



The Corporation of the Town of Milton

Report To: Council

From: Barbara Koopmans, Commissioner, Development Services

Date: April 12, 2021

Report No: DS-017-21

Subject: Cease Whistling at Level Crossing

Recommendation: THAT Council receive report DS-017-21 (Cease Whistling at Level Crossing) for information;

AND THAT the Town not pursue a cessation of whistling for the rail crossing located near the intersection of First Line Nassagaweya and No. 3 Sideroad.

EXECUTIVE SUMMARY

- CP Railway has confirmed that “quiet time” cease whistling is not an option for rail operations.
- Railway operations in Canada are governed by the federal Railway Safety Act R.S.C. 1985 c. 32 and associated regulations, which require whistling at level crossings. Railways in general do not support cease whistling due to public safety concerns.
- Cease whistling at level crossings increases the Town’s exposure to liability at level crossings.
- The body of this report contains an alternative resolution if Council decides to take further steps regarding cease whistling at this location.

REPORT

Background

Council passed the following notice of motion at the February 8, 2021 meeting:

BE IT RESOLVED THAT staff be directed to prepare a staff report with respect to a resident’s request for a "quiet time" for train whistling at the rail crossing located near the intersection of First Line Nassagaweya and No. 3 Sideroad.

Discussion

The Town received an enquiry from a resident who resides in the vicinity of a railway level crossing on No. 3 Sideroad and First Line Nassagaweya. The enquiry requested staff to investigate if trains using the rail line would be able to observe a “quiet time” during night operations and refrain from whistling.

Staff contacted Canadian Pacific Railway (CPR), who own and operate the railway at the level crossing on No. 3 Sideroad within the jog of First Line Nassagaweya, to enquire about the implementation of a “quiet time” for this level crossing.

CPR confirmed that there is no option for “quiet times” when dealing with railway operations whistling. The only option is to request a full-time around the clock cease whistle order.

Rail Operation Rules

Railway operations in Canada are governed by the federal Railway Safety Act R.S.C. 1985 c. 32 and associated regulations. Trains approaching a level crossing, regardless of the level of protection provided, are compelled to whistle for the safety of both vehicular and pedestrian traffic. In general, railways do not support the elimination of whistling at level crossings for public safety reasons.

If there is a desire to cease whistling at a level crossing, a municipality is required to follow the 8-step process developed by Transport Canada and obtain consent from the rail operator. The 8-step process is attached as Appendix I.

Safety Standards

In order for the railway to issue a cease whistling order to the train operators, the level crossing must be inspected and must meet safety criteria including:

- Ability to provide sight lines at the approaches to the level crossing. This will include increased level of service for the removal of vegetation and clearing sight line areas, some of which may be on private property outside the limits of the road allowance and railway corridor.
- Upgrade the pavement markings within the vicinity of the crossing. This includes painting and maintaining the road approaches to the level crossing with stop bars and cross-bucks to indicate vehicles are entering a level crossing section of road.
- Provide signage within the approach to the crossing to warn that trains do not whistle.

- Ensure that the crossing is in passable condition and meets exposure time criteria for vehicles and pedestrians crossing. This includes the time frame for gate closure when trains are approaching.
- Inform relevant organizations representing both employees and customers of the railway of the intent to cease whistling. This includes railway unions and customers that transport dangerous goods.

Investigation

In order to proceed with the process, the municipality would need to engage a technical expert, recognized by the railway, in railway operations. The technical expert will assess the level crossing for deficiencies and make recommendations for improvements to bring the crossing to a standard where whistling could be stopped.

The expected cost of engaging a consultant to carry out a detailed safety assessment for a level crossing is approximately \$30,000.

There will also be one-time work required to bring the level crossing into conformity to allow the cessation of whistling. The extent of the work required, along with a preliminary estimate of costs, will be determined through the safety assessment.

Liability Considerations

Following an investigation and a determination of any work required to the crossing, should the Town proceed with the train whistle cessation, this does add an element of risk to the Town that did not exist previously. The railway has indicated that it will require the municipality to pay for the additional insurance required by it to insure the additional risk associated with any claims that may arise. This additional insurance has been estimated at a cost of approximately \$600 per year. In addition, should Council approve the next steps for the cessation of the whistling and prior to implementation, staff will confirm with the Town's insurer if there will be any implications to the Town's own insurance premiums based on the results of the investigation noted above.

Other Considerations

Within the Town there are currently 25 level train crossings of Town and Regional roads. Of the crossings at Town roads, cease whistle orders are currently in place at 6 locations.

Next Steps

Should Council wish to pursue a cessation of whistling at No. 3 Sideroad and First Line Nassagaweya, staff provide the following alternate recommendation for Council's consideration:



THAT staff be directed to retain a technical expert to assess the level crossing for deficiencies and make recommendations for improvement to bring the crossing to a standard where whistling can be stopped;

THAT staff establish a new capital budget for the purpose of the technical review in the amount of \$35,000, funded from the Project Variance Account;

THAT following the technical review staff bring a report back to Council outlining any additional work required including costs for Council consideration prior to implementation.

The transportation authorities have developed a regulated process for these situations and as such, this scenario is not unique to Milton or this specific crossing. While the cessation of the whistling at the crossing introduces a potential new risk, Council may choose to weigh this against the potential benefits along with any necessary investments that will be required for safety upgrades resulting from the detailed safety assessment.

Financial Impact

The work associated with train whistle cessation at No. 3 Sideroad and First Line Nassagaweya was not included as part of the 2021 budget.

Should Council direct staff to engage a technical expert to assess the crossing for deficiencies and make recommendations for improvement, staff recommend that a new capital project be established in the amount of \$35,000 with funding from the Project Variance Account. This amount represents the estimated one-time costs of the safety assessment, as well as contingency, overhead and unrecoverable HST.

One-time capital costs associated with bringing the crossing to the standard required to cease whistling would be determined through the technical report. Ongoing operating costs would also result from a cessation of whistling including, but not limited to, insurance and maintenance of sight lines. Both the capital and operating costs would be reported back to Council following the completion of the safety study, prior to implementation.

Respectfully submitted,

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Commissioner, Development Services

For questions, please
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Attachments

Appendix I - 8-Step Process

CAO Approval
Andrew M. Siltala
Chief Administrative Officer

Appendix I

8 step process to cease whistling

1. Citizen or community group expresses interest

The municipality receives a request to stop train whistling at a specific area (one crossing or multiple crossings) along a railway corridor.

2. Municipality consults with railway company

To find out if the request is feasible, the municipality checks with the company that operates the railway line.

3. Municipality notifies the public

The municipality:

- o notifies all relevant associations or organizations
- o issues a public notice, which says it intends to pass a resolution to stop train whistling at a railway crossing (or at multiple crossings in one area)

4. Municipality and railway company assess the crossing(s)

This assessment determines whether or not the area meets whistling cessation requirements in section 104 of the *Grade Crossings Regulations* and Appendix D of the *Grade Crossings Standards*. The municipality and railway company may hire a professional engineer to help complete the assessment.

5. Municipality and railway company agree the crossing(s) meet requirements

If the municipality and the railway company do not agree that the crossing(s) meet(s) these requirements, they should try to resolve the conflict.

- o **5a. (optional): Municipality and railway request a final decision from Transport Canada**

If the disagreement continues, the municipality and the railway company can ask Transport Canada for a Ministerial Decision on whether the crossing(s) meet the requirements in section 104 of the *Grade Crossings*

Regulations by emailing railsafety@tc.gc.ca. Transport Canada's decision on the issue is final.

- For Transport Canada to be able to review and come to a conclusion on whether the crossing(s) meet the requirements, it will need information that only the road authority and the railway company have. That is why it's important that your submission for a Ministerial Decision includes the following information:
 - the names, mailing addresses, telephone numbers, and e-mail addresses of all parties involved (i.e. the road authority, municipality, and railway company contact information)
 - a list of the crossing location(s) where you would like whistling to stop (road name, rail line name, mile point, railway company)
 - a short, clearly written statement that explains why there's a dispute on whether the crossing(s) meet the requirements for whistling to stop.
 - This statement should be supported by facts (letters, engineering reports, etc.) that show that the crossing(s) do or do not meet the requirements in Sections 104-107 of the *Grade Crossings Regulations* and Appendix D of the *Grade Crossings Standards*
 - **Note:** There is no requirement to have a third party assessments done to decide if the requirements for whistling to stop have been met.
- In addition, the following information must be submitted for each crossing. The list below are technical items that the railway company must provide and are defined in the *Grade Crossings Standards*:
 - The Gate Arm Clearance time from the Stopping Sight Distance position: (in seconds)
 - The Gate Arm Clearance time from the Stopped position: (in seconds)

- The calculated Warning System's Warning time (minimum value): (in seconds)
- The calculated Warning System Activation time: (N/A or in seconds)
- A copy of the design calculations/board plans for the warning system times: (can be provided in letters, emails, reports etc.).
- A confirmation of whether the warning system meets, or does not meet, the design and operating requirements in articles 12 to 16 and 10.4 of the *Grade Crossings Standards*, and section 105 of the *Grade Crossings Regulations*
 - If the warning system doesn't meet these requirements, please include details for any specific requirement that haven't been met
- Other information that would help Transport Canada make a decision would include the following items:
 - Information that the railway company and the road authority shared under Sections 4 and 12 of the *Grade Crossings Regulations*
 - Letters, reports or emails from both parties that confirm that the area does not have repeated incidents of trespassing
 - Copy of bylaw documents that support whistling stopping, when applicable
 - Proof that the railway company and road authority or municipality have been consulted
 - Proof that the relevant associations or organizations have been notified

6. **Municipality passes a resolution**

If it's decided that the crossing(s) meet(s) requirements, the municipality:

- must pass a resolution saying it agrees train whistling should not be used at the crossing(s)
- sends a copy of the resolution to the railway company and all relevant associations or organizations, including

Transport Canada's Rail Safety Directorate headquarters
(railsafety@tc.gc.ca)

7. Railway company confirms whistling has stopped at the crossing(s) (within 30 days)

When they receive the resolution, the railway company must:

- issue special instructions to stop train whistling at the crossing(s)
- notify Transport Canada's Rail Safety Directorate (railsafety@tc.gc.ca) of the effective date of whistling cessation, with a copy of its special instructions
- notify the municipality and/or road authorities in writing of the whistling cessation, not later than 30 days after the day the whistling stops

Municipality and railway company both ensure the right safety conditions are met.

8. If the municipality and company do not maintain the crossing(s) according to requirements in the *Railway Safety Act* and *Grade Crossings Regulations*, a Transport Canada Rail Safety Inspector may order that train whistling start again.