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RE: Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the Planning Act (ERO number 019-9198)

On behalf of the City of Toronto, please find staff comments regarding the regulatory proposal to enable the use of pay-on-demand surety bonds to secure land-use planning obligations. City staff have no objections to this regulation provided that the final regulation addresses key concerns regarding implementation and financial risk as outlined below. We acknowledge that the intention of this regulatory proposal is to support the increase of housing supply by freeing up funds for new housing projects. Staff's comments are directed to ensure that the regulation minimizes financial risk to the City and is implemented in a manner that is mutually beneficial to the City and homebuilders.

Staff's comments generally follow the structure of the ERO posting by providing commentary and recommendations (where appropriate) to the six proposed mandatory elements of the regulation. Three additional key matters not specifically addressed in the ERO posting have been included for the Ministry's consideration.

Additional Key Matters:

1. Regulation Sets Out Minimum Requirements

The ERO posting includes six proposed mandatory elements of the regulation that would inform the process and terms of the pay-on-demand surety bonds. However, it is unclear whether the obligee (i.e., municipality) would have the flexibility to include additional clauses or requirements not outlined in the regulation.

Recommendation(s):

- Stipulate that the regulation sets out minimum requirements and that the obligee has the ability to include additional clauses that reflect their needs, including that the final form and terms of surety bonds must be to the satisfaction of the obligee.

2. Transition Period

The City of Toronto does not currently accept pay-on-demand surety bonds. As such, there is no system in place to accept or administer these types of bonds. Time would be needed to develop the policies, processes, and forms to accept pay-on-demand surety bonds after any regulation comes into force.

Recommendation(s):

- A transition period of at least 120 days should be provided so that the City has time to develop the necessary policies, process, and forms to accept pay-on-demand surety bonds.

3. Discretion to Accept Pay-on-Demand Surety Bonds

City Staff are generally unsupportive of requiring that municipalities must accept pay-on-demand surety bonds if the principal determines that it is their preferred method of providing a financial security.

Recommendation(s):

- Municipalities should be provided with the flexibility to determine which financial securities are preferable based on the context of the development project.

Proposed Mandatory Element of a Pay-on-Demand Surety Bond:

1. Licensing Requirement

City Staff are supportive of requiring that the insurer of pay-on-demand surety bonds must be licensed under the *Insurance Act* to write surety insurance.

2. Credit Rating Requirement

City Staff are supportive of using credit ratings to limit which insurers are eligible to write pay-on-demand surety bonds. However, it is unclear what would happen in the event that an insurer's credit rating dropped below the prescribed threshold when a pay-on-demand surety bond is in-effect.

Recommendation(s):

- Allow the obligee to, at their discretion, require that the principal provide a replacement surety bond or, if not available, an alternative financial security to the satisfaction of the obligee in the event that the credit rating of the insurer drops below the prescribed threshold. The existing surety bond would remain in force until such time as the replacement surety bond or alternative financial security is provided.

3. Guaranteed Payment:

City Staff are supportive of requiring that the insurer guarantees payment to the obligee if the principal defaults in performing the obligation guaranteed by the bond. However, it is essential that:

(1) the determination of default is at the obligee's sole discretion,
(2) no proof of breach is required to trigger the insurer's obligation to provide payment, and

(3) the surety shall not assert any defence or assert any grounds for refusing to provide payment.

Recommendation(s):

- Provide clarity that if the obligee determines a breach has occurred no proof of breach is required to trigger the insurer's obligation to provide payment.

4. Timely Payment

City Staff are supportive of requiring that payment is issued to the obligee within 15 business days of written notice of default being provided to the insurer.

5. Partial Drawdowns

City Staff are supportive of providing the flexibility for partial drawdowns.

6. Cancellation

City Staff are supportive of requiring the insurer to provide 90 days written notice to the obligee of their intent to terminate the pay-on-demand surety bond. Staff are also supportive of requiring the principal to provide the obligee with a replacement financial security, satisfactory to the City, and that in the event that the principal cannot obtain a replacement financial security, the existing pay-on-demand surety bond remains in full force.

The City would like to thank the province for providing an opportunity to comment on the proposed regulation. Please contact Jeffrey Cantos, Acting Director, Strategic Initiatives, Policy & Analysis (Jeffrey.Cantos@toronto.ca) and Michelle Drylie, Project Director, Business Transformation (Michelle.Drylie@toronto.ca) should you have any questions or require any clarification.

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