



## REPORT

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**TO:** Mayor Lawlor and Members of Council

**FROM:** Kathleen Reinhardt, Risk & Insurance Advisor

**DATE:** May 6, 2024

**REPORT NO.:** CS-2024-009

**SUBJECT:** Pay-On-Demand Surety Bonds Pilot Project Update

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### RECOMMENDATION:

THAT Report No. CS-2024-009 dated May 6, 2024, regarding Pay-On-Demand Surety Bonds Pilot Project Update be received;

AND FURTHER THAT Council approves the Development Agreement Surety Bond Policy, attached as Appendix A;

AND FURTHER THAT Council approves the conclusion of the pilot program and commences the acceptance of pay on demand surety bonds as an allowable form of security subject to the terms outlined in the Development Agreement Surety Bond Policy;

AND FURTHER THAT this report be referred to Budget Committee for tracking purposes in the event that additional legal costs for administering surety bond applications cannot be funded by the Town's existing legal budget allocation.

### KEY POINTS:

The following are key points for consideration with respect to this report:

- Through Report CORPSERV-2022-0010, Council approved a pilot program approach for the acceptance of pay-on-demand surety bonds for development agreements.
- An update on the surety bond pilot program is provided.
- A policy has been created based on municipal best practices and lessons learnt through the pilot program.

## **BACKGROUND AND DISCUSSION:**

The Town has historically accepted only a letter of credit (LC) or cash as security for agreements related to Planning Act approvals. In recent years, there has been collaboration between industry and municipalities to create a new commercially viable development bond instrument that is a practical alternative to LCs. The intent of the pay-on-demand surety bond is to provide financial assurance to a Municipality that a Developer will successfully complete all obligations under the development agreement.

A pilot project was launched by the Town in 2022 to assess the risks of accepting a pay-on-demand surety bond as an alternative form of security for development agreements. The pilot program was to run for a term of 24 months at the end of which, staff would report back to Council with any challenges that might have arisen during the pilot and provide a recommendation on future acceptance of pay-on-demand bonds as an alternative form of security.

During the pilot program, the Town received two requests from developers to accept pay on demand surety bonds as a form of security. Although the volume of requests was low, and there was no requirement to draw down on either of the bonds during the pilot program, there were some noteworthy lessons that staff documented.

The first surety bond that the Town received under the pilot program was forwarded to legal counsel for review. Multiple amendments were made to the documentation by both the Town and the developer's legal counsel before the bond agreement was accepted by both parties.

The first challenge identified that the pay-on-demand surety bond must include every stakeholder's name, some of which were not immediately obvious to staff, requiring time from legal counsel to identify all parties. In contrast, a letter of credit can be drafted solely in the name of the agreement holder.

The second challenge related to the Town's list of acceptable financial institutions. Historically, the Town has mirrored the Region of Halton's policy to ensure consistency, however, the Region does not currently accept pay-on-demand-surety bonds and as such the list of acceptable financial institutions did not extend to insurance underwriters. The Town's historic experience has been that Letters of Credit could only be accepted if the financial institution was a Schedule I or Schedule II bank with a credit rating of at least R-1 (Mid) as provided by the Dominion Bond Rating Service (DBRS). To address this challenge, staff developed a list of additional acceptable financial institutions, specific to security bonds, thereby deviating from the Region of Halton's policy as follows:

Pay on demand surety bonds are issued by insurance underwriters, through a Canadian surety provider with a minimum credit rating of:

- "A" or higher as assessed by Dominion Bond Rating Service Limited;
- "A-" or higher as assessed by Fitch Ratings;
- "A3" or higher as assessed by Moody's Investors Services Inc.; or
- "A-" or higher as assessed by S&P.

Town staff do not have the experience or formal training on how to interpret financial institution ratings reports and as such, this should be identified as a potential risk when accepting future pay on demand surety bonds.

It is noteworthy to add that one of the applicants did increase the value of their surety bond, and similar to a Letter of Credit (LC) where the bank issues an amendment, the insurance company issued what is termed a "Rider" without issue.

Staff are unable to comment at this time on any challenges associated with the process of drawing down on a pay-on-demand surety bond. Bonds are structured to be paid within seven (7) days of a written request; however, this was not required during the pilot program and there are no publicly available documented cases of this from other municipalities.

The pilot program highlighted that surety bonds require a more custom-made approach before they can be accepted as a form of security, necessitating legal counsel to review the documentation. Costs for additional legal work could require an increase to the Town's legal operating budget if they cannot be accommodated within the current budget.

After reviewing the pilot program staff are recommending at this time that the pilot period be closed and that the Town start to accept surety bonds as an acceptable method of security. All surety bonds accepted must meet the criteria outlined within the policy. On the understanding that pay-on-demand surety bonds are still a relatively new security instrument, and there are no current documented cases of challenges, the Treasurer will continue to monitor the acceptance of these as a suitable form of security. Should significant challenges be encountered, the Treasurer will report back to Council, along with any recommendations to discontinue accepting this form of security.

#### **STRATEGIC PLAN ALIGNMENT:**

This report identifies a thriving economy as one of the Town's Strategic priorities.

#### **RELATIONSHIP TO CLIMATE CHANGE:**

This report is administrative in nature and does not directly impact or address climate change and the Town's Net Zero target.

#### **PUBLIC ENGAGEMENT:**

Public Engagement was not needed as this report is administrative in nature.

**INTERNAL CONSULTATION:**

The Treasurer and Deputy Treasurer were consulted on this report.

**FINANCIAL IMPLICATIONS:**

This report has the potential to require funding in a future budget year and therefore needs to be referred to budget committee for tracking purposes.

Reviewed and approved by,

Joseph Vandermeer, Deputy Treasurer & Senior Manager of Accounting and Taxation

Moya Jane Leighton, Director of Finance & Town Treasurer

Laura Lancaster, Commissioner of Corporate Services

Chris Mills, Chief Administrative Officer