Report
Staff Report
The Corporation of the City of Brampton
3/17/2025

Date: 2025-02-25

Subject: **Information Report – Surety Bonds for Development Agreements**

Contact: Carolyn Crozier, Strategic Leader, Office of the Commissioner Planning, Building and Growth Management

Report number: Planning, Bld & Growth Mgt-2025-193

RECOMMENDATIONS:

1. That the report from Carolyn Crozier, Strategic Leader, Office of the Commissioner, Planning, Building and Growth Management to the Planning and Development Committee meeting of March 17, 2025, re: **Information Report – Surety Bonds for Development Agreements** be received.

OVERVIEW:

- **This report provides an overview and information on Pay-on-Demand surety bonds that are now permitted under the Surety Bond Regulation 461/24 of the Planning Act, which came into force and effect on November 20, 2024.**

BACKGROUND:

When approving a development proposal to build out a site, municipalities require assurance that the necessary site improvements/works (i.e. roads, landscaping sidewalks) will be delivered in a timely fashion and warranted for a period by the developer. To ensure the developer has the necessary financial resources to deliver and pay for the required improvements, the City requires financial security from the developer.

The developer's obligation to build this infrastructure is contained within a subdivision or site plan agreement, with standard language to ensure services will be constructed to an acceptable and common standard. This is critical as ultimately the City will own and be responsible for these improvements, including their ongoing maintenance, repair and replacement. Further, any liability resulting from the operation and use of these improvements/works by the public becomes the responsibility of the City upon assumption. The development agreements contain financial security provisions to guarantee to the municipality that the improvements/works will be completed to the approved specifications and will function properly.

The most common form of financial security received by the City is an irrevocable standby letter of credit (“LC”) from a Canadian chartered bank. While LCs are an effective form of security for municipalities, they place significant constraint on developers as each LC must be collateralized, most often in the form of cash. This imposes a liquidity crunch and opportunity cost against developers; the cash is held stagnant rather than being used to fund the project at hand or to reinvest in additional development opportunities.

On-demand surety bonds are an alternative, or additional tool that municipalities can consider to satisfy their financial security requirements while providing the development industry with greater financial flexibility.

However, municipalities have been reluctant to pursue this avenue for securing financial obligations for development agreements due to challenges experienced with previous forms of performance bonds that are issued by insurance companies. The responsibility for release of the money under performance bond is vested with the insurance company, which could potentially lead to the following situations:

- the surety may try to establish that the owner did not comply with the technical conditions of a bond to avoid paying the compensation;
- the surety may try to force the owner to settle for the least expensive remedy to the problem;
- any underestimation on the part of City with regards to the costs involved in remedial measures resulting from a deficiency could result in an inability to recover the shortfall from the surety.

The modern surety bonds, as considered here, have evolved from the conventional ‘on-default’ bonds to ‘on-demand’ bonds, meaning the oblige can draw down on the amount of the bond without any recourse on the part of the surety or the obligor to dispute the claim, eliminating, in theory, the scenarios listed above.

Several Ontario municipalities, including Hamilton, Pickering, Ottawa and Halton Hills have been utilizing development bonds as part of their development agreement process since around 2021.The City of Calgary began using surety bonds in 2019.

The Ontario Home Builder’s Association has advocated for the use of surety bonds since 2020. Most recently, the Ontario Housing Affordability Task Force has recommended that pay on-demand surety bonds be utilized across the Province, noting that the shift would free up “billions of dollars to build more housing.”

On November 20, 2024, Ontario Regulation 461/24 (Surety Bonds) (the “Surety Bond Regulation”) came into effect under the Planning Act (Attachment 1), which provides an option for landowners and those applying for planning approvals (applicants) with the option to stipulate that a surety bond be a form of security to secure their approval-related obligations.

CURRENT SITUATION:

With the enactment of the Surety Bond Regulation, municipalities are obligated to accept surety bonds (“SB”) as a form of security, should an applicant/landowner choose, subject to the requirements set out under Section 2(2) of the Surety Bond Regulation and any municipal policies.

The internal processes to integrate the use of SBs into the development agreement process will mirror the existing process for LCs, with some differences. When submitting the bond proposal to the City, the landowner or developer must provide essential details, including the issuing entity, bond amount, and duration. City staff will be responsible for verifying the authenticity of the surety provider and the bond document.

Table 1: Internal Letter of Credit (LC) Process Vs. Surety Bond (SB) Process

	Letter of Credit (LC)	**Surety Bond (SB)**
1. Initial Requirements & Submission	Developer provides a letter of credit to the city as security. LC must meet specific requirements. LC must be from an eligible bank, a Schedule 1 bank under the Bank Act and on template provided by the City	Developer submits a bond proposal to the city for review, including details about the issuing entity, bond amount, and duration. SB must be from a surety provider with a minimum credit rating and must be licensed under the *Insurance Act* (Ontario).
2. City Review and Approval	City reviews the LC to ensure it meets all policy requirements.	City reviews the bond proposal and verifies the authenticity of the surety provider and the bond document.
3. Agreement and Execution	Site Plan approval Memo for Site Plans or the Security & Payment Statement for Subdivisions advises the amount to collect, and security can be collected thereafter.	Upon receipt of an executed Pay On Demand Surety Bond Agreement, the Surety Bond is accepted as security.
5. Default and Payment	In the event of a default, the City can make a demand on the LC. Full or partial draws can be made upon the LC on demand, regardless of disputes.	The City declares the developer in default and notifies the surety provider. The surety provider is obligated to make payments, up to the amount of the surety bond, to

		the City within a specified timeframe, often 10 business days.
6. Release of Security	Upon completion of the work and satisfaction of all conditions, the City releases LC.	Upon completion of the work and satisfaction of all conditions, the City advises termination of the SB.

Legal and Finance, in collaboration with the Planning, Building and Growth Management Department, are actively working to complete the necessary changes to the security provisions in the City's template development agreements, creating a SB template, and finalizing the internal Finance policy on SBs. The policy would include acceptable terms and conditions, requirements for issuing institutions, and roles/responsibilities of the City staff. It will provide a clear way to assess and manage the risks and processes around a SB as security.

This work will be completed imminently, positioning the City to be ready to action SB requests from landowners/developers under development agreements.

Risks, Concerns and Ongoing Monitoring

While the use of Surety Bonds is now regulated and required to be accepted under the Planning Act, staff have identified potential risks and concerns associated with their use. Staff provided a formal submission in response to the Province's request for comment on the use of Surety Bonds through the Environmental Registry Posting in October of 2024.

Staff continue to identify potential risks and concerns to the City with the new regulation, including:

- There is naturally an inherent risk with bonds versus cash and Letters of Credit (LCs). Cash and LCs are guaranteed funds and allows the City the right to draw upon the security at any time in the event of default from a developer - the City is not 'chasing' developers for payment;
- The bond is backed by an insurance company as opposed to a financial instrument regulated by a Canadian financial institution and fully backed by cash as collateral – there is no collateral with surety bonds;
- Though insurance companies are backed by ratings, with the number of municipalities now accepting surety bonds as a result of the new Surety Bond Regulation, this will potentially dilute such ratings thus impacting insurer credibility;
- Potential for payment not being provided by the insurer for whatever reason or City having to prove default to the insurer, notwithstanding the Surety Bond Regulation, which could result in future claims, given the lack of experience with surety bonds in the development application context;

- Potential risk of City not being paid in the event the insurer terminates its obligations under the surety bond and the City has not received an acceptable form of security from the developer to replace the surety bond;
- Insurer payout ability in the event a developer files for creditor protection or bankruptcy;
- Potential for insurer to go bankrupt; and
- Potential risk of fraudulent bonds being provided – more diligence will be required internally from Finance.

Given the use of SBs is only now required, it is difficult to ascertain the degree of risk in using these instruments. The City of Hamilton adopted the use of Surety Bonds for use with development agreements in 2021. They have received 56 Surety Bonds to date and have not experienced any defaults.

Staff confirm that very low rates of realization have occurred with respect to the City's need to draw down on LCs. Staff will monitor activity against SBs and flag to Council should significant issues arise.

Swapping Existing Letters of Credit for Surety Bonds

Members of the development industry have inquired as to whether the City will permit the swapping out of existing LCs for Surety Bonds.

Staff advise that swapping LCs for SBs will not be permitted and to address any SB requests on a go-forward basis. The Surety Bond Regulation is not retroactive as the Surety Bond Regulation does not contain either retroactive wording or a transition provision. Based on the foregoing, municipalities are not obligated to replace existing forms of security. Further, swapping will cause an administrative burden on staff in both Legal and Finance, especially if the is no date restriction on how far back the City is agreeable to swap LCs for SBs. With respect to municipal benchmarking, it is difficult to currently ascertain what most municipalities are doing in this respect given the newness of the requirement.

CORPORATE IMPLICATIONS:

Financial Implications:

There are no financial implications associated with this report.

Other Implications:

There are no other implications associated with this report.

STRATEGIC FOCUS AREA:

This report aligns and supports the strategic focus areas of:

- **Growing Urban Centres & Neighbourhoods**: Focusing on an economy that thrives with communities that are strong and connected.
- **Government & Leadership**: Focusing on service excellence with equity, innovation, efficiency, effectiveness, accountability, and transparency.

Additional financial options to support the development industry could support thriving communities and improves service excellence with respect to the development application process.

CONCLUSION:

The use of Surety Bonds is now regulated and required to be accepted under the Planning Act. Staff are completing work on the internal requirements to facilitate the acceptance of Surety Bonds and will be prepared to begin acceptance of such requests before the end of Q1 2025.

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Attachments:

- Attachment 1 – Ontario Regulation 461/24 (Surety Bonds)