Proposed Regulatory Matters Pertaining to 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

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<tr><th>Proposed Mandatory Elements of a Pay-On-Demand Surety Bond</th><th>City of Burlington Comments</th></tr>
<tr><td>1. Licensing Requirement

The pay-on-demand surety bond would be required to be issued by an insurer that is licensed under the Insurance Act to write surety insurance.

This would cover insurers that are licensed to write insurance in Ontario and that are overseen by the Financial Services Regulatory Authority of Ontario (FSRA).</td><td>The FSRA is an independent regulatory agency of Ontario (provincial) created to improved consumer and pension plan protections in Ontario vs. OSFI is an independent agency of Government of Canada (federal).

The City supports this element as a mandatory requirement.</td></tr>
<tr><td>2. Credit Rating Requirements

In order to minimize credit risk to municipalities of the pay-on-demand bonds, the insurer would be required to meet one of the following credit ratings:

• Dominion Bond Rating Service as “A” or higher;
• by Fitch Ratings as “A-” or higher;
• by Moody’s Investors Service Inc. as “A3” or higher;
• by Standard and Poor’s as “A-” or higher;
• by A.M. Best Company, Inc. as “A” or higher.

This is an important feature to ensure that if a pay-on-demand surety bond is called on by a municipality, the surety’s assurance to pay the amount due and on time is supported by a third party (i.e., credit rating) assessment.</td><td>The City supports this mandatory requirement as it provides the City with independent opinion of the insurance company’s solvency, financial strength, and ability to pay the policyholder’s claims. This provides greater assurances that the bond value will be upheld in case of default.

However, as reported in City of Burlington staff report F-13-24 (June 2024), though the credit rating is a strong indicator of financial performance, the City cautions that if the number of municipalities accepting bonds increases it may dilute the ratings. It will be administratively difficult, if not impossible, to monitor any changes in credit ratings based on future volume. This presents an increasing level of risk to the municipality that can be foreseen.

Province should consider that if an insurer no longer meets the acceptable credit rating, the rules require that the upon written notice from the municipality (obligee), the principal (homebuilder) must provide a replacement security with 60 days of receiving the notice, failing which the municipality will be entitled to draw on the existing bond. It is also recommended that the municipality have the authority to disqualify an insurer if it has experienced issues with past performance.

Further the Province maintain a public list of eligible companies that is regularly updated and posted as a bulletin to enable both the municipality and the homebuilders to deal only with the qualified and pre-approved companies.</td></tr>
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3. Guaranteed Payment The pay-on-demand surety bond issuer (i.e., insurer) guarantees payment to the obligee (i.e., municipality) if the principal (i.e., homebuilder) defaults in performing the obligation guaranteed by the bond. This feature requires the insurer to make payments to the municipality for amounts demanded by the municipality if the municipality determines, in its sole discretion, that the principal (i.e., homebuilder) has defaulted in performing the obligation guaranteed by the bond and provides written notice of the default to the principal (i.e., homebuilder) and the insurer.	The City supports the guaranteed payment requirement without objection from the surety. This would be required to be built into the agreement and upheld by the surety. However, as reported in City of Burlington staff report F-13-24 (June 2024), there has been limited use of surety bonds in Ontario, and the City is unaware of an instance demonstrating whether payment on claims is in fact timely and administered with ease. Any instance where the City is spending extended amounts of time to prove default or accessing funds will be both costly and administratively challenging, as resources are being re-directed away from activities that are part of the development application process. The City has noted significant news (The Toronto Star) in the number of developers that have folded projects and gone into receivership. This highlights the financial hardships that are being experienced due to the economic environment, and therefore demonstrates the increased risk that the City is exposed to by accepting surety bonds that are not backed by any secured financial collateral.
4. Timely Payment The insurer would be required to make payment to the municipality within 15 business days of being provided with a written notice of default. This feature ensures that the municipality, in the case of default, would have timely access to funds so that it can remedy/complete the works required on the land.	The City supports inclusion of a timeline in which payment is required in case of default. Similar to the comment above, there has been limited use of surety bonds in Ontario, and the City is unaware of an instance demonstrating whether payment on claims is in fact timely and administered with ease. Any instance where the City is spending extended amounts of time to prove default or accessing funds will both be costly and administratively challenging, as resources are being re-directed away from activities that are part of the development application process. It is recommended the payment date be within 10 business days of notice.
5. Partial Drawdowns The pay-on-demand bond instrument would provide for partial drawdowns. This means that, 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 supports the ability to undertake partial drawdowns. As highlighted in City report F-13-24 (June 2024), the City notes that there is uncertainty around the level of financial consequence to the developer that would alleviate the need for regular inspections to decrease the security amount, and potentially the need for developers to address deficiencies in a timely manner, since the bond is not backed by any secured financial collateral.

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6. Cancellation The insurer would be required to provide a written notice to the municipality and the principal (i.e., homebuilder) at least 90 days in advance of its intention to terminate the pay-on-demand surety bond. The principal (i.e., homebuilder) would be required to provide the municipality with a replacement security (e.g., LOC, another equivalent pay-on-demand surety bond) within 60 days of the receipt of the notice. Failing which, the existing pay-on-demand surety bond would remain in full force. The Ministry of Municipal Affairs and Housing is not proposing to enumerate the specific circumstances in which the authority can be used in regulation.	The City supports the inclusion of this element. As noted in City report F-13-24 (June 2024), there is a lack of judicial experience, providing uncertainty if the existing pay-on-demand surety bond would in fact remain in full force. Exploration around parameters in which a cancellation can be accepted or rejected by the City. It is recommended that the municipality be allowed to draw on the existing pay-on-demand surety bond within 60 days of receiving termination notice, if it is not replaced within 60 days by a new pay-on-demand surety bond, Letter of Credit or cash.