

**Whistling Prohibition Update – Beare Road and the Canadian Pacific Railway Belleville Subdivision**

<b>Date:</b>	May 29, 2013
<b>To:</b>	Scarborough Community Council
<b>From:</b>	Director, Transportation Services, Scarborough District
<b>Wards:</b>	Ward 42 – Scarborough Rouge River
<b>Reference Number:</b>	P:\2013\Cluster B\TRA\Scarborough\sc1346 D13-5433967 Beare CPR Whistling Prohibition Update

**SUMMARY**

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This report provides an update on Council's resolution to prohibit the whistling of any railway equipment at the level crossing of Beare Road and the Canadian Pacific Railway at Mileage 192.48 Belleville Subdivision.

**RECOMMENDATIONS**

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**Transportation Services recommends that:**

1. City Council receive this report for information.

**Financial Impact**

There is no financial impact associated with this report.

**DECISION HISTORY**

At its meeting of September 24 and 25, 2008, Toronto City Council authorised staff to arrange for a Railway Whistling Cessation Study at four level crossings of the Canadian Pacific Railway (CPR) in the northeast area of Scarborough. This involved hiring a professional consultant with expertise in railway engineering.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.SC18.16>

At its meeting of August 25, 26 and 27, 2010, Toronto City Council received the results of this study for information. The report indicated that the only location for which whistling cessation would be feasible in the short term would be the level crossing of the

CPR at Beare Road, subject to minor adjustments to warning signs and pavement markings by the City and railway signal plant adjustments by the CPR.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.SC37.18>

At its meeting of July 12, 2011, Toronto City Council:

1. Passed a resolution to prohibit the whistling of any railway equipment at the level crossing of Beare Road and the Canadian Pacific Railway at Mileage 192.48 Belleville Subdivision.
2. Authorized staff to enter into any necessary agreements with the Canadian Pacific Railway, including indemnification relating to the whistling prohibition regulation, in content satisfactory to the General Manager of Transportation Services and in a form satisfactory to the City Solicitor.
3. Enacted an amendment to Toronto Municipal Code Chapter 591 – Noise, as identified in Appendix 1 of the report (June 1, 2011) from the Director, Transportation Services, Scarborough District, subject to the execution of the agreement(s) in Recommendation 2 and the approval of the necessary mitigating measures at the level crossing by Transport Canada.
4. Authorized the introduction of any necessary bills required to give effect to these recommendations.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.SC8.1>

## **BACKGROUND INFORMATION**

Through a public Request for Proposal (RFP) process in late 2009, AECOM Canada Limited was retained in March 2010 to conduct the necessary Whistling Cessation Study. The Consultant was tasked with determining if whistling could cease at any or all of the four level crossings, and identifying mitigating measures that would allow for whistling cessation rules to be enacted. The Consultant delivered the final report in June 2010.

## **COMMENTS**

The study identified that whistling cessation is feasible at this level crossing, subject to mitigation of the following safety deficiencies:

*Beare Road at CPR Belleville Subdivision (Mile 192.48)*

- City of Toronto - Relocation of a warning sign on the north approach
- City of Toronto - Providing minimum 10 metres of spacing between warning sign and “X” pavement markings
- CPR – Signal mast foundations greater than 100 millimetres being mitigated

The mitigation of these matters was requested and on December 5, 2011, the Railway formally notified Transport Canada that the City and the Railway both believed that the Beare Road crossing met the requirements outlined in Transport Canada Railway Safety Directorate Guideline No. 1 in order to implement whistle cessation. The Railway requested Transport Canada to review the safety assessment and to advise on their concurrence with whistling cessation.

On March 1, 2012, Transport Canada formally advised the Railway and the City that based on their inspection of January 17, 2012, this grade crossing met the conditions outlined in the Guideline. Transport Canada also indicated that should the Railway decide to prohibit the application of train whistle rules at this crossing, the Railway should bring the whistling cessation rule to the attention of train crews. Transport Canada did indicate that under the applicable federal legislation, the Railway and the City have the responsibility to ensure that the conditions supporting the cessation of train whistling are met at all times. In addition, both parties need to continue to monitor the current warning system due to Beare Road being an active school bus route and due to the restricted sightline visibility in the northeast quadrant.

City staff and the Railway did begin a process to draft the necessary agreement as per Council direction. However, the process seemed to stop on the Railway's side of the drafting. After several contacts, Railway staff indicated to the City by e-mail in early 2013 that the Railway no longer supports whistling cessation at this crossing due to the sightline restriction in the northeast quadrant, would not enter into an agreement for same, and would not change the whistling rules.

#### *Northeast Quadrant – Beare Road at the Railway Crossing*

The northeast quadrant consists of agricultural uses at 9 Beare Road and are owned by the Toronto and Region Conservation Authority (TRCA). It consists of older farm buildings at a grade several metres higher than the level crossing. It appears that when the railway was constructed in the 1800s, the curve in its alignment was cut through a hill at Beare Road. The hill is located on both the railway right-of-way and TRCA land and contains TRCA farm buildings on top of it. The City has no authority to enter this property to regrade the hill or potentially demolish or relocate the farm buildings, since the TRCA is a provincial special purpose body and has paramouncy over the City. The Railway has not indicated that it would be willing to implement this mitigating measure either, or to what extent such mitigation should occur to satisfy their sightline concerns. This area is also within the Rouge Park so there may be federal prerogatives and paramouncy as well.

#### *Next Steps*

Even with a whistling prohibition resolution passed by City Council, whistling cessation can only be implemented at the Railway's option after the execution of the necessary

agreement with the City. Without such an agreement in place, the City cannot enact a whistling prohibition regulation. Even if it did so without an agreement, it could not compel the Railway to change the whistling rules at this crossing as the matter is under federal jurisdiction. As a result, whistling cessation at this crossing cannot be implemented since Railway staff has indicated that the Railway does not agree to it under applicable federal law.

## **CONTACT**

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## **SIGNATURE**

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## **ATTACHMENTS**

1. Location Plan – Whistling Prohibition Status – Bear Road and the Canadian Pacific Railway Belleville Subdivision