

NO: L002

COUNCIL DATE: December 3, 2018

REGULAR COUNCIL – LAND USE

TO: **Mayor & Council**

DATE: **November 29, 2018**

FROM: **General Manager, Engineering**

FILE: **5250-01**

XC: **7917-0143-00,**

7817-0143-00

SUBJECT: **Surety Bond for Land Development Project No. 7817-0143-00**

RECOMMENDATION

The Engineering Department recommends that Council approve the Development Variance Permit No. 7917-0143-00 (Appendix “I”) to vary the definition of “Bond” in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7817-0143-00 and to proceed to Public Notification.

INTENT

The purpose of this report is to seek Council’s approval to vary the definition of “Bond” in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for the Servicing Agreement associated with the noted land development project as part of the Council approved Pilot Program established in Appendix “I” and “II”.

BACKGROUND

Traditionally, the City has only accepted Cash or Letters of Credit from Developers as acceptable forms of securities.

In 2016, a surety company and a developer requested staff to consider the use of Surety Bond as an alternate form of security. The process requires the City to only engage with acceptable credit-worthy surety companies (minimum of A level) who, in turn, would qualify Developers after a thorough review of their current and historical financial results to verify financial stability and capability to ensure completion of the development. The expected benefit to the City is that the Developer’s working capital is then available for greater liquidity that can then be encouraged for reinvestment into the City. This is a component of the City’s strategy to encourage investment by reputable and stable development firms.

A pilot program was established to limit the use of Surety Bonds to only Servicing Agreements. On December 5, 2016, Council approved Corporate Report R257; 2016 titled “Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements,” which is attached as Appendix “II” to this report. On February 27, 2017, Council approved Corporate Report L001; 2017 titled “Update on Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements”, which is attached as Appendix “III” to this report.

DISCUSSION

Anthem Coyote Creek Developments LP (“Anthem”) have rezoned 15215, 15235, and 15255 Sitka Drive to develop a four-storey mixed use building and approximately 265 townhouse units. Anthem has requested that their development project, for which a Letter of Credit is held by the City for the Servicing Agreement, be permitted to retroactively replace the Letter of Credit with a Surety Bond. Anthem has been qualified by a Surety Company acceptable to the City.

In order to allow the use of Surety Bond, a Development Variance Permit is required to vary the definition of “Bond” in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for the Servicing Agreement associated with the noted land development project.

To date, there have been three development projects that have been approved to use Surety Bonds (7814-0348-00, 7815-0130-00, and 7816-0448-00), and the City has not experienced any issues related to the use of Surety Bond. Upon the successful completion of the pilot program, staff will report back to Council on the results of the land development projects and recommend changing the definition of “Bond” in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include Surety Bond.

SUSTAINABILITY CONSIDERATIONS

The pilot program to use Surety Bonds supports the goals of the City’s Sustainability Charter 2.0 to increase housing options and affordability by allowing improved utilization of developers’ capital funds for reinvestment. In particular, the pilot program supports the Sustainability Charter 2.0 theme of Inclusion, specifically the following Desired Outcomes (“DO”) and Strategic Directions (“SD”):

- Housing DO12: Everyone in Surrey has a place to call home;
- Housing DO13: Appropriate and affordable housing is available to meet the needs of all households in Surrey;
- Housing SD10: Increase and maintain the supply of affordable and appropriate rental housing across all Surrey communities; and
- Housing SD11: Ensure development of a variety of housing types to support people at all stages of life.

CONCLUSION

The Engineering Department recommends that Council approve the Development Variance Permit No. 7917-0143-00 (Appendix “I”) to vary the definition of “Bond” in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7817-0143-00 and to proceed to Public Notification.

Fraser Smith, P.Eng., MBA
General Manager, Engineering

Appendix “I”: Development Variance Permit No. 7917-0143-00

Appendix “II”: Corporate Report R257; 2016

Appendix “III”: Corporate Report L001; 2017

CITY OF SURREY

(the "City")

DEVELOPMENT VARIANCE PERMIT

NO.: 7917-0143-00

Issued To: ANTHEM COYOTE CREEK DEVELOPMENTS LP
(the "Owner")

Address of Owner: Suite 1100, Bentall 4, 1055 Dunsmuir Street
Vancouver, B.C. V7X 1M5

1. This development variance permit is issued subject to compliance by the Owner with all statutes, by-laws, orders, regulations or agreements, except as specifically varied by this development variance permit.
2. This development variance permit applies to that real property including land with or without improvements located within the City of Surrey, with the legal description and civic address as follows:

Parcel Identifier: 030-591-392
Lot 1 Section 23 Township 2 New Westminster District Plan EPP58178

15235 Sitka Drive

Parcel Identifier: 030-591-406
Lot 2 Section 23 Township 2 New Westminster District Plan EPP85178

15215 Sitka Drive

Parcel Identifier: 030-591-414
Lot 3 Section 23 Township 2 New Westminster District Plan EPP85178

15255 Sitka Drive

(the "Land")

3. Surrey Subdivision and Development By-law, 1986, No. 8830, as amended, is varied as follows:
 - (a) In Part I – Interpretation – Definitions, “Bond” means cash, an irrevocable Letter of Credit or a Surety Bond in favour of the City.
4. The terms of this development variance permit or any amendment to it, are binding on all persons who acquire an interest in the Land.
5. This development variance permit is not a building permit.

AUTHORIZING RESOLUTION PASSED BY THE COUNCIL, THE ____ DAY OF _____, 20__.
ISSUED THIS ____ DAY OF _____, 20__.

Mayor – Doug McCallum

City Clerk – Jane Sullivan

CORPORATE REPORT

NO: **R257**

COUNCIL DATE: **December 5, 2016**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **November 30, 2016**

FROM: **General Manager, Engineering
General Manager, Finance & Technology
City Solicitor**

FILE: **5250-01**

SUBJECT: **Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements**

RECOMMENDATION

The Engineering Department, the Finance & Technology Department and the Legal Services Division recommend that Council:

1. Receive this report as information; and
2. Approve a pilot program, for up to three land development projects on a first-in-first-selected basis, for the use of a Surety Bond, from acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services, in a form acceptable to the City as an alternate form of security to Cash or Letter of Credit for Servicing Agreements in which the Developers have been qualified by an acceptable Surety Bond Insurer.

INTENT

The purpose of this report is to seek Council's approval for a pilot program, for up to three land development projects, for the use of Surety Bonds as an alternate form of security for Servicing Agreements.

BACKGROUND

The *Surrey Subdivision and Development Bylaw, 1986, No. 8830*, as amended, identifies only Cash or an irrevocable Letter of Credit in favour of the City as the only acceptable forms of securities for Servicing Agreements.

DISCUSSION

City staff have developed a Nexus approach to land development which envisions:

- A partnership between the Developer's team and City staff to expedite processing of key strategic applications/projects, e.g., developments along LRT corridors, City Centre enhancements, significant economic benefits, etc.; and
- Areas for continuous improvements, e.g., piloting the use of project schedules on several projects to establish realistic expectations of timelines, piloting the use of Surety Bonds as an alternate form of security for Servicing Agreements, etc.

Currently, security for engineering works and services ("Works") required to be constructed by the Developer in order to develop a property in accordance with the *Surrey Subdivision and Development Bylaw, 1986, No. 8830* is to be in the form of Cash or Letter of Credit only. These forms of security allow the City to immediately access and utilize these monies, if required, to complete outstanding or deficient Works should the Developer not fulfill the Servicing Agreement obligations which are required to support the development, e.g., subdivided lots which must have frontage works completed when houses are built and ready for occupancy. In a similar way, a Surety Bond, which is a three-party agreement between the Developer, Surety Bond Insurer ("Surety") and the City, obligates the Surety to pay the City for the debt or default of the Developer.

The City will qualify acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services. In turn, the Surety will qualify Developers after a review of their current and historical financial results to verify financial stability and capability to ensure completion of the development.

The City's Legal Services staff will provide the Surety with the form of the Surety Bond to ensure all terms and conditions are acceptable to the City. The proposed Surety Bond will have different and simplified terms and conditions from the standard bonds to be consistent with current terms and conditions of Letter of Credit. If the Surety and the City cannot agree to the form of the Surety Bond, then a Surety Bond will not be permitted.

The following is a summary of the pros and cons to the Developer and the City with using Surety Bonds:

Pros

Developer	<ul style="list-style-type: none">• The Developer's working capital will be freed for greater liquidity that can then be encouraged for reinvestment into the City.• The Surety will have qualified the Developers as financially stable and capable of completing the development after a review of their current and historical financial results.
City	<ul style="list-style-type: none">• The City may be viewed as more open for business with a new practice to facilitate development.• The City may benefit from the Developer's freed-up working capital for reinvestment into the City.

Cons

Developer	<ul style="list-style-type: none">• In order to effect the use of Surety Bond as an alternate form of security for a Servicing Agreement, the Developer will have to apply for a Development Variance Permit requesting Council's approval to vary the definition of "Bond" in the <i>Surrey Subdivision and Development Bylaw, 1986, No. 8830</i> to include the use of Surety Bond for that specific Servicing Agreement.
City	<ul style="list-style-type: none">• The City's Legal Services staff will need to prepare the form of the Surety Bond to ensure all terms and conditions are acceptable to the City.• If the Developer defaults in resolving a construction issue in a timely manner, the City traditionally holds the Cash or Letter of Credit security to ensure the defaulted work is completed by the Developer but, with a Surety Bond, the City will then have to take on the role of project manager and contract administrator to remedy the defaulted work.• The success of the pilot program can only be evaluated when an issue arises.

Staff will report back to Council on the results of the project(s) and with recommendations regarding its continuation.

SUSTAINABILITY CONSIDERATIONS

This pilot program supports the goals of the Sustainability Charter 2.0 to increase housing options and affordability by allowing improved utilization of Developer's capital funds for reinvestment. In particular, the pilot program supports the theme of Inclusion, specifically the following Desired Outcomes and Strategic Directions:

- Housing DO12: Everyone in Surrey has a place to call home;
- Housing DO13: Appropriate and affordable housing is available to meet the needs of all households in Surrey;
- Housing SD10: Increase and maintain the supply of affordable and appropriate rental housing across all Surrey communities; and
- Housing SD11: Ensure development of a variety of housing types to support people at all stages of life.

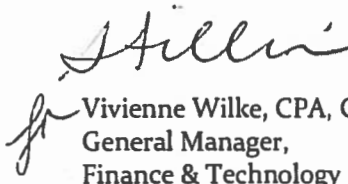
CONCLUSION

Based on the above discussion, it is recommended that Council:

- Receive this report as information; and
- Approve a pilot program, for up to three land development projects on a first-in-first-selected basis, for the use of a Surety Bond, from acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services, in a form acceptable to the City as an alternate form of security to Cash or Letter of Credit for Servicing Agreements in which the Developers have been qualified by an acceptable Surety Bond Insurer.



Fraser Smith, P.Eng., MBA
General Manager,
Engineering



Vivienne Wilke, CPA, CGA
General Manager,
Finance & Technology



Craig MacFarlane
City Solicitor

SSL/clr

NO: **2001**

COUNCIL DATE: **March 6, 2017**

REGULAR COUNCIL – LAND USE

TO: **Mayor & Council** DATE: **February 27, 2017**

FROM: **General Manager, Engineering** FILE: **5250-01**
Acting General Manager, Finance & Technology XC: **7914-0348-01**
City Solicitor XC: **7915-0130-01**

SUBJECT: **Update on Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements**

RECOMMENDATION

The Engineering Department, the Finance & Technology Department, and the Legal Services Division recommend that Council:

1. Approve the change of acceptable Surety companies from a minimum of A+ level to a minimum of A level from A.M. Best Rating Services;
2. Approve the change in the maximum number from three to five for land development projects eligible to participate in the pilot program on a first-in-first-selected basis for the use of a Surety Bond when the Developers have been qualified by an acceptable Surety company;
3. Approve the Development Variance Permit No. 7914-0348-01 (Appendix "I") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7814-0348-00 and to proceed to Public Notification; and
4. Approve the Development Variance Permit No. 7915-0130-01 (Appendix "II") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7815-0130-00 and to proceed to Public Notification.

INTENT

The purpose of this report is to seek Council's approval to change the acceptable Surety companies' rating from A+ to A, to change the number of eligible projects and to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for the noted development projects.

BACKGROUND

On December 5, 2016, Council approved Corporate Report R257;2016 titled "Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements".

DISCUSSION

Upon further discussions with the development industry, it was requested that the Surety companies' minimum rating be changed from A+ to A. This change is acceptable, as staff have been advised that this will allow more Surety companies in Canada to underwrite Surety Bonds and still meet our expectations.

Two developers have requested that their development projects, which have each provided a Letter of Credit for the respective Servicing Agreement, be permitted to retroactively replace each Letter of Credit with a Surety Bond. Staff support this request, but recommend that only one of each developer's projects be permitted to implement the replacement. Including these projects will allow a shortened timeline to evaluate the success of the pilot program.

In order to allow the use of Surety Bonds, a Development Variance Permit is required to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for each of the two development projects. As a result of the inclusion of these two development projects, staff are recommending that the original maximum number of three projects indicated in Corporate Report R257;2016 be increased to a maximum of five projects.

SUSTAINABILITY CONSIDERATIONS

This pilot program supports the goals of the City's Sustainability Charter to increase housing options and affordability by allowing improved utilization of developers' capital funds for reinvestment. In particular, the pilot program supports the Sustainability Charter theme of Inclusion, specifically the following Desired Outcomes and Strategic Directions:

- Housing DO₁₂: Everyone in Surrey has a place to call home;
- Housing DO₁₃: Appropriate and affordable housing is available to meet the needs of all households in Surrey;
- Housing SD₁₀: Increase and maintain the supply of affordable and appropriate rental housing across all Surrey communities; and
- Housing SD₁₁: Ensure development of a variety of housing types to support people at all stages of life.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Approve the change of acceptable Surety companies from a minimum of A+ level to a minimum of A level from A.M. Best Rating Services;

- Approve the change in the maximum number from three to five for land development projects eligible to participate in the pilot program on a first-in-first-selected basis for the use of a Surety Bond when the Developers have been qualified by an acceptable Surety company;
- Approve the Development Variance Permit No. 7914-0348-01 (Appendix "I") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7814-0348-00 and to proceed to Public Notification; and
- Approve the Development Variance Permit No. 7915-0130-01 (Appendix "II") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7815-0130-00 and to proceed to Public Notification.



Fraser Smith, P.Eng., MBA
General Manager,
Engineering



Suzanne Fillion, CPA, CGA
Acting General Manager,
Finance & Technology



Craig MacFarlane
City Solicitor

Note: Appendices available upon request

SSL/cc

Appendix "I" – Development Variance Permit No. 7914-0348-01

Appendix "II" – Development Variance Permit No. 7915-0130-01