

October 16, 2024

**Submitted online and via email to [MFPB@ontario.ca](mailto:MFPB@ontario.ca)**

Ruchi Parkash  
Director, Municipal Finance Policy Branch  
College Park 13th floor, 777 Bay St  
Toronto, ON M7A 2J3

**RE: 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.**

Dear Ms. Parkash

The Corporation of the City of Guelph (the “City” or “Guelph”) appreciates the opportunity to comment on the Province’s proposed amendment to the Planning Act to enable the use of pay-on-demand surety bonds by developers to secure land-use planning obligations. Guelph recognizes the value of pay-on-demand surety bonds in promoting liquidity among homebuilders and increasing capacity to build homes across the province.

Guelph has worked closely with local builders, the Guelph Wellington Development Association, representatives in the insurance industry, and our internal legal department to structure a pilot program for the use of pay-on-demand surety bonds as security for obligations in connection with development applications and under development agreements. We have relied on an internally developed form of demand bond to address the financial capacity constraints of our local development community, and to mitigate the major risks posed by the use of financial instruments as an alternative to cash or letter of credit.

We are pleased to see that the proposed minimum requirements for structuring pay-on-demand surety bonds set out in this proposal include a number of the same elements the City has relied on in our pilot program. However, some of the elements outlined in the proposal do not fully address the risks to the City, and we appreciate the opportunity to provide additional context to this proposal from our experience to date.

**Scope**

The City is concerned with the breadth of the regulation-making authority granted under section 70.3.1 of the Planning Act to prescribe and define “surety bonds” and “other instruments” for the purpose of the section, and to specify the circumstances in which an owner/applicant has authority to stipulate the type of surety bond or other instrument to be used to secure an obligation to the municipality. Per subsection (2),

**City Hall**  
1 Carden St  
Guelph, ON  
Canada  
N1H 3A1

T 519-822-1260  
TTY 519-826-9771

[guelph.ca](http://guelph.ca)

“other instrument” means “an instrument that secures the performance of an obligation”, which is very broad.

ERO 019-9198 relates specifically to the proposal of a regulation under s.70.3.1 of the Planning Act that would authorize landowners to stipulate pay-on-demand surety bonds. The City supports a regulation that defines “surety bond” for the purposes of section 70.3.1 of the Planning Act as specifically a pay-on-demand surety bond (and not other forms of bonds or instruments) which meets the mandatory requirements of the regulation.

### **Authority**

The proposal specifies that the regulation will not enumerate the specific circumstances in which the authority granted to owners/applicants under section 70.3.1(2) of the Planning Act can be used. The City believes the regulation should specify that owners/applicants can only stipulate use of a pay-on-demand surety bond for development applications dated on or after the day the regulation comes into force. The authority of owners/applicants to stipulate the form of security should not extend to existing security held by municipalities, in the form of cash or letters of credit, for pre-existing development obligations. Owners/applicants should not have the ability to require the City to swap out existing posted security for pay-on-demand surety bonds.

### **Issuer Credit Rating Change**

The City requires some more clarification regarding the consequences of insurer ratings falling below these minimum thresholds, for both the City and the builder. In the event that an insurer no longer meets the eligibility criteria defined by the Province, the City would require that builders provide alternate security within a reasonable timeframe. If the builder is unable to do so, the City would reserve the right to draw on the bond immediately.

### **Guaranteed Payment**

The City supports the requirement that the insurer pay upon demand. This enables the City to ensure that the secured development obligations are performed to the required standard without further delay.

Our current pilot program is very clear about the process by which claims can be made by the City. We stress that the City, in its sole and absolute discretion, will determine that the Principal is in default. There is no onus on the City to prove default, and payment must be made regardless of any objection by the Principal. We also require that payments made by the Surety be made free and clear, without deduction, set-off, or withholding – in short, that the full amount requested by the City be available immediately. This will enable us to quickly address any shortfalls in the Development Agreement.

The language herein speaks to the various nuances to be considered, including the burden of proof for determining default, the opportunity to dispute the claim of a municipality, and the exclusion of any deductions by the Surety. We recommend expanding this section to be clear on the aforementioned points.

## **Partial Drawdowns**

The proposed regulation would provide for partial drawdowns. This is elaborated on as meaning “similar to a LOC, a municipality would release portions of the security (i.e. , reduce the amount of the bond) when it is satisfied that the condition of development has been fulfilled by the homebuilder”. The City requires clarification of the intent. The City understands partial drawdown to mean that the obligee may draw a portion of the pay-on-demand bond from time to time as applicable. The description in the proposal speaks to partial release, which is not, to our knowledge, applicable to pay-on-demand surety bonds except where a bond is cancelled and replaced with a bond of lesser value. In the event the regulation does expressly permit or require partial release, any partial release should only be permitted/required in accordance with the terms of the development agreement (i.e. in specified phases or on completion of specified portions of secured work).

Where a development agreement does not provide for partial release of security, the municipality should not be obligated to allow partial release. The value of security for development obligations is determined based on detailed cost estimates, however the municipality is not limited to drawing on the security on the basis of the cost breakdown. Rather, the security is an aggregate value to secure total performance of the obligations. Partial release on the basis of value of work performed, except where expressly provided in a development agreement in circumstances satisfactory to the municipality, presents significant risk that municipalities would have insufficient security to secure total performance. In the event the regulation requires or permits partial release, the regulation should also stipulate a notice requirement for the developer to request partial release and a requirement for replacement/amended security (similar to the requirements for cancellation), so that the municipality is not exposed.

## **Cancellation**

The proposed regulation states that if an insurer intends to terminate the pay-on-demand surety bond, they are required to provide written notice to the municipality and principal at least 90 days in advance, and the principal is required to provide the municipality with replacement security within 60 days of receipt of the notice. Failing which, the existing pay-on-demand surety bond remains in full force.

The City’s agreement states that the bond is “irrevocable” by the insurer, and Guelph feels that this language is critical in defining the relationship between the insurer and the municipality. Our current agreement states that the insurer’s liability under the Bond is unconditional and shall not be discharged or released or affected by any arrangements, including any arrangement made between the City and the developer or the insurer and developer, or any disputes between the insurer and the developer.

Should the relationship between the insurer and principal deteriorate to the extent that the insurer issues an intention to terminate the bond, the municipality should have the right to draw on the bond if alternate security is not

provided. There should be no opportunity for the insurer to cancel the bond without the municipality having alternate security or full access to the funds.

### **Closure**

Thank you once again for the opportunity to provide feedback on this proposal from the perspective of the City of Guelph. Should you have any questions or would like to discuss these responses in more detail, please do not hesitate to contact the City at [intergovernmental.relations@guelph.ca](mailto:intergovernmental.relations@guelph.ca)

Sincerely,

**Shanna O'Dwyer**, General Manager, Finance, and City Treasurer  
Corporate Services  
City of Guelph

**T** 519-822-1260 extension (2300)

**TTY 519-826-9771**

**E** [shanna.odwyer@guelph.ca](mailto:shanna.odwyer@guelph.ca)