



CITY OF
ST. CATHARINES

Corporate Report

Report from Transportation & Environmental Services, Operations

Date of Report: July 9, 2013

Date of Meeting: July 22, 2013

Report Number: TES-214-2013

File: 10.13.99

Subject: Moffatt Street CN Rail Crossing – Anti-Whistling Update

Recommendation

That Council receive the report for information purposes, and

That the City Clerk be directed to make the necessary notifications. FORTHWITH.

Summary

The Moffatt Street pedestrian crossing of the CN Rail mainline was closed in August of 2009 in response to concerns expressed by area residents regarding the recent commencement of train whistling at this crossing where previously none existed. On June 10, 2013, Transport Canada performed a site inspection and observed a number of trespassers travelling across and along the tracks within the vicinity of the crossing. These observations combined with those of previous inspections resulted in Transport Canada directing CN Rail to treat the crossing as active and resume whistling.

Since the resumption of whistling at the Moffatt Street crossing, staff have been actively discussing the matter with both CN Rail and Transport Canada in an effort to achieve a resolution. CN Rail is currently resolving some design issues associated with the installation of the pedestrian warning system and have indicated that they will expedite its installation. A safety review has also been initiated that will identify a plan to achieve anti-whistling. The results of the safety review are expected to be known by the end of August while the installation of the warning system will not occur until sometime this fall at the earliest.

Background

The Moffatt Street pedestrian crossing of the CN Rail mainline was closed in August of 2009 in response to concerns expressed by area residents regarding the recent commencement of train whistling at this crossing where previously none existed. This change in operation came as the result of a safety inspection undertaken by Transport Canada where several minor safety and procedural issues were identified. One of the procedural issues was the absence of whistling at the crossing which is required under the Railway Safety Act (RSA). Subsequent to this

review, Transport Canada ordered CN Rail to start whistling at the crossing. In an effort to stop the whistling quickly, Council directed that the crossing be closed.

Since that time, staff have been working with CN Rail and Transport Canada on a plan that would see the crossing re-opened to pedestrian traffic without whistling. In order for this to occur, the installation of a pedestrian crossing warning system (flashing lights, bells and gates) is necessary. Council approved the funding for the warning system on March 5, 2012 and authorized an Agreement with CN Rail for the design and installation of the warning system on September 10, 2012. At that time staff were informed by CN Rail that the warning system would be scheduled for installation in 2013. Prior to June 11, 2013, the crossing remained closed and whistling was a rare occurrence.

On June 10, 2013, Transport Canada performed a site inspection at the Moffatt Street crossing and witnessed a significant amount of trespassing taking place. Based on the results of this site inspection as well as other inspections undertaken over the past two years, Transport Canada directed CN Rail to start whistling and to treat the crossing as active. Other remedial measures such as tree trimming and brush cutting was also recommended and completed by CN Rail. Staff were notified of this direction by CN Rail late in the day on June 10, 2013 and the crossing was effectively re-opened to pedestrian traffic on June 11, 2013.

In response to complaints from the public regarding the resumption of whistling, Councillor Stevens, at the Council meeting of July 8, 2013, put forward the following motion that was subsequently approved:

WHEREAS this Council endorsed and passed a duly recorded motion regarding the concerns over the resumption of train whistling at the Moffatt Street crossing, and

WHEREAS the motion called for immediate action by the Director of TES, the CAO and the Mayor, and

WHEREAS no communication regarding this problem has been forthcoming, and

WHEREAS the City of Brantford is considering an anti-whistling By-Law to solve a similar concern;

NOW THEREFORE BE IT RESOLVED that the Director of T.E.S. report on any communications between his department, Transport Canada and C.N .R. since the motion of June 24, 2013 was passed, and

That the Director of T.E.S. provide a report on the installation of crossing arms and other safety measures that were approved by this council, and

That the Director of TES provide a report on the feasibility and effectiveness of the City of St. Catharines instituting an anti-whistling By-Law similar to that of Brantford, and further

That these reports be provided to council for the next scheduled meeting date.

The following report will address the requests put forward by Council.

Report

Subsequent to the June 10, 2013 site inspection by Transport Canada and the resumption of whistling at the Moffatt Street crossing, staff have been actively discussing the matter with both CN Rail and Transport Canada. In particular, staff have requested an update from CN Rail regarding the installation of the pedestrian warning system that was authorized by Council in September 2012. CN Rail has indicated that they are currently resolving some design issues associated with the warning system and are prioritizing its installation. Although CN Rail is expediting the process, they have not committed to an installation date which, in staff's opinion, suggests that the warning system won't be installed until sometime this fall at the earliest.

While the process associated with the design and installation of the pedestrian warning system is proceeding, staff are concerned that the implementation of this system, as a sole initiative, may not be enough to achieve an anti-whistling agreement for Moffatt Street. When this matter was first raised in 2009, the installation of a warning system was viewed as the critical component of any anti-whistling request (i.e. put in the system and anti-whistling can be easily achieved). Based on recent discussions with both CN Rail and Transport Canada, and given the amount of trespassing that is occurring within the area, the installation of the warning system may no longer be sufficient to achieve the desired result. Since their first inspection in 2009, Transport Canada has visited the site several times and has become increasingly concerned with the level of trespassing that is occurring across and along the tracks within the vicinity of crossing; highlighted by two fatalities. While neither fatality occurred at the Moffatt Street crossing, they did occur within a reasonable distance of the crossing and have heightened the awareness and sensitivity associated with trespassing and rail safety.

In light of Transport Canada's most recent findings, a safety review has been initiated to determine what additional measures, above and beyond a warning system, will be required in order to achieve anti-whistling at this location. A consultant has been engaged by CN Rail and the review is expected to be complete by the end of August. Once the results of the safety review are known, a summary report will be provided to Council.

The authority to regulate railway operations rests with the Federal Government. An anti-whistling by-law passed by a municipality is an acknowledgment of an agreement between the municipality, the rail operator and Transport Canada that

train whistles will not be sounded once safety concerns have been adequately addressed. Such a by-law cannot override the Railway Safety Act (RSA) or the Canadian Rail Operating Rules (CROR).

The process to achieve an anti-whistling agreement is well established and was recently completed by the City for First Street Louth, Third Street Louth and Vansickle Road. As outlined in Guideline No. 1: Procedure & Conditions for Eliminating Whistling at Public Crossings issued by Transport Canada, municipalities seeking relief from whistling at public crossings must contact the pertinent railway company directly and discuss the matter. At the same time, the municipality must also notify the general public and all relevant organizations of its intention to pass a resolution forbidding the use of whistles in the area. The responsible authorities, which are the municipality and the railway company, shall jointly conduct a detailed safety assessment of the grade crossings. If the responsible authorities are in agreement, and the crossings meet the requirements of the Guideline, the municipality must pass a motion and a by-law prohibiting whistling. Once this is complete, the railway company can issue the instruction to stop whistling.

With respect to the City of Brantford experience noted in the motion, staff have been in contact with the City of Brantford and they've advised that no such by-law exists at this time. Similar to St. Catharines, the City of Brantford is currently working through a process with both Transport Canada and a local rail operator following *Guideline No.1*. This process is on-going and no decision has been made to move forward with anti-whistling in Brantford.

Financial Implications

To date, Council has committed \$300,000 towards the planning, design and installation of the pedestrian warning system for Moffatt Street. Of this funding, \$50,000 was allocated in 2010 while an additional \$250,000 was committed in 2012. All funding is through through the "In Lieu of Parkland Dedication Fund". The cost to install the pedestrian warning system was estimated at \$243,000 (excluding HST) in 2011. The design and safety review currently being undertaken by CN Rail is estimated at \$10,000.

Recent discussions with CN Rail suggest that the previous design and cost estimate completed for the Moffatt Street crossing must be revised to address technical issues that weren't identified during their initial assessment. It is likely that these design modifications will result in an increase to the overall project costs however the magnitude of this increase is not known at this time. Furthermore, the overall project costs may also increase based on the results of the current safety assessment. While the warning system was once viewed as the only major barrier to achieve anti-whistling, the installation of this system may no longer be sufficient to achieve the desired result. Additional measures above and beyond the warning system may be required in order to satisfy Transport Canada. The cost associated with these additional measures, if required, would be the City responsibility and will

be identified through the safety assessment. Future reports will document these costs once they're known.

Conclusion

Train whistling is a necessary and required safety measure that is federally regulated through the Railway Safety Act and the Canadian Rail Operating Rules. Although the City had been successful at eliminating whistling by closing the Moffatt Street crossing in 2009, the continued presence of trespassers travelling across or along the tracks within the vicinity of the crossing has resulted in the resumption of whistling for safety reasons. Staff continue to work with both CN Rail and Transport Canada on the installation of the pedestrian warning system as well as an overall plan to achieve anti-whistling. Updates on progress in both regards will be forwarded to Council once they are known.

Notification

It is in order that the following be so notified:

1. Mr. Rick Dykstra, MP, St. Catharines, 61 Geneva Street, St. Catharines, ON, L2R 4M6
2. Ms. Ola Oyelowo, Railway Safety Inspector, Transport Canada, Surface, 4900 Yonge Street, 3rd Floor, Toronto, ON, M2N 6A5, and
3. Mr. Michael Orr, Public Works Officer, Canadian National Railway, 1 Administration Road, Concord, ON, L4K 1B9.

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