POPS into the park dedication regime in that these spaces wouldn’t represent the entire parkland contribution but would offset it to some degree. Viewed as sort of a credit in-lieu of providing a POPS space, the notion of City collecting money for parkland from developers and not spending was sensed to be frustrating.

9.4.4 The Blurred Distinction Between Parks and POPS

In planning documents, there has been an obvious effort made to distinguish POPS from parks. The program, at its core, is not intended to replace parks. However, during interviews, POPS were inevitably discussed in conjunction when speaking to the City’s challenges with obtaining and purchasing new parkland. For example, when asked about the motivation for the City to work with the private sector to develop these new open spaces one interviewee said,

“... the city does not have the funds to buy new parks and that happens rarely, there are a few occasions that that’s happened recently more often than not we’re partnering with the development industry in order to create new parks, POPS and open spaces and as a strategy you know, we think that this is a good thing [as] the downtown intensifies so we do think you know, what’s the value of a tree...”

And when asked if POPS may potentially become “more green”, they said,

“... we often say right that they're never replacement for city parks but they are, they do add to the public realm so therefore they are a benefit to the city so were quite careful in saying we're not going to stop seeking new parks and we continue to do so, but it is often a lot more, it is sometimes easier for us to get a developer to provide a POPS rather than a parks and they're often smaller too so again we say that they are not a replacement because we still seek those places where you could throw a Frisbee...”.

As well another interviewee made reference to green space in downtown saying,

“... when we look in downtown Toronto, I mean my view as that it relates to open spaces and the public realm in downtown is its an area where we are deficient in green space and so not only do we need that new parkland we need to be more creative around how we create these green spaces and public spaces so whether that you know thinking about rail corridors and under the gardener or whether its think about POPS spaces we need to be more creative and we need to see the connection so they're not isolated”.

Similarly, in speaking to the topic of POPS generally, an interviewee said,

“... its also expensive for the city to create new park space now in some cases the city is doing that... but in many cases there is simply either isn't a property that is affordable to the city or there may simply not be enough space and like in some areas like Yonge and Eglinton and areas in Downtown Toronto where there's just so much development there's so much intensification exist already in the existing conditions that you need to be creative about it and if you're able to work out an arrangement between the community and the developer to create a POPS it's a win-win for everyone...”.

Also adding that a project that has a park space on it will actually be a POPS, even though it is on private property, it will act like a public space. Finally, in speaking to a question regarding potential suggestions for creating POPS differently, a interviewee speaking from the perspective of the private sector said,

“... I don't think there's really a regiment and a approach to it, I think it's a creative way of achieving urban parkland but I think it comes down to I guess, site specific barriers and constraints that basically would see if you could do one or not”.

Finally, when speaking to the future of POPS and where these spaces might be going in the future, an interviewee responded,

"...development in the downtown in particularly the King-Spadina and King-Parliament, so the Kings, they're park deficient areas and I think this is a tool that the city can use to help elevate some of that. I don't think it's the, I don't think that the city should rely on, I

think the city needs to actually acquire land to build proper parks but I think its kind of a complimentary approach to solving an issue in these areas. Its not the answer but its part of a solution...”.

Lastly, one interviewee revealed that in regards to POPS, they are second to parkland,

“...I start from the premise POPS are an area of last resort based on mutual interests...”.

Adding,

“... but it is the point of last report because the starting point is the parkland dedication and I am of the view that parkland dedication should be on-site, now [it] rarely happens...”.

In parallel with what had been said with other interviewees, the relationship between parks and POPS is unclear. Conversations with participants revealed that the distinction between POPS and parks might actually be greyer than what policies communicate to be black and white.

9.4.5 Private Sector Perspective on the Future of POPS

When asked about the future of POPS and where they might be headed in the future, one private sector participant said that it would depend on what the City chooses to classify them as, alluding to the confusion around POPS relationship to park space. Conversely, as another participant was quoted earlier saying that the City shouldn't rely on POPS as parkland but they do serve as a solution to areas that are park deficient but do not exist as the answer to solving parkland deficiencies in Toronto.

9.5 Miscellaneous Findings

The idea of POPS predictability came up during the private sector interviews. One participant said that the Section 37 process was a more appropriate time for the conversation of POPS to come up rather than within a Secondary Plan or in the Official plan when built form and building envelope features had yet to be established. When asked about the development community being able to anticipate that in a park deficient downtown, that they should expect a POPS conversation, the participant said no. Calling it an imposed mandate, the participant said that on land that was purchased for full

market value, the POPS mandate could deteriorate the value. In that a large enough site that could compensate an open space is one thing, but in the urban environment when buildings will occupy lot line to lot line, its more difficult to put one in. Adding to this, another private sector interviewee said,

"no its not something that we can anticipate its something that when we're looking at a site, when we're looking at a site it really has to get into the discussions with the city staff..."

Within the five interviews, the incorporation of the public into the POPS conversation was only brought up once. The participant said that public input is important so that at the end of the day, the application that moves forward to Council is one that the community is not *"out of concert with"*.

10.0 Discussion

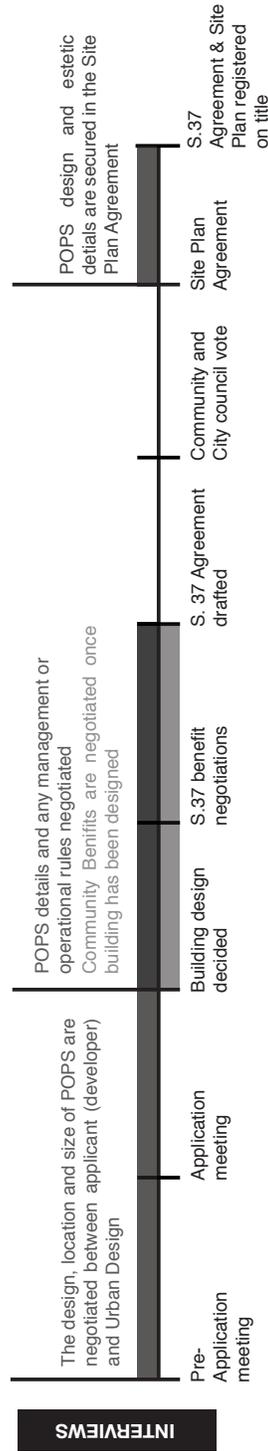
Interviews with public and private sector actors revealed that creating and securing POPS in Toronto does not conform with conventional POPS processes. These spaces are not considered Section 37 community benefits and thus, are not typically exchanged directly for additional height and or density. As seen in New York, POPS rules and regulations are typically established by the private owner, in Toronto, rules and regulations are negotiated and collaboratively established by both the City and the private developer. The following discussion will outline the generalized methodology for creating and securing POPS in Toronto as well as the apparent strengths and inevitable challenges hindering the successful implementation of POPS.

10.1 Generalized POPS Process Model

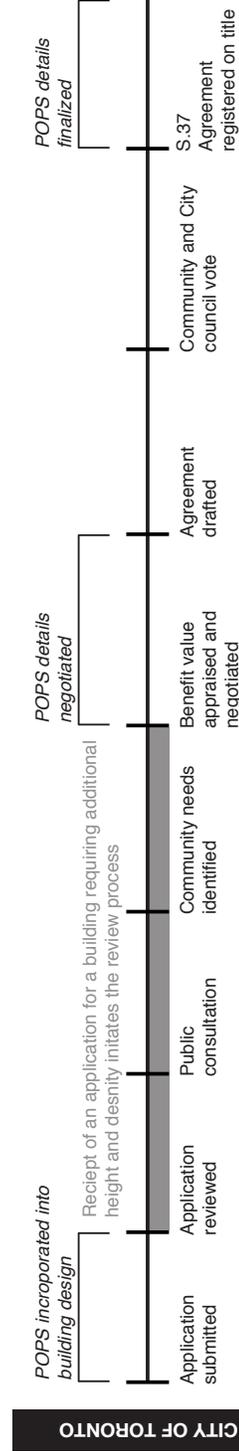
The topic of POPS in Toronto is one that warrants further investigation. This exploratory investigation was supported by a small sample of interviews that lead to a generalized process model of how POPS are created in Toronto (see **Figure 10**). Future research and study will have to be done on this model as a larger sample and interviewees with other interest groups may reveal more details related to creating and securing these spaces. Similarly, while this model provides the foundational information for future research, because POPS are made on a case-by-case basis and are subject to site-induced exceptions, this discussion does acknowledge that this model may *not* apply to all development projects in Toronto incorporating a POP space.

Figure 10: Integration of Section 37 and POPS Process Models

POPS creation process as illustrated by interview responses:



POPS creation process applied to City of Toronto Section 37 process:



(Information Source: City of Toronto, 2014c)

Through this model, POPS occur in the development and Section 37 process over the course of three phases. The first phase of POPS is to determine how it will be incorporated into the built form and design of the building. The second phase is to secure details related to maintenance, but primarily management and any further details that the Ward Councilor would like to see entrenched in the zoning by-law. The final phase involves securing the attributes and aesthetic details of the space, which are incorporated into the site plan. As this model illustrates, POPS meander through the Section 37 process beginning as a conceptual idea with the outcome being a legally secured designed space for public use and consumption.

10.2 Strengths and Limitations of Toronto's POPS System

Interview findings paired with knowledge and understanding of how typical community benefits are secured in Toronto and existing literature led to an evaluation of the strengths and limitations of how POPS are created and secured within the existing planning framework (**Table 7**). This evaluation did not comment on the quality or use of existing POPS spaces.

Table 7: Strengths and limitations to Toronto’s POPS system

Strengths	Limitations
<ul style="list-style-type: none"> • Satisfies immediate community needs. • Allows private sector to control and deliver their investment in a timely manor. • Produces public spaces that are legally secured in perpetuity. • Space maintenance by the public sector is appropriate as they have more ‘stake’ in the space. • The absence of follow up program. • The involvement and coordination of POPS by Urban Design makes the process subject to less political influence. 	<ul style="list-style-type: none"> • Process, reasoning, social value of POPS is not transparent. • Public consultation is weak and unknown. • Private sector is contributing community benefits twice, receiving credit for one contribution. • In some instances, POPS may result in an “over dedication” of parkland.

The way in which POPS are created allows for the immediate satisfaction of a local need or deficiency. Based on the interviewees responses about POPS and their relationship to Toronto’s park deficiencies and acquisition challenges, they are short term, tactical solution to park and open space deficiencies. In Gladki Planning Associates (2014) evaluation of Section 37 use in Toronto, there was an apparent lag between the time in which the community contributions were negotiated and when the City was able to access the funds to fulfill the agreed upon Section 37 benefits. However, by incorporating POPS into the built form of the building rather than categorize it as a community benefit, the space can be instantly used and absorbed into the community as soon as the building is complete. Next, the POPS process allows for the private sector to control and deliver on their investment in a timely manor. The private sector, specifically developers, invest a significant amount of financial capitol into Toronto and the local community by way of development charges, mandated parkland contributions and Section 37 community contributions (City of Toronto, 2014c). It is only the community contribution investment is the only one that developers have the ability to control. The way in which POPS are

made allows for the private sector to control one of their investments into Toronto, financially and process wise. The private sector is able to control how their money (investment in the POPS space materials, landscape architect etc.) is spent and at the same time, have the confidence that these spaces would be delivered on time for their residents and the local community can use. Moreover, the current process results in a legal agreement that secures new POPS for public use in perpetuity. Given Toronto's projected growth trends, the creation and existence of public space and the quality of our public realm will continue to be an important City priority. While these new buildings are not anticipated to be redeveloped in the immediate future, legally securing public open space will ensure that the built form of Toronto's urban landscape will not jeopardize the liveability of vertical neighbourhoods. The allocation of risk and responsibilities over POP spaces is appropriate, based on public private partnership literature. Toronto's POPS take the form of a 'design-build-finance-operate-maintain' partnership. This model is generally characterized by high private sector involvement and risk transfer (Murphy, 2008). The literature on public-private partnerships says that for a P3 to be successful, the risks need to be allocated appropriately based on skill and expertise (Murphy, 2008). In Toronto, the private sector is responsible for managing and maintaining a POPS, which means that they absorb the risks related to damage or destruction of the space. Non-public entities have the flexibility and resources to withhold this risk. As well, it appears to be appropriate for the private sector to be responsible for the maintenance of the POP space as they have more 'stake' in the space's appearance. Often POPS can be found adjacent to the front door of residential developments. This adds an element of good corporate responsibility to ensure that these POPS spaces are maintained to the upmost standards. That being said, a City established follow up program is not necessary. While an interviewee did claim to have not heard of instances of poor maintenance of existing POP spaces, it makes sense given the reasons above for the City to have confidence in the private sector to manage and maintain their POP spaces. Given the cost of land in downtown Toronto, an investment into a property by the private sector is serious and it is assumed that they would not want to jeopardize good returns by creating a poor or mismanaged space. Finally, the involvement and coordination role of Urban Design may subject POPS to less political and private sector influence. Gladki Planning

Associates (2014) evaluation raised some red flags over the quality of the community need assessments done by the Ward Councilor and City Staff. These assessments were found to be inconsistent and done on a case-by-case basis, catalyzed by a development application (Gladki Planning Associates, 2014). The involvement of an urban designer may bring forth a holistic perspective to built form decisions as they are looking at the needs and future development of the surrounding neighbourhood. Interpretation of the interviews leads to belief that yes, while the Ward Councilors are involved in the application, POPS are primarily overseen by Urban Design and as such, takes out some of the political influence that may exist when community benefit contributions are negotiated. In turning to the literature of privately owned public spaces, the absence of extensive public input place Toronto's POPS are at risk of being moulded and shaped by private sector. Even though there is a lack of clarity around public consultation in regards to the initial design of POPS, the involvement of the Urban Design section of City Planning should prevent developers designing these spaces in such a way that would result in them succumbing to the noted critiques of privatized public spaces. In conjunction with the urban design guidelines, Urban Design's involvement means that they should be injecting the public interest into the design's that are negotiated with the private developers landscape architect.

In contrast, the way in which POPS are determined, rationalized and valued is not transparent to all involved. While the public sector appears to have an established methodology to determine a POPS suitability for a property, it was unclear if it was thoroughly understood by the private sector. Similarly, the contested relationship between POPS and parkland seemed to haze the understanding by the private sector of the public sector's motivation in asking for POP spaces. Are POPS a creative way of obtaining new urban parkland? Returning to the point made about public consultation, it was expressed by an interviewee that the social value of these spaces is unknown. This could be explored further through design and use evaluation studies, it is understandable that clarity would be needed on their social value because of the assumed disconnect with public consultation. Next, interviews with public and private sector actors did extensively speak to the timing or extent of public consultation when creating and securing POP

spaces. When the POPS process was overlaid with the City's Section 37 model, inferences could be made as to when the public would have an opportunity to weigh in on a POP space. Presumably, if a POPS were to be incorporated into the design of the building as early as the pre-application, preliminary staff reports and public meetings would notify and give the public an opportunity to weigh in on the space. Similarly, applications can go to the Design Review Panel. This panel "is comprised of private sector design professionals – architects, landscape architects, urban designers and engineers – who provide independent, objective advice to city staff aimed at improving matters of design that affect the public realm" (City of Toronto, 2016c). The existence of this panel is important to take note of because it allows for both private and public sector professionals to objectively advise and provide input on the proposed development (City of Toronto, 2016c). This panel can create the opportunity for those not involved in the negotiations to provide a third opinion. Interestingly, applications that have already been submitted or are in the preliminary stages can be subject to the review. This was illustrated by a panel meeting that took place on February 18th, 2016. During this meeting, two applications were discussed that contained a POPS; 88 Queen Street East which was in its preliminary design stage ("pre-application for rezoning) and 141 Bay Street, which had already been filed as a "rezoning application" (Toronto City Planning, 2016). From this, it is shown that aside from required public consultations that occur during the application review process, there are subsequent opportunities for third party opinions to be made. However, what remains unclear is the public's capacity to be involved in the initial POP conversation, regarding ones appropriateness of a proposal. That being said, it appears as if the determination of whether a POPS would be valuable to a community is subject to the decision of City Staff and/or the developer. When an interviewee from the private sector spoke to the creation and design of POPS, they firmly called it a negotiation between themselves and City Staff. In contrast, a public sector interviewee made reference to the character of a POPS, saying that it is sometimes a reflection of those who designed it. This raises the question of whether the needs or wants of the local community is one of the topics discussed in the POPS negotiation? Finally, the process of creating and securing POPS is resulting in the duplication of community amenity contributions and what was suggested as an over dedication of parkland. In

modeling the POPS process from interview responses, it appears as though the private sector is contributing two sets of community benefits, while only receiving credit once. The grant of additional height and density by the City is repaid in the form of the Section 37 community contributions negotiated in the Section 37 Agreement. However, POPS are not considered community amenity contributions by definition of Section 37 use and as such, do not appear to be directly correlated with the additional height and/or density granted in the zoning by-law amendment. Furthermore, interviewees said that POPS are not community benefits and that the Section 37 process is used because of the legal agreement it adds to the zoning by-law amendment. This then leads to the argument that developers who are creating new POP spaces should be granted a credit much like the height and density when contributing to the creation of a public amenity. Given the challenges the City is facing regarding parkland acquisition and creation as well as the legal constraints that bind the City's ability to purchase new parkland, crediting private developers may bring forward creative and innovative small urban POPS-parks. A credit may further motivate developers to create POPS as mentioned by an interviewee and may eliminate some of the contention that arises from the negotiation process as mentioned by another interviewee.

10.3 Private and Public Motivation for POPS

It became evident in the interview findings that the motivations for both the public and private sector to create POPS was fuelled by the anticipated outcome or opportunities they'd provide and create. The public sector, collectively were motivated by the opportunity to create and enhance the public realm while the private sector was split. On one hand, there was less motivation to create them, more so if there was some type of credit or incentive in place. Right now, private developers are being asked by the city or going through with these projects to maintain control of the space.

11.0 Conclusions

Within the City of Toronto, POPS do not conform with the conventional model of creating ‘privately owned public spaces’ as seen in other cities. POPS are not considered an amenity that when provided, would allow for additional building height and/or density to be granted. Rather, POPS are incorporated into the redevelopment proposal at the request of the City on a case-by-case basis and site suitability determined by an area analysis. When overlaid with the City’s Section 37 procedure, POPS are independent of community amenity negotiations. As a result, private builders end up contributing community amenities in addition to the provision of an onsite public space. While challenges and limitations were identified by interviewees, the current regime appears to be tolerated by those involved, leading to the conclusion that the process is simply adequate and exists as a reactive negotiation rather than a proactive city building tool.

Despite its apparent limitations regarding clarity and transparency and the motivations to create POPS ranged between participants, the private sector has been compliant as seen in the number of POPS have been built and proposed in new development applications. Presumably, if the developer did not want to do a POPS or did not see their property accommodating one, they would say no or challenge the City at the OMB. Without an incentive or received benefit, POPS may constitute as just a decision related to built form that the builder and City have to negotiate. Debating the space could delay the rezoning process which may not be worthwhile for the developer, making acquiescence more common. The private sector is assisting the city construct new public open spaces and enhance the public realm whether it be the result of a request or consideration that the refusal to incorporate a POPS will impact desired height and/or density. Private builders are reacting to a problem identified by the City and supplying a solution. However, from the interviews, it didn’t appear as if private builders were excited by these spaces. While a physical evaluation of the spaces was not done in this report, it could be inferred that compliance with the City and process tolerance would lead to the creation of satisfactory spaces, plazas and mews.

The consequences of reactive planning is that it does not attract private sector partnerships. Improvements to the POPS process and an evaluation of their capacity as a city building tool would inherently take POPS from tolerated requests to innovative property landmarks. There is a role for planners to further improve upon the POPS process so that these are used as a positive city building tool that will provide quality and functional open spaces to Toronto's high density neighbourhoods. As facilitators, urban planners need to make sure that they are allowing for a clear and mutually understood dialogue between the City and the developer/applicant. The next section of the report will outline the recommended ways in which to improve the process for creating and securing POPS.

12.0 Recommendations

The interviews revealed specific challenges and issues related to the current process of creating POPS in Toronto. Based these findings, three recommendations are proposed to remediate parts of the POPS process to better entice the private sector to initiate the creation of these spaces and ignite a sense of excitement in creating and establishing these spaces that will contribute to Toronto's identity as a world class, innovative and creative city. Key recommendations include,

- To strive for a process that results in a collective “win” among all the key stakeholders, and includes incentives for the private sector;
- To create a process that is more transparent to those participating in and observing the POPS negotiations, clarifying motivations and rationales;
- To create an agreement specifically for POPS; and
- Update existing and zoning by-laws to reflect current built form patterns and uses, better contextualizing the proposal's fit into a neighbourhood.

Incentivise POPS to Optimize Private Sector Involvement

Toleration of the POPS process is hindering the City's ability to use these spaces as a proactive city building tool and achieve the most out of private sector involvement. One way in which to excite the private sector about POPS would be for the city to develop and integrate an incentive for the private developers into the process of developing and securing POP spaces. Interpretation of the interviewees responses about participating in the POPS process led to the belief that the current approach was not resulting in a collective “win” for those involved. In it's current form, the process of creating a POPS does not generate compelling benefits for private builders other than allowing them to withhold the construction, management and maintenance responsibilities associated with the spaces. Furthermore, the additional height and/or density obtained is not intended to be a result of the developer creating a POP space. The City grant is not a comparable win when talking about POPS because this grant is a result of the builder pledging to the City a comparable amount of community contributions. POPS, as noted earlier, are not considered a Section 37 benefit but rather are considered part of a building that exemplifies good planning.

As mentioned in the interviews, crediting POPS as parkland dedication would be an example of an actionable item that may incentivise private builders to propose POPS on their properties. This may involve re-evaluating the way the City of Toronto applies Section 42 of the Planning Act which may alter the way POPS are defined. Permitting them as ‘parkland’ may clarify the intention, purpose and uses of these within the public realm and downtown.

Create a More Transparent Process

The absence of transparency and clarity in reference to a POPS role and purpose in the Section 37 review and the intentions of policy makers and elected officials impact the successful implementation of this urban design tool. Utilizing planners (public and private) as mediators would ensure that the conversation between the public and private sector around POPS, motivations, reasoning’s and justifications are tabled and understood collectively by both sectors. As such, the POPS process could be made more clear and transparent if the planner was more actively involved in the negotiation conversation. As documented in the report’s findings, there appears to be some confusion around how a site’s suitability for a POPS is conveyed to the private sector. Additionally, the role of POPS in a Section 37 review varied as some public sector actors may be considering them items to exchange and most notably, there appeared to be differing understandings regarding POPS use as a temporary solution to park deficient areas. Urban planners should be more actively involved in the negotiations so that they can use their position as a project manager and mediator to guarantee that those at the negotiation table are in equal understanding of the purpose and intention of the POP space and project rationales are shared with all stakeholders.

Create an Independent POPS Agreement

Building on the previous sections, while the Section 37 process provides a legal avenue to secure these spaces, POPS do warrant their own policy and guidelines. In their current form, POPS are not considered community benefits and should not be associated with the Section 37 process. A recommendation for the City would be to explore the opportunities for creating an independent POPS agreement for redevelopment applications. Accompanying a POPS agreement would be a set of general process and procedure

guidelines which would create consistency in POPS conversations and negotiations. Such agreements would minimize the weight legal and negotiation details have on the POPS conversations, allowing for the focus to be on the user, their needs, wants and desires for their neighbourhoods and communities.

Update Existing Zoning By-laws

Similarly, the City could evaluate the zoning by-laws across the city to see if they accurately reflect the reality of the area. It was brought up in the interviews that POPS may be leveraged from height and density conversations, despite not being community benefits, and with the challenge being that the current zonings are not reflective of current built form trends. Area's may be "under-zoned" which allow the City to negotiate POPS for height and density, which does not abide by the role POPS have in the Section 37 process.

13.0 Areas of Further Research

As the POPS program comes into its second year of use, this report has highlighted areas of this process that could be improved upon. As such priority areas of research, review and study that have been identified include,

- Understanding the relationship between the built form of POPS and their use;
- Feasibility of allowing POPS to contribute to parkland dedication value; and
- Feasible alternatives for legally securing POPS in perpetuity.

Implications of Built Form and Quality

Within Toronto, there is an apparent need to understand the relationship existing POPS have with their communities. As an interviewee questioned their intrinsic social value, planners, designers and decision makers could benefit from an understanding of what role existing spaces play in the local community and how public are these spaces in reality. By answering these questions, the City could more effectively build upon the process of secured and creating POPS. Additional studies could be done on POPS design, and whether or not their built form is hindering or enabling their use as a public space. A design evaluation could provide insight into whether or not attributing a value to these spaces would impact their appearance and quality. In turn, this may also confirm the assumption put forth in this report of whether the tolerability of the process by the private sector is impacting the quality of the spaces put forth. Research could mirror the observational techniques and methodology employed by Jeremy Németh and Stephan Schmidt in their research into privately owned public spaces in New York City. This would also be an opportunity to confirm whether or not Toronto's POPS succumb to the critiques of public space privatization. The literature on privatization of public space articulates a multitude of potential negative repercussions including excludability and controlled use. As such the City may benefit from being able to gauge their risk for these negative externalities as a result of the current process.

Feasibility of POPS as Parkland Dedication

Further study and research could be done on the feasibility of introducing a parkland dedication credit incentive to private builders in exchange for building a POPS. Given the challenges the City of Toronto currently faces creating new green and open spaces, POPS

grant them the opportunity to utilize the private sectors resources and expertise. However, engaging them in a sub-optimal process will not amount to the benefits and outcomes the City envisions for these spaces. Exploration into the feasibility of POPS as a means of parkland accreditation would entail case study consultation, a policy review of the current park acquisition framework and an examination of municipal finances and revenue streams. Looking to ways in which cities have treated privately owned public space and more importantly, what benefits are given to the private sector. A SWOG (strength, weaknesses, opportunities and gaps) analysis of current municipal park acquisition policies would help identify the feasibility of integrating POPS into the these policies and if not, how could Toronto's policies be improved to account for POPS.

Feasible Legal Alternatives to Secure Public Perpetuity

The final area of research that could build upon the conclusions made in this report would be to investigate policy alternatives to Section 37 Agreements that that could legally secure POPS to land titles. POPS is the foremost strategy for building and enhancing Toronto's public realm and sanction a proper legal mandate for including them in the title of redeveloped and newly developed properties.

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