



Pipeline to Permit Meeting Committee

Agenda

Date: June 13, 2024
Time: 9:30 a.m.
Location: Hybrid meeting- virtual and Council Chambers, City Hall
Contact: City Clerk, Samantha.Yew@burlington.ca 905-335-7600, x7490

Pages

1. Entrance

1.1 Call to Order

Chair: Mayor Marianne Meed Ward
Clerk: Samantha Yew

1.2 Land Acknowledgement

Burlington as we know it today is rich in history and modern traditions of many First Nations and the Métis. From the Anishinaabeg to the Haudenosaunee, and the Métis – our lands spanning from Lake Ontario to the Niagara Escarpment are steeped in Indigenous history.

The territory is mutually covered by the Dish with One Spoon Wampum Belt Covenant, an agreement between the Iroquois Confederacy, the Ojibway and other allied Nations to peaceably share and care for the resources around the Great Lakes.

We would like to acknowledge that the land on which we gather is part of the Treaty Lands and Territory of the Mississaugas of the Credit.

1.3 Approval of the Agenda

1.4 Declarations of Interest

2. Enlightenment

Enlightenment items include presentations and opportunities for education, state of the industry developer updates, and jurisdictional scans

2.1 Presentations

a. P2P Open Data Migration (PP-17-24)

Presentation to be provided by Jamie Tellier, Director, Community Planning, Nick Anastasopoulos, Chief Building Official and Chad MacDonald, Executive Director, Digital Service and Chief Information Officer

3. N2: News and Numbers

News and Numbers includes Provincial and Federal housing initiatives, staff updates on Council directives and the Pipeline to Permit Report.

3.1 Pipeline to Permit Report

3.2 Contextual Updates

4. Enactions

Enaction items make recommendations for next steps and identify actions.

4.1 Pay-On-Demand Development Bonds (F-13-24)

1 - 8

4.2 Next Steps and Action Identification

4.3 Information Items

4.4 Adjournment

5. Envisions

Envision items focus on future housing and planning goals and connections to the City's strategic plans and complete communities vision.

6. Enhancements

Enhancement items identify opportunities for policy, process and procedure improvements.



SUBJECT: Pay-On-Demand Development Bonds

TO: Pipeline to Permit Committee

FROM: Finance Department

Report Number: F-13-24

Wards Affected: not applicable.

Date to Committee: June 13, 2024

Date to Council: June 18, 2024

Recommendation:

Approve the pilot program approach to accepting Pay-on-Demand development bonds as outlined in finance department report F-13-24 herein; and

Direct the Chief Financial Officer to develop a pay-on-demand bond template and pay-on-demand development Bond Policy that include the parameters of the pilot program, in a form satisfactory to the Executive Director of Legal and Corporation Counsel, as outlined in this report for Council approval by Fall 2024; and

Direct the Executive Director of Legal and Corporation Counsel to ensure that Site Plan Agreements for developments participating in the pilot program recognize pay-on-demand development bonds as an acceptable form of security, as recommended in this report; and

Direct the Chief Financial Officer to report back in two (2) years, or earlier subject to provincial legislation with a summary of challenges and future consideration for on-going acceptance of Pay-On-Demand development bonds.

PURPOSE:

The purpose of this report is to respond to the following staff direction approved by Council on March 19, 2024.

Direct the Acting Chief Financial Officer or designate to, at minimum but not limited to, consult with WEHBA and Marsh to explore and report back to the Pipeline to Permit Committee on how to implement a Modern Pay-on-Demand Surety Bond program by the end of Q2 2024.

The report provides an overview of the steps required to accept pay-on-demand development bonds as well provide a conservative pilot program approach for council's consideration. Based on the recent backgrounder on Bill 185 the province will be consulting on potential regulation to specify the type of instruments to be used to secure municipal land use planning approvals, including surety bonds. This is an area that the province is looking to legislate, therefore, to be prudent staff propose a pilot program and development of bond policy and template, that will be subject to future legislation.

The report provides an overview of considerations of parameters and future policy in order to accept pay-on-demand development bonds (bond) at the City of Burlington. At this time, staff are recommending a conservative pilot for acceptance of pay-on-demand development bonds for a maximum of three (3) developments bringing forward a site plan application to minimize risk to the city in accepting bonds. This provides an opportunity for staff to review and monitor the use of bond(s), establish internal processes and procedures as well as to monitor performance of the development using bonds to track potential challenges.

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth

Executive Summary:

The report herein is being brought forward for Council approval of a pilot program approach for the acceptance of pay-on-demand development bonds. The approach allows the city to accept pay-on-demand development bonds for a maximum of three (3) new site plan agreements, a maximum bond value of \$1 million per development, and one bond per developer subject to minimum credit rating requirements of the surety. The city's existing options of letters of credits and cash securities continue to be available. Staff will bring forward a required bond template and bond policy for Council approval in Fall 2024.

Staff are recommending this be implemented as a pilot program in order to learn, develop and refine processes as it relates to bonds and learn how this can be adapted to other municipal land-use planning agreements. Furthermore, to support possible future legislation that will be resulting from MMAH consultation and feedback of Ontario municipalities. Staff is not recommending transition of existing securities as part of this pilot. Though the pay-on-demand development bond has gained traction among Canadian municipalities, based on the municipalities consulted there is no evidence of any claims to date, and furthermore, though it appears the bond aligns with many of the features of letters of credits, staff feel that municipal due diligence is still required to determine if an insurance backed instrument is equivalent to an LC which is backed by a

chartered bank.

Background and Discussion:

The city currently accepts either a letter of credit (LC) or cash as security for agreements related to Planning Act approvals. This security represents a portion of the cost of municipal related construction work (sewers, grading, stormwater management, related site management etc.) and is held by the city until the agreed upon work has been completed to the satisfaction of the city.

A Letter of Credit is a form of security issued by a financial institution that guarantees payment or performance by allowing the city the right to draw upon the security in the case of developer default. Any disagreement between the city and the developer can be contested in court once the funds have been paid out by the financial institution. Historically, the LC as a security instrument has been widely and most commonly used by municipalities due to its ease of use and presents the least financial risk to the municipality.

To further mitigate the inherent risk that is attached to an LC, the city follows the letter of credit policy. This policy provides a framework that is to be followed when accepting LCs. As part of this process, staff will be undertaking a review of the existing LC policy and template and will bring forward any revisions as required. The current parameters of the city's LC framework are acceptance of LC's only from Schedule I and Schedule II banks, with a minimum rating of R-1 or higher as provided by the Dominion Bond Rating Service (DBRS) or equivalent acceptable agency.

Strategy/process/risk

Staff are proposing that the city implement a pilot program to implement pay-on demand development bonds for a maximum of 3 site plan development applications. The primary reason behind exploring this program is that the city's current policy of accepting only letters of credit is considered limiting to developers and tying up funding and borrowing capacity for developers. As financial securities have evolved over time, the features of a pay-on-demand development bond appear to align with the features of LCs. The most notable difference is follows:

- Development bond is held with an insurance company as opposed to a financial institution. However, like the banking industry, the insurance industry is regulated by the Office of the Superintendents of Financial Institutions (OSFI) and is subject to credit ratings.

Though this appears to be only a singular difference it is important. The bond is an insurance product, backed by an insurance company, as opposed to financial instrument regulated by a Canadian financial institution and fully backed by cash collateral.

Developers who wish to obtain a pay-on-demand development bond must undergo an underwriting process by the surety company. This includes a review of the developer's credit, their history and project specific details such as the economics, schedule and trades used. The developer must also provide a corporate guarantee to the surety company. This prequalification process does provide the city with additional assurance of the developer's financial ability and ability to successfully complete the development.

A credit rating for surety providers (insurance company) is an opinion of a company's solvency, financial strength, and ability to pay the policyholder's claims and in many cases ratings of the same insurance company can differ among various credit rating agencies. The major rating agencies are, AM Best, Moody's, Standard & Poor's (S&P), and Fitch. Though the credit rating is a strong indicator of financial performance, staff do caution that if the number of municipalities accepting bonds increases it may dilute the ratings. Once staff accept a bond from a surety provider it will be administratively difficult to monitor any changes in credit ratings based on future volume, therefore presenting a level of increased risk.

The most common concern is that payment would not be disbursed or that a municipality would need to spend extended amounts of time proving default prior to accessing funds through a surety bond. For pay-on-demand bond those concerns appear to be alleviated as language has been adopted that requires payment within 10 days without negotiation. Therefore, if a demand for payment has been made the surety provider is obligated to make payment without question. Based on discussions with other municipalities, none have yet had any experience with a claim to date, therefore it is unknown if payments on claims in fact are timely and administered with ease. Noting, that any claim is in effect an insurance claim, and though staff will make every effort to ensure the agreement addresses as many eventualities as possible, it doesn't change the nature of the risk of the instrument and the lack of experience to date with claims. The other noted concern is the 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.

The lack of experience with demand bonds in the development application context means that outcomes where security needs to be drawn upon cannot be fully predicted. For example, in the case of a developer bankruptcy where several bonds issued by the same surety are called upon (possibly by multiple municipalities) simultaneously to address deficient or incomplete work, municipalities may need to litigate to realize the security if a surety refuses to honour a bond. With no municipal experience drawing on bonds, nor any judicial guidance, the city cannot be fully assured that a demand bond will be as

reliable as a cash-backed letter of credit. It is intended that the language in the future demand bond policy and template agreement will mitigate risks that can be foreseen at this time. Staff have reviewed this matter with legal staff and are in support of the conservative pilot approach recommended herein.

Pilot Program:

Staff recommend a pilot program approach subject to Council approval of the pay-on-demand development policy and bond template which will be brought forward in the Fall 2024. While developing the policy and template, it also provides staff the time to communicate process among staff involved in the security process, make automation changes to assist in collection, and releases of bonds similar to LCs, and review wording in a site plan agreement and any related documents to consider for amendment as required in the acceptance of pay-on-demand development bonds.

Acceptance of the bond for a maximum of 3 site plan agreements is to minimize financial and legal risk to the city. Furthermore, in the city's due diligence with other municipalities site plans applications seemed to be the predominant case for the use of bonds. Other parameters that the policy will consider, but subject to policy development are.

- maximum bond value of \$1 million
- one bond per developer
- minimum credit rating of "A-" as assessed by S&P or an equivalent rating from Fitch Ratings of "A-" (high credit quality), Moody's Investors ("A3"), AM best rating of "a-" (Excellent) or AMB-1 (Outstanding), or "A" or higher as assessed by Dominion Bond Rating Service.

This allows city adequate time to develop and refine processes as it relates to bonds and learn how this can be adapted to other municipal land-use planning agreements. Staff is not recommending transition of existing securities as part of this pilot.

Furthermore, the province will be consulting on potential regulation to specify the type of instruments to be used to secure municipal land use planning approvals, including surety bonds. The city recently completed a survey (April 30th) provided through MMAH seeking feedback to better understand how municipalities currently use instruments to secure obligations in connection with land-use planning matters, and what measures can better support municipalities in considering innovative instruments such as pay-on-demand surety bonds. This pilot program will allow the city to learn and put the necessary process and procedures in place, to support possible future legislation, as well as align with potential legislation that will be resulting from the consultation and feedback of Ontario municipalities.

Financial Matters:

Staff are proposing the implementation of a pilot program for the city to accept pay-on-demand development bonds for a single new site plan application that comes forward. At this time, staff is not considering transitioning of any active/ existing securities to bonds. Presently, the city has approximately 200 active letters of credit (not including cash securities), with a total value of approximately \$25 million.

A pilot program allows for staff's continual due diligence to assess the outcomes relating to the acceptance of this new instrument and to document any risks. After, this pilot program staff will report back, and should pay-on-demand development bonds be a continued acceptable insurance instrument by the city then staff will consider expanding the parameters of the policy. As well as consider the impact of transitioning existing securities related to any financial risk, legal risk and impact to staff resourcing based on developer demand to transition based on the city's learnings from the pilot program and subject to future legislation.

There are no financial impacts in development of a pilot program for pay-on-demand development bonds. However, there is a risk of financial impact in consideration of future claims that maybe required.

Climate Implications:

Not Applicable.

Engagement Matters:

Marsh Canada provided a presentation to city's Pipeline to Permit Committee on March 8, 2024. The presentation focused on the evolution of financial securities, the similarities and differences between an LC and a pay-on-demand development bond, and other municipalities that have begun accepting this insurance instrument. Staff's understanding from this presentation was that the risks between the two forms of security are relatively the same, however, from a legal perspective this assertion cannot be confirmed, as set out above.

Staff met with WEHBA, and Marsh on April 25, 2024. It was an insightful discussion on some of the process elements of proposed pilot-program and particular aspects of implementation the city was reviewing. It is the city's understanding that WEHBA is pleased the city will be considering policy alignment with the City of Hamilton and others for consistency and ease and acknowledged that most developments coming forward are

site plan agreements. However, would have preferred the city also consider the transition of existing securities at this time. Staff indicated the city will re-assess the program after two years to determine its permanency and future consideration to expand the types of development agreements in which bonds are accepted and the impact of transitioning existing securities, pending future legislation.

Furthermore, Finance staff have had discussions with the following municipalities who are currently accepting these instruments as security to gain an insight into the benefits and challenges. In addition, staff have carefully reviewed their policies and templates and will consider its contents as the city brings forwards its policy in the Fall. This ensures that there is regional alignment in practice and policy.

- (2022) Halton Hills – *2-year pilot program*
- (2021) City of Guelph – *pilot program for 1 development only*
- (2021) City of Hamilton
- (2022) City of Ottawa - *pilot program for 5 developments only*

Based on discussions with the above municipalities the following is a high-level summary of the key take-aways.

- No claims experienced to date,
- The policy only extends to new development applications, and does not consider transitioning of existing securities (Hamilton is beginning to explore),
- Most bonds are related to site plan applications,
- Uptake of Surety Bonds
 - Hamilton holds 22 surety bonds (2021 – June 2023)
 - City of Guelph held first surety bond earlier this year, since program opening in 2021
 - Halton Hills holds 2 surety bonds (2022 – April 2024)

Conclusion:

Staff are recommending a pilot program approach for the acceptance of pay-on-demand development bonds for future site plan applications agreements. Staff will bring forward a bond policy and template in the Fall 2024 and will report back in two years to assess the use of bonds and challenges or risks that have been identified which require modification to the city's policy.

Respectfully submitted,

Reena Bajwa

Manager of Financial Strategies & Business Consulting

905-335-7600 ext. 7896

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.