Memo

To: Ministry of Municipal Affairs and Housing

From: Finance Department, Town of Oakville

Date: October 16, 2024

Subject: **Comments on ERO #019-9198 – Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the Planning Act**

Comments

The Town of Oakville appreciates the opportunity to comment on this regulation, and that the province is considering a specific type of surety bond that would both benefit the landowner and limit risk for municipalities. The town supports the submission made by the Municipal Finance Officers' Association (MFOA) of Ontario, which includes important comments that must be considered prior to enacting this regulation. In addition, the town is submitting the following comments.

The town currently does not accept surety bonds. The town's policy is that financial assurance from landowners is required to be in the form of an irrevocable letter of credit, or cash. The town does this to limit the risk of delays or non-payment of funds in the event of disputes associated with the town's determination of a default of obligations by the landowner. Delays or non-payment can lead to the delay of correcting deficiencies that impact the community, and/or a financial impact on taxpayers to correct deficiencies.

The town generally supports the use of pay-on-demand surety bonds, as they appear to have a positive impact on the ability of landowners to build more homes, while having a minimal impact on the risk for municipalities. This limited risk exists because they are guaranteed, and that the municipality may at its sole discretion determine that a default has occurred and demand payment. As the town does not have experience with demanding payment of a pay-on-demand surety bond, the process of providing a written notice of default, and payment being made within 15 business days, does raise concern. The town does not support the use of pay-on-demand surety bonds if there is a dispute route that could delay the payment or result in non-payment, and this should be made clear in the regulation.

The town is also concerned about the administrative burden associated with accepting pay-on-demand surety bonds. The province should maintain a list of insurers that are licensed under the *Insurance Act* to provide surety insurance, and meet the credit rating requirements in the regulation. If a qualified insurer is no longer licensed to provide surety insurance, or no longer meets the minimum credit rating requirements, the insurer should be required to notify the landowner and municipality so that the amount being secured can be replaced. There should be a time limit identified in the regulation so that the surety is replaced immediately, limiting risk to the town.

A transition period should be provided for municipalities to develop appropriate policies and procedures to enable the use of pay-on-demand surety bonds in a manner that limits risk and administrative burden. The acceptance of surety bonds should only be required on a go forward basis, allowing municipalities to determine whether replacements of current securities with surety bonds is acceptable.

Municipalities should be given the authority to develop specific requirements of the landowner and/or surety so as to limit the financial risk and administrative burden if the regulation is not updated to include the requests in this comment.