



October 16, 2024

Finance  
Office of the Commissioner  
1151 Bronte Road  
Oakville ON L6M 3L1

Minister Paul Calandra  
Ministry of Municipal Affairs and Housing  
Municipal Finance Policy Branch  
777 Bay Street, 13th Floor  
Toronto ON M7A 2J3

Dear Hon. Paul Calandra:

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.

---

Thank you for the opportunity to provide comment on the proposed provisions to be included in the new regulation under *the Planning Act*, that would authorize landowners/homebuilders to choose to provide a pay-on-demand surety bond to secure obligations that are conditions of land use planning approvals. This letter is Halton Region's response to ERO# 019-9198 posted on the Environmental Registry of Ontario.

Halton Region has a shared objective with the Province and its Local Municipalities to advance housing supply and support the Local Municipalities in meeting their housing pledges by proactively planning for, financing and delivering infrastructure. Regional Council has committed to support the planned growth, while protecting its taxpayers from the financial impact of growth.

A wider acceptance of pay-on demand surety bonds as security for local works that are conditions of land use planning approvals, may help homebuilders to free up funds for more housing projects. However, the requirements for acceptance must be at no financial risk to the municipality or its taxpayers.

**The Region's submission to ERO# 019-9198 is outlined below.**

Currently the Region only accepts cash or letters of credit to secure land use planning conditions but was in the process of introducing a policy for Councils consideration to allow pay-on-demand surety bonds for obligations related to planning approvals as well. Homebuilders have argued that surety bonds are more flexible and will free up cash flow which will help them build homes faster. Therefore, Halton is generally supportive of allowing for the use of surety bonds.

**Regional Municipality of Halton**

HEAD OFFICE: 1151 Bronte Rd, Oakville, ON L6M 3L1  
905-825-6000 | Toll free: 1-866-442-5866

The elements, as outlined in the proposal along with including the additional changes recommended herein, would protect the municipality's interest and reduce financial risk.

Firstly, rather than having these requirements mandated by the regulation, it is Halton's submission that the Province should release guidelines that provide best practices on what pay-on-demand surety bonds should include (i.e. standard language to be included) and be less prescriptive in the regulation. This will give municipalities flexibility to approve policies that protect their interests. This is particularly important since there appears to be no municipal experience with drawing on these instruments and guidelines will give municipalities the ability to update their policies based on their own experiences with implementation, their needs and the risk levels outlined by their council. This would also allow municipalities to add requirements as deemed necessary, including such things as it not being retroactive (i.e. cannot replace existing securities being held) and disqualifying insurers based on poor performance.

The proposed regulation under the *Planning Act* will authorize homebuilders to use a 'pay-on-demand surety bond' with prescribed features to secure municipal obligations that are conditions of land-use planning approvals. Based on this wording, it does not extend to non-residential developers which may cause issues with equity of treatment and in cases where a planning approval is for a mixed-use development.

#### Proposed Mandatory Elements:

As noted above, it is Halton's submission that these be guidelines. Our comments/recommendations are provided on each element as follows.

1. **Licensing Requirement** – required to be issued by an insurer licensed under the *Insurance Act* to write surety insurance, licensed to write insurance in Ontario and are overseen by the Financial Services Regulatory Authority of Ontario.

Regional comment/recommendation - This is acceptable to Halton.

2. **Credit Ratings requirement** – In order to minimize credit risk to the municipality, the insurer would have to meet specific credit requirements. This ensures if a pay-on-demand surety bond is called on, the assurance to pay the amount due and on time is supported by a third-party assessment (the credit rating).

Regional comment/recommendation - There is no direction provided for situations where, during the life of the pay-on-demand surety bond, the insurer's credit rating changes resulting in the insurer falling outside the acceptable limit. It is recommended 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 Region recommends that 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.

3. **Guaranteed payment** – The insurer guarantees payment to the municipality if there is a default in performance by the developer of the obligation guaranteed by the bond.

Regional comment/recommendation – this guaranteed payment must be immediate and not be questioned in any way by the insurer as to the authority that the municipality has to demand its payment. It is recommended that there be included in the requirements that the pay-on-demand-surety bond must be unconditional and irrevocable, which is language currently required for Letters of Credit.

4. **Timely payment** – insurer would be required to make payment within 15 business days of the municipality providing the written notice of default.

Regional comment/recommendation – Halton recommends that the payment date be within 10 business days of notice.

5. **Partial Drawdowns** – the pay-on-demand surety bond would provide for partial drawdowns

Regional comment/recommendation – allowing for partial draws is important for both the developer and municipality and this provision is acceptable to Halton.

6. **Cancellation** – the insurer would be required to provide written notice to both the municipality and the homebuilder at least 90 days in advance of its intention to terminate the pay-on-demand-surety bond. Within 60 days of receiving that notice, the homebuilder would then have to provide a replacement security (either new Pay-on-demand bond, Letter of Credit or cash), failing which the existing pay-on-demand bond would remain in full force.

Regional comment/recommendation – Halton is concerned with allowing the bond to remain in full force when the insurer has notified the municipality of termination. 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.

It is recommended that 3 months transition period be included to allow the municipalities to develop policies and create the required forms and templates related to implementation.

Additionally, it is not clear what the estimated average cost of \$1,400 per municipality relates to. The ERO indicates that it is related to learning about the regulation and drafting policies on pay-on-demand surety bonds. Is this meant to be training by the MMAH and/or the insurers, for which the municipality will be billed? This should be made clear prior to posting the regulation.

If you have any questions or concerns regarding our submission the Region would be pleased to meet to review and discuss.

Sincerely,

A handwritten signature in dark ink, appearing to read 'CWinslow', with a stylized flourish at the end.

Cyndy Winslow  
Commissioner of Finance and Regional Treasurer  
(905) 825-6005  
[cyndy.winslow@halton.ca](mailto:cyndy.winslow@halton.ca)

cc: Gary Carr, Regional Chair, Regional Municipality of Halton  
cc: Jane MacCaskill, CAO, Regional Municipality of Halton