October 16, 2024

Municipal Finance Policy Branch
777 Bay Street
13th Floor
Toronto, ON
M7A 2J3

**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 019-9198)**

On September 16, 2024, the Provincial government released proposed regulation under s.70.3.1 of the Planning Act that would authorize landowners to stipulate pay-on-demand surety bonds to be used to secure municipal obligations that are conditions of land-use planning approvals.

The City has considerable concerns with accepting surety bonds in lieu of securities paid or secured via letter of credit as conditions of land use planning approvals. In the City's experience, surety bonds have been challenging to draw upon and require substantial legal resources to administer, make claims and access funds. Based upon our experience, use of surety bonds would not achieve the intended outcomes and are likely to cause considerable delays and costs to all parties involved, including the landowner/developer, and will not support more timely reviews or the provision of additional housing.

Should the Province proceed with the development and implementation of a regulation enabling the use of pay-on demand surety bonds, the City of St. Catharines provides the following matters for consideration:

**Implementation and Timing**
As of October 11, 2024, Section 70.3.1 of the Planning Act is in effect and once the associated Minister's regulation comes into force and effect, the municipality would be required to accept a pay-on-demand surety bond as a financial assurance to secure municipal land-use planning obligations. The proposed regulation (ERO 019-9198) provides an 'Analysis of Regulatory Impact' which indicates that there would be some financial and time costs to the municipality relating to drafting policies on pay-on-demand surety bonds.

- The City recommends that prior to implementing the Minister's regulation, a transition period of at least six months is allocated to allow Municipalities to prepare these policies before a landowner could choose to provide a pay-on-demand surety bond. Providing this time will ensure the learning, policies, procedures, and documentation required to implement the Minister's regulation can be addressed before use of the regulation and ensures no unnecessary delays to the review and approval process.

- It would be helpful if the Province could provide guidance on what a municipality may or may not require in their own policies relating to pay-on-demand surety bonds.

**Process for Payment**

In the City's experience there is a substantial and litigious procedure involved with making claims and accessing funds. The proposed regulation indicates payment on demand would be guaranteed and would be required to be paid within 15 business days of being issued a written notice of default. It appears as though the process for payment would be addressed administratively between the landowner/developer, municipality and a surety, however that has not been the City's experience. Previous attempts to draw upon surety bonds have required legal action and insufficient funds have been collected to finalize obligations. It is the City's experience that drawing upon surety bonds have not made the municipality whole and is not a process that is in the public interest, particularly where alternatives (such as letter of credit) exist.

- It would be helpful if confirmation or assurance could be provided that the process is not intended to require substantial legal proceedings, ultimately costing the municipality, community, and developer significant time and costs.

**Cancellation**

The proposed regulation indicates the insurer would be required to provide a written notice to both the municipality and the principal a minimum 90 days ahead of its intention to terminate the surety bond and then the landowner subsequently has 60 days to provide a replacement. If a replacement is not provided, the existing surety bond would remain in full force.

- If the landowner does not secure a replacement surety bond within the 60 days, whose responsibility would it be to notify the existing insurer and what is the process?
- What prevents the insurer from cancelling the existing bond after the 90 days?

In addition to the above, the City of St. Catharines was circulated a memo from the Town of Grimsby regarding ERO 019-9198. The memo (attached) will be included in the agenda package for the Council meeting of October 21, 2024. The City echoes the comments and questions shared in the memo from the Town of Grimsby.

If you have any questions on the comments provided, please contact Taya Devlin, Senior Planner at tdevlin@stcatharines.ca or 905.688.5601 extension 1709.

TOWN OF GRIMSBY

# Memo

**To:** Ruchi Parkash, Municipal Finance Policy Branch

**From:** Town of Grimsby

**Date:** **October 16, 2024**

**Re:** **Town of Grimsby Comments on Pay on Demand Surety Bond Regulation Proposal (ERO 019-9198)**

On September 16th, 2024, the Province released an Environmental Registry of Ontario (ERO) posting seeking feedback on the development of the regulation to address the yet un-proclaimed section (S. 70.3.1) of the Planning Act respecting surety bonds. The ERO provided a 30-day comment period, with a deadline for comments on October 16, 2024.

At the October 3rd meeting of Finance Committee a Notice of Motion was put forward and approved for staff to prepare comments on the ERO regarding surety bonds, and the Notice was further approved at Council on October 7th. A copy of the motion has also been appended to this memo.

Accordingly, the Town of Grimsby respectfully provides the following comments and questions on the ERO for consideration:

1. The ERO speaks to a wider acceptance of surety bonds as a targeted step to support the increase of housing. It also states: *The Minister may prescribe the instruments that landowners and other applicants can choose from as well as the circumstances in which the authority can be exercised*.
   a) What are those circumstances being considered?
   b) If the focus is only on housing, will commercial and industrial operations be excluded?
   c) Similarly, will mixed-use facilities be excluded?
   d) Will a municipality have the right to deny certain surety bonds should a developer or insurance company have a history of default?

2. The regulation requires credit ratings of insurers.
   a) What happens if one of the insurers loses their credit rating during the time of the surety bond and is unable to pay?
   b) While banks have more stringent regulations, will there be further risk management tools considered regarding insurance companies who offer pay on demand surety bonds?
   c) Will there be language in the regulation to protect municipalities?

d) Given that these bonds can be held for a significant period of time, how will the Province ensure those funds might be available for the long-term?

e) Is there a requirement that the insurance company hold funds for potential claims by a municipality, especially if a natural disaster or some other catastrophe happens?

f) What if a cancellation notice is received and no other insurance company can be found, and it defaults to the original who no longer has funds available?

3. The surety bonds agreements are between three parties, the insurance company, municipality, and developer.

   a) What if the developer meets financial challenges and defaults on their obligations with the municipality and insurance company?

   b) How would the situation be resolved?

   c) Does this have an impact to the surety bond and the municipality's ability to draw on it should works be incomplete?

   d) What would happen if a developer sold their interest in the project mid-project?

   e) Will there be standardized language in the agreements protecting municipalities should this occur?

   f) Would the new developer be required to attain a new surety bond?

   g) What if the developer or insurance company has defaulted in the past?

4. The proposal outlines that the municipality, in it sole discretion, can demand payment if the developer is in default.

   a) Will the Province be providing standardized language with respect to the agreements that assures municipalities that there are not lengthy or difficult processes to gain those funds?

   b) Will there be a dispute mechanism provided should the agreement be unclear, alternative language is used, or the insurance company refuses to pay?

5. The government assumes that the cost to municipalities would be approximately $1,400.

   a) Some municipalities do not have legal counsel internally for their operations, especially smaller municipalities.

   b) The requirement to follow this will require ongoing legal support to not only build the materials from insurance companies and developers, but also when payment is required for a default, proving to the insurance company that a default has occurred, and if the insurance company tries to pull out of the arrangement.

   c) Further, should legal recourse have to be sought for payment, that will also have a cost. This can lead to significant costs for smaller municipalities that have not been considered.

Thank you for considering these comments and questions. The Town looks forward to working with the Province to ensure that the risk to municipalities is limited with respect to surety bonds, while also achieving our shared housing goals.

Respectfully,

Brandon Wartman

Brandon Wartman, CET, CMMII
Director of Public Works

TOWN OF GRIMSBY

# Notice of Motion

| | |
|---|---|
| INTRODUCTION DATE: | Thursday October 3, 2024 |
| SUBJECT: | Pay-on-Demand Surety Bonds |
| REQUESTED BY: | Councillor Davoli |
| SECONDED BY: | Councillor Vardy |

Whereas the Ministry of Municipal Affairs and Housing has introduced a proposal which would create a new regulation under the Planning Act that would enable developers to use of pay-on-demand surety bonds to secure land-use planning obligations under Section 70.3.1 of the Planning Act.

Whereas municipalities need an effective method to ensure developers meet their financial obligations as established through their respective development agreements.

Whereas a Letter of Credit provides a guarantee directly from a certified financial institution (i.e. Bank, etc.) which allows the municipality to draw on the funds as needed;

Whereas pay-on-demand surety bonds used a third-party surety (insurance company) rather than a financial institution to provide these guarantees, financial institutions are subject to more stringent financial regulations, which introduces additional risk to the municipality and the tax payer;

Whereas the process to call on these funds is more complex, and may involve significant legal fees, and the proposed regulation does not adequately address downgrading of credit ratings of these insurance companies, renewals and defaults, related thereto.

Whereas it is estimated that the costs for developing, implementing, and maintaining these surety bonds could have significant financial impact to the municipality;

Whereas the proposal takes the decision for the type of guarantee being provided out of the municipalities hands, and into the developer's hands;

Whereas the proposal was published on the Environmental Registry of Ontario (ERO #019-9198), on September 16, 2024, with a 30-day comment period ending October 16, 2024;

Therefore be it resolved that Council direct staff to prepare detailed comments on the impact of this proposed change and submit the comments to the ERO by October 16, 2024 together with this resolution.

Be it further resolved that the same be shared with Mr. Sam Oosterhoff, MPP and other municipalities within the Regional Municipality of Niagara.

**I request, contingent on a 2/3 majority vote, that this Notice of Motion be given consideration at the October 3, 2024 Finance Committee Meeting.**