



The Corporation of the Town of Milton

Report To: Council

From: Glen Cowan, Chief Financial Officer / Treasurer

Date: March 17, 2025

Report No: ES-007-25

Subject: Financial Securities - Acceptance of Surety Bonds

Recommendation: THAT Council approve the Pay-on-Demand Surety Bond Template attached as Appendix A to this report;

AND THAT Council authorize the Chief Financial Officer and Treasurer to make amendments to Appendix A and the associated schedules thereto as necessary to comply with provincial legislation or reflect evolving best practices;

AND THAT Council approve a new user fee, in the amount of \$279, for the conversion of an existing letter of credit financial security with a surety bond.

EXECUTIVE SUMMARY

- Through Town Policy No. 117 Financial Management - Development Finance, Milton currently accepts financial securities in the form of cash or letters of credit to guarantee performance under various development agreements.
- Legislative changes to the *Planning Act* through Bill 109, *More Homes for Everyone Act, 2022*, compel municipalities to accept surety bonds as a form of financial security as prescribed by the Minister.
- Concurrent to this report, recommended changes are being proposed to Town Policy No. 117 Financial Management - Development Finance to allow surety bonds as a form of security in accordance with the *Planning Act* and as summarized in this report.
- A new user fee of \$279 is recommended to recover staff time administering any exchanges of existing financial securities with a surety bond, where applicable, under the amended financial policy.

REPORT

Background

When a property owner enters into a development agreement with the Town under the *Planning Act*, the owner is required to deliver financial securities to the Town to guarantee performance of the owner's obligations under the development agreement. The financial security represents a portion of the cost of municipal related construction work (sewers, grading, stormwater management, related site management, etc.) and are held by the Town until the agreed upon work has been completed to the satisfaction of the Town. Town Policy No. 117 Financial Management - Development Finance defines cash and letters of credits as the form of financial securities currently accepted by the Town. Letters of credit are often the preferred option for developers of large-scale projects whereas cash securities are typically used for smaller projects.

A Letter of Credit (LC) is a form of security issued by a financial institution that guarantees payment or performance by allowing the Town the right to draw upon the security in the case of developer default. LCs, as a security instrument, continue to be widely and most commonly used by municipalities due to their ease of use and minimal financial risk to the municipality.

Discussion

On April 14, 2022, legislative changes were approved through Bill 109, *More Homes for Everyone Act, 2022*, that added the following section to the *Planning Act* requiring municipalities to accept surety bonds as a form of financial security for land use planning matters:

70.3.1 (1) The Minister may make regulations,

(a) prescribing and defining surety bonds and prescribing and further defining other instruments for the purpose of this section;

(b) authorizing owners of land, and applicants for approvals in respect of land use planning matters, to stipulate the specified types of surety bond or other instrument to be used to secure an obligation imposed by the municipality, if the municipality requires the obligation to be secured as a condition to an approval in connection with land use planning, and specifying any particular circumstances in which the authority can be exercised.

A surety bond is a form of financial guarantee and is an agreement between three parties: the principal (the developer), the obligee (the Town), and the surety. The surety provides a

Discussion

promise to the Town that it will be liable for the debt, default or failure of the developer under a development agreement. In most cases, the surety will rigorously vet the financial means, expertise, resources, and operational controls of the principal to bring a development project to completion prior to issuing the surety bond. Surety bonds benefit the development community as they do not tie up funds in the manner that LCs may, and instead allow the applicants to commit more finances towards their development activities.

Similar to LCs and cash securities, the surety bond will be in an amount that meets the financial security requirements of the Town under the development agreement, and should, at any point, the developer fail to meet their obligations under the development agreement, the Town can make a demand to the surety in an amount commensurate with the default.

Although approved in April 2022, the legislation only came into force on November 20, 2024 with the release of O.Reg 461/24 which defines the legislated requirements a surety bond must satisfy. These requirements serve to protect municipal financial interests and include the following:

- Insurer must be licensed under the *Insurance Act* to write surety insurance and meet minimum bond rating requirements
- Municipality must be guaranteed payment if the principal defaults in performing an obligation guaranteed by the bond
- Municipality has sole discretion in determining if the principal has defaulted on an obligation guaranteed by the bond
- Insurer must make payment to the municipality, within 15 business days, after receiving a demand from the municipality, notwithstanding any objection by the principal and the insurer cannot assert any defence or grounds for not making the payment
- Requirements for termination of an insurer's obligation under the bond

Concurrent to this report, staff are recommending modifications to Town Policy No. 117 Financial Management - Development Finance to reflect the legislative requirements to accept surety bonds for land use planning matters. The recommended policy changes provide direction on when and in what form surety bonds will be accepted as well as identify the responsibilities of various Town staff involved in the process of their collection and administration. Key policy highlights include:

Discussion

- All surety bonds must meet the requirements of subsection 2(2) of Regulation 461/24 of the *Planning Act* and will only be accepted to secure an obligation required in connection with land planning approvals under the *Planning Act*
- The surety bond must be in Canadian dollars and in compliance with the Town's Surety Bond Template, attached as Appendix A to this report
- Requests to transition existing financial securities will only be accepted if the language in the underlying development agreement permits the provision of a surety bond as a form of security

Although the *Planning Act* does not require municipalities to exchange existing financial securities for agreements executed before the legislative changes came into force, staff are recommending the Town accept such exchanges but only where the underlying financial agreement permits surety bonds as a form of security. In such cases, Town staff are recommending a new user fee in the amount of \$279 be established and imposed where a developer requests a change in form of security to recover staff time to administer these requests.

Staff have also updated the financial security related language in the relevant development agreement templates to align with the updated financial policy so all future land use planning related development agreements permit the provision of surety bonds as a form of financial security in accordance with the *Planning Act*.



Discussion
Financial Impact

As currently written, the legislation governing the provision of surety bonds appears to provide similar financial security and protection to municipalities as letters of credit provide. This protection, however, has yet to be tested as it is difficult to find many examples to date where a demand for payment was required by a municipality for non-performance under a surety bond. For context, as of the end of 2024, the Town held just over \$200 million in LC securities under various financial agreements.

The introduction of the recommended new user fee of \$279 for the exchange of an existing LC with a surety bond is not expected to yield significant revenue for the Town as staff are not projecting a large quantity of security exchanges. Any revenue from the new user fee will be reflected in the operating budget and related variance reporting.

In accordance with Town Policy No. 117 Financial Management - Development Finance, surety bond holdings will be reported annually with the other financial securities through the Town's Development Charges Reserve Fund Treasurer's Statement report.

Respectfully submitted,

Glen Cowan
Chief Financial Officer / Treasurer

For questions, please contact: Melanie Wallhouse
Manager, Development Finance and Financial Consulting Ext: 2314

Attachments

Appendix A: Surety Bond Template

Approved by CAO
Andrew M. Siltala
Chief Administrative Officer

Recognition of Traditional Lands

The Town of Milton resides on the Treaty Lands and Territory of the Mississaugas of the Credit First Nation. We also recognize the traditional territory of the Huron-Wendat and



The Corporation of the Town of Milton

Report #:
ES-007-25
Page 6 of 6

Recognition of Traditional Lands

Haudenosaunee people. The Town of Milton shares this land and the responsibility for the water, food and resources. We stand as allies with the First Nations as stewards of these lands.