



Legislative Services  
Michael de Rond  
905-726-4771  
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Town of Aurora  
100 John West Way, Box 1000  
Aurora, ON L4G 6J1

June 9, 2022

**Delivered by email**  
**regional.clerk@york.ca**

Christopher Raynor, Regional Clerk  
The Regional Municipality of York  
17250 Yonge Street  
Newmarket, ON L3Y 6Z1

Dear Mr. Raynor:

**Re: Town of Aurora Council Resolution of May 24, 2022**  
**Item 8.1.8 - PDS22-066 - Train Whistle Cessation Program Assessment Update**

Please be advised that this matter was considered by Council at its meeting held on May 24, 2022, and in this regard, Council adopted the following resolution:

- 1. That Report No. PDS22-066 be received; and**
- 2. That a project with total capital budget authority of \$95,000 be included in the 2023 capital budget for Council review and approval in support of the detailed design and peer review of a level crossing at St. John's Sideroad; and**
- 3. That York Region be requested to implement a 24-hour train whistle cessation for the level crossing at St. John's Sideroad on the Barrie GO Line; and**
- 4. That York Region be requested to budget \$1,000,000 in their 2023 budget to implement the necessary crossing upgrades for anti-whistling; and**
- 5. That the Train Whistle Cessation Program not be implemented on roads under the Town's jurisdiction.**

The above is for your consideration and any attention deemed necessary. Staff report no. PDS22-066 – Train Whistle Cessation Program Assessment Update is attached for reference.

Town of Aurora Council Resolution of May 24, 2022  
PDS22-066 - Train Whistle Cessation Program Assessment Update  
June 9, 2022

Page 2 of 2

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael de Rond". The signature is cursive and somewhat stylized.

Michael de Rond  
Town Clerk  
The Corporation of the Town of Aurora

MdR/lb

Attachment (1)



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Town of Aurora

# General Committee Report

No. PDS22-066

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**Subject:** Train Whistle Cessation Program Assessment Update

**Prepared by:** Michael Bat, Traffic/Transportation Analyst

**Department:** Planning and Development Services

**Date:** May 3, 2022

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## Recommendation

1. That Report No. PDS22-066 be received; and,
2. That a project with total capital budget authority of \$95,000 be included in the 2023 capital budget for Council review and approval in support of the detailed design and peer review of a level crossing at St. John's Sideroad; and,
3. That York Region be requested to implement a 24-hour train whistle cessation for the level crossing at St. John's Sideroad on the Barrie GO Line; and,
4. That York Region be requested to budget \$1,000,000 in their 2023 budget to implement the necessary crossing upgrades for anti-whistling; and,
5. That the Train Whistle Cessation program not be implemented on roads under the Town's jurisdiction.

## Executive Summary

A Staff Report No. PDS22-020 on the Train Whistle Cessation Program was presented to Council on April 19, 2022. The staff report was subsequently referred back to staff for additional information related to the Train Whistle Cessation Program.

The report can be summarized as follows:

- York Region and Association of Municipalities of Ontario (AMO) have provided an update on the program; and,

- A review of other municipalities that have initially considered but decided not to implement the program.

## Background

On December 14, 2021, Council adopted the following motion:

1. That the comments from Delegation 6.1, by Susan Morton-Leonard and Lynn Browne, regarding train whistle cessation in Aurora, be referred back to staff to report back to Council.

The key objective of this report is to provide Council with an update on the Train Whistle Cessation Program as requested at the meeting.

Existing Level Crossing Locations:

There are four level crossings located within Town of Aurora's urban area (Engelhard Drive, Wellington Street East, Centre Street and St. John's Sideroad) and they are illustrated in Attachment 1. Metrolinx is proposing to grade separate Wellington Street East and the estimated construction completion date is 2025. Therefore, the budget estimation for the Aurora Train Whistle Cessation Program excludes the level crossing at Wellington Street East.

As detailed in Staff Report No. PDS20-055, trespassing on the railway tracks in the vicinity of Cousins Drive was identified as an ongoing issue. In recent years, Metrolinx has erected a chain-link fence along its property boundaries from the Aurora GO Station to Engelhard Drive to prevent unregulated crossings of the railway corridor due to safety concerns. A letter dated May 13, 2020, addressed to the CEO of Metrolinx, was sent from the Mayor's office in regards to pedestrian crossing options at Cousins Drive. Subsequently, a reply letter dated June 10, 2020 was received from Metrolinx with the following recommendations:

"While our teams are available to continue earlier discussions about safety measures that would need to be in place to explore alternative access, we are not prepared to discuss the reopening of the level crossing. Instead, we would be open to exploring an infrastructure solution that is not at-grade (e.g., a grade separated overpass or underpass)."

A copy of the reply letter is provided in Attachment 2.

### Summary of Previous Decisions:

As directed by Council, Town staff has been providing assessments and recommendations on the Train Whistle Cessation Program since 2004. The most recent decisions from Council are outlined below:

- In 2011, Council decided to cancel the project due to high implementation costs and the challenges with the terms of the legal agreement with Metrolinx;
- In 2016, Council requested that staff pursue train anti-whistling on the four (4) active level crossings within the Town (as identified above);
- As directed by Council, Capital Project no. 34532 – Train Whistle Cessation was included as part of the 2018 budget with a conditional approval;
- A staff report was presented to Council on March 20, 2018 to satisfy Council's conditional budget approval in the amount of \$235,000 to proceed with the detailed design. Council subsequently requested for additional information regarding cost, safety and liability; and,
- A staff report was presented to Council on September 17, 2019 with the requested information and staff recommends not to proceed with the Train Whistle Cessation Program.

### Analysis

#### **York Region and Association of Municipalities of Ontario (AMO) have provided an update on the program**

As confirmed by York Region and Association of Municipalities of Ontario (AMO), since 2019 no other municipalities (except for the City of Markham, City of Barrie, and Halton Region (motion passed by Council)) within the Greater Toronto and Hamilton Area (GTHA) have considered or implemented the Train Whistle Cessation Program. The general concerns, as outlined in the September 17, 2019 staff report, are repeated below:

- Considerable construction cost to meet the Transport Canada safety requirements including the installation of the following elements at a minimum: maze barriers or pedestrian warning gates, flashing lights to assist the public who have hearing impairments, tactile walking plates to assist the public who are visually impaired, signage and audible markers;

- The municipality must undertake the mandatory Safety Assessment to be completed by Metrolinx's Third Party Project consultant at the municipality's expense;
- The liability and risk will be shifted from the railway authority to the municipality in the event of an incident as a result of the program;
- Many municipalities that have initiated the process have found the mandatory safety assessments and required upgrades to be costly;
- The process can take up to five years from project initiation to completion; and,
- The program is only intended to eliminate the whistles and not necessarily other sounds created by the train including the noise caused by the wheels at low speed and/or engine vibrations.

As noted in Staff Report No. PDS19-077, the City of Markham has implemented the train anti-whistling program since November 2019. Staff has contacted the City for feedback but have not received any comments to date.

### **A review of other municipalities that have initially considered but decided not to implement the program**

In addition to the City of Richmond Hill and Town of Newmarket, the Town of East Gwillimbury and Town of Caledon have also recently decided not to proceed with the implementation of the Train Whistle Cessation Program due to concerns related to public safety.

Halton Region has recently passed a motion on May 19, 2021, to prohibit all train whistling at the Trafalgar Road (Regional Road 3) railway crossing between Lindsay Court and 20 Side Road, in the Town of Halton Hills. However, this initiative appears not being supported by the Town of Halton Hills. In a staff report prepared for the Town of Halton Hills Council on May 28, 2021, it is recommended that whistle cessation not be implemented at the railway crossings on roads under the jurisdiction of the Town of Halton Hills.

### **Advisory Committee Review**

Not applicable.

## Legal Considerations

### Liability and Risk:

The liability another municipality would face is not different from the Town's liability. If a train accident occurred in either Aurora or any other municipality and liability was apportioned due to that municipality enacting a Train Whistle Cessation By-law, the municipality could be held liable for the incident.

What is different is the cost of liability and the risk. A municipality's insurance deductibles, premiums, reserves, budget, tax base and staffing in insurance and risk are all relevant factors that must be taken into consideration when assessing the cost of liability and risk. A municipality with a low deductible and no reserves for insurance, such as the Town, would have a greater risk to its insurance program and less financial resources to sustain any corresponding changes to the insurance program (further outlined below). This may then result in increases to the tax base. Another municipality may have the financial resources and an insurance program that is able to handle a loss and therefore, that municipality may be more willing to take on the risk.

If the Town was to suffer a catastrophic loss and it was shown, in whole or in part, that the cause of the loss was as a direct result from a train not sounding its whistle because an anti-whistling by-law was in effect, the Town's insurance program may be negatively impacted in the following ways:

1. The Town's insurance premiums could increase dramatically. For example, a loss of \$1 Million dollars could result in premium increases in the range of twenty-five to forty percent annually.
2. The Town could be forced to take on a substantial deductible increase which would have an impact on the claims budget and all other claims against the Town.
3. In addition to 1 and 2 above, the Town's insurer could exclude future claims of this type.
4. If the loss was substantially catastrophic, the insurer could refuse to provide insurance to the Town. As the municipal insurance market is already limited, this could impact the Town's ability to obtain insurance in the future.

### Legal Agreements:

The following agreements must be entered and executed in regard to the Town's crossings prior to implementing the project:

- Cost Sharing Agreement: required to be signed by Metrolinx, the Region and the Town;
- At-Grade Crossing Modification Agreement: required to be signed by Metrolinx and the Town; and,
- Metrolinx Indemnity Agreement: required to be signed by Metrolinx, the Region and the Town.

The indemnity agreement in relation to the Town's crossings, would include an indemnification clause whereby the Town would assume full liability for any potential claims from a third party (ex. personal injuries) and the railway company (ex. business interruption/economic losses) resulting from the elimination of the whistle in accordance with the anti-whistling by-law. The Region is willing to take on the risk of liability in relation to their crossings as per its Anti-Whistling Warrant Criteria.

## **Financial Implications**

The previous construction cost estimates presented to Council in Staff Report No. PDS19-077 were indexed based upon an assumed conservative inflation rate of two and a half percent per year to present 2022-dollar values. In light of recent inflation rate trends with rates closer to six percent it is quite likely that these presented costs will be much higher depending upon the timing of the presented construction and design under Tables 1 and 2.

The presented budgets under Table 1 and 2 exclude any costs for the design and installation of four pedestrian gates at Wellington Street East as this crossing will be addressed as part of the planned Mextrolinx improvements program with the future grade separation.

In addition, according to York Region Policy No. 1146244 (Anti-Whistling Warrant Criteria), anti-train whistling could be considered if the following key actions are completed at the cost of the local municipality:

- A safety audit is completed by a specialized safety consultant;
- The safety audit is approved by Transport Canada; and,
- An education program is developed for the affected area.



Once anti-whistling is endorsed by Regional Council, the Region will be responsible for the cost of flashers and gates for the regional road crossing and the cost of pedestrian gates, if required.

The total estimated costs for the Town to implement whistle cessation at all of its at-grade rail crossings is presented in Tables 1 and 2. Table 1 reflects the estimated cost solely for the St. John's Sideroad level crossing and Table 2 includes the estimated costs for all of the at grade rail crossings within the Town. These costs are broken into Phase One: Detailed Design and Peer Review and Phase Two: Construction.

The cost estimates presented in Tables 1 and 2 are based upon a conservative annual inflation rate of 2.5 percent. Realistically, the general annual inflation rate has been running at 6.5 percent or higher, with the cost of various construction materials experiencing inflationary pressures in excess of 25 percent. Therefore, it is anticipated that the presented estimated costs will be materially higher upon conclusion of the detailed design and finalization of costs.

**Table 1 – Budget for Construction and Design (St. John's Sideroad Only)**

Phase	Location	Requirement	Responsibility	Estimated Cost
Phase One: Detailed Design and Peer Review	St. John's Sideroad	Detailed Design	Town of Aurora	\$50,000
		Peer Review Consultant		\$45,000
	Phase One Sub-Total			\$95,000
Phase Two: Construction	St. John's Sideroad	Sidewalk and Civil Improvements	Town of Aurora	\$25,000
		Four Pedestrian Gates	York Region	\$1,000,000
	Phase Two Sub-Total			\$1,025,000
<b>Total Cost</b>				<b>\$1,120,000</b>
<b>Total Cost (Town Only)</b>				<b>\$120,000</b>

**Table 2 – Budget for Construction and Design (Town-Wide)**

Phase	Location	Requirement	Responsibility	Estimated Cost
Phase One: Detailed Design and Peer Review	Town-Wide	Detailed Design	Town of Aurora	\$150,000
		Peer Review Consultant		\$125,000
	Phase One Sub-Total			\$275,000
Phase Two: Construction	Town-Wide	Sidewalk and Civil Improvements	Town of Aurora	\$25,000
	Engelhard Drive	Two Maze Barriers plus Two Pedestrian Gates		\$500,000
	Centre Street	Two Maze Barriers plus Two Pedestrian Gates		\$500,000
	St. John's Sideroad	Four Pedestrian Gates	York Region	\$1,000,000
	Phase Two Sub-Total			\$2,025,000
Phase Two Sub-Total (Town Only)			\$1,025,000	
<b>Total Cost</b>				<b>\$2,300,000</b>
<b>Total Cost (Town Only)</b>				<b>\$1,300,000</b>

The above estimated cost covers Phase One (detailed design and peer review) and Phase Two (construction). The total initial investment cost for this program is estimated to be:

- St. John's Sideroad level crossing only: \$1,120,000, including \$95,000 for detailed design and peer review; and,
- Town-wide level crossings, including St. John's Sideroad: \$2,300,000 including \$275,000 for detailed design and peer review.

Based on recent discussion with the Region, if there are pedestrian facilities in the area of the crossing, pedestrian gates are required in accordance with Rail Safety Act. As a result, the cost estimates for the crossings at Engelhard Drive and Centre Street were updated to include two pedestrian gates. This estimated cost excludes all ongoing program operating costs such as those relating to required annual monitoring, public education, inspection and repair of the required infrastructure, plus any potential insurance premium increases. As noted previously, these costs are expected to be

material and would result in a new tax levy pressure that would need to be managed by the Town.

The requirements and cost estimates for Phase 2 (Engelhard Drive and Centre Street) identified in Table 2 are subject to changes depending on the assessment from the peer review and conditions from Transport Canada.

With York Region Council's endorsement of the Town's whistle cessation program, it is assumed that York Region will pay for the construction costs for all applicable regional road crossings. Therefore, it is assumed that the Town will recover \$1,000,000 of its St. John's Sideroad crossing costs from York Region. A funding source for the Town's share of all required crossing enhancement costs is not known and will need to be identified.

## **Communications Considerations**

Communications will inform the public about plans for the train whistle cessation for GO train crossings via the Town website, newsletters and social media. Any construction-related impacts would also be communicated to residents and affected businesses via mail and personal visits (where appropriate) as well as through the usual channels noted above.

## **Climate Change Considerations**

The recommendations from this report does not impact greenhouse gas emissions or impact climate change adaptation.

## **Link to Strategic Plan**

None.

## **Alternative to the Recommendation**

1. That Council provide direction.

## **Conclusions**

It is recommended that a project with total capital budget authority of \$95,000 be included in the 2023 capital budget for Council review and approval in support of the detailed design and peer review of a level crossing at St. John's Sideroad. Also, it is

recommended that a formal request be submitted to York Region to implement Train Whistle Cessation for the level crossing at St. John's Sideroad on the Barrie GO Line.

It is recommended that the Town does not proceed with a Train Whistle Cessation program on all roads under the Town's jurisdiction. Should Council decide to implement a Train Whistle Cessation Program for roads under the Town's jurisdiction, the Town will assume additional responsibility and will be required to execute legal agreements with the relevant parties including Metrolinx. Other municipalities have determined the added liability/risk factors and the related cost to be unjustifiable and therefore have decided not to proceed.

As noted by Transport Canada, train whistling is an important way to keep drivers, cyclists and pedestrians safe. The Canadian Rail Operating Rules require all trains to whistle whenever they approach a public grade crossing. While staff have respect for and recognition of the quality-of-life issues that residents face when living in close proximity to a railway, public safety is paramount and must be protected.

## **Attachments**

Attachment 1: Level Crossing Location Map

Attachment 2: Letter from Metrolinx

## **Previous Reports**

General Committee Report No. IES17-024, Implementation of Train Whistle Cessation for GO Train Crossings, dated June 27, 2017;

General Committee Report No. PDS18-026, Implementation of Train Whistle Cessation for GO Train Crossings Design and Peer Review Budget, dated March 20, 2018;

Council Report No. PDS18-045, Additional Information for the Implementation of Train Whistle Cessation for GO Train Crossings Design and Peer Review Budget, dated March 27, 2018;

Council Report No. PDS19-077, Additional Information Regarding the Feasibility of Implementing a Train Whistle Cessation Program for Aurora GO Train Crossings, dated September 17, 2019; and,

Council Report No. PDS22-020, Train Whistle Cessation Program Update, dated April 19, 2022.

## **Pre-submission Review**

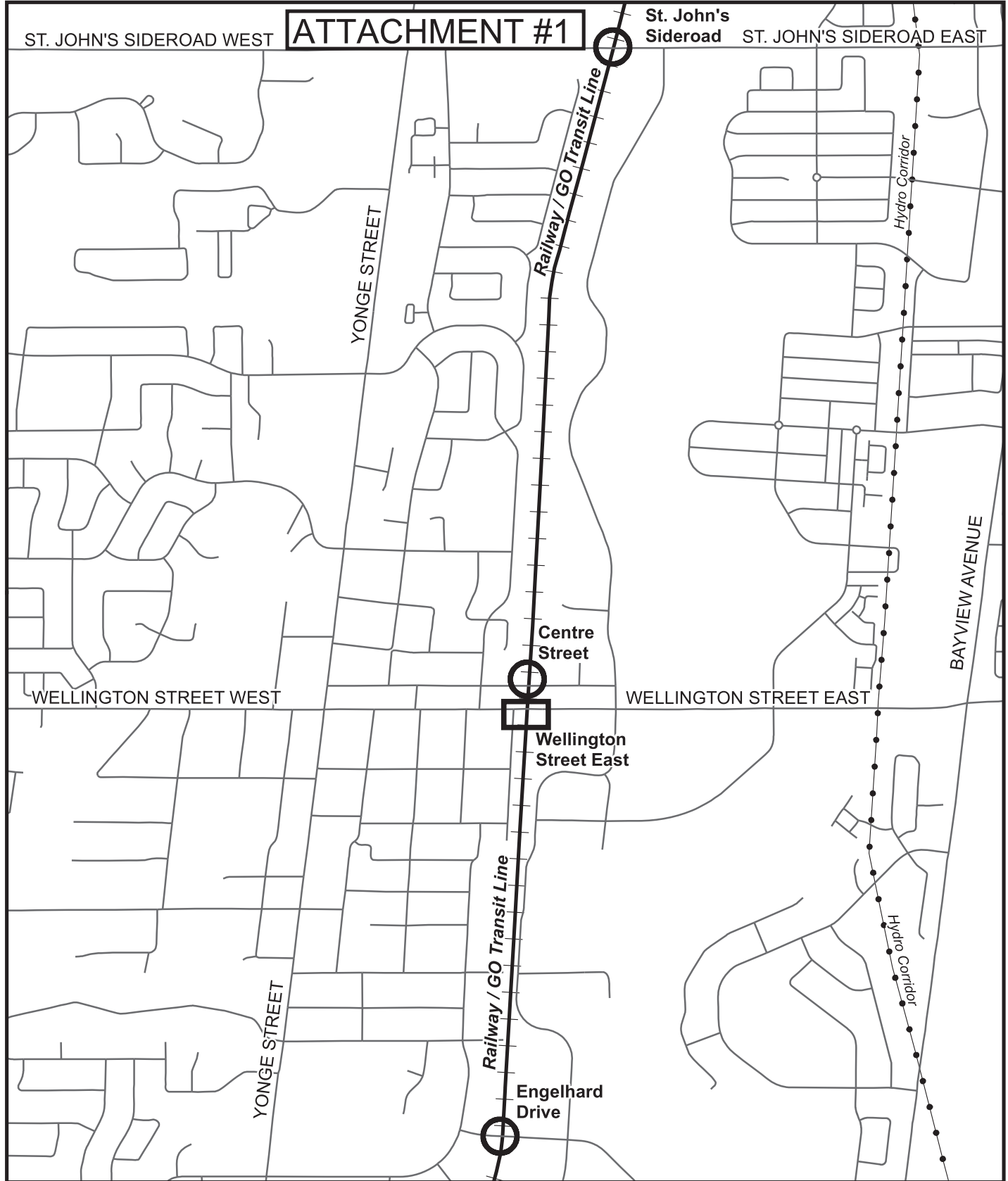
Agenda Management Team review on April 26, 2022

## **Approvals**



Approved by Marco Ramunno, MCIP, RPP, Director, Planning and Development Services

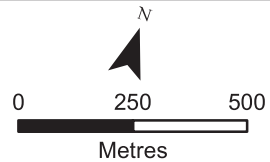
Approved by Doug Nadorozny, Chief Administrative Officer

# ATTACHMENT #1



## LEVEL CROSSING LOCATION MAP

-  Level Crossing Included in Budget
-  Level Crossing Excluded from Budget



PDS22-066



*Office of the President & Chief Executive Officer*

Phil Verster  
Phil.Verster@metrolinx.com  
(416) 202-5908

June 10, 2020

His Worship Tom Mrakas  
Office of the Mayor  
100 John West Way, Box 1000  
Aurora, ON L4G 6J1

Dear Mayor Mrakas,

**RE: Cousins Drive Crossing**

Thank you for your letter dated May 13, 2020 regarding a new crossing at Cousins Drive, which is approximately mile 29.48 on the Newmarket Subdivision. I appreciate the opportunity to respond.

As I shared at our meeting at the beginning of this year, we remain committed to collaborating with the Town of Aurora to deliver exceptional transit in the region.

As you noted, safety is critical to everything we do. Nothing we plan or do can compromise safety. Our tracks and infrastructure are inspected twice-weekly per Transport Canada regulations for any signs of degradation or trespassing.

From our regular inspections, observations and safety reporting, we have not noted any trespass incidents since September 2019 and no near-miss incidents with trains and pedestrians.

To stop previous misuse, we installed expanded metal mesh over the chain link fencing from Aurora GO Station all the way down Cousins Drive. The reinforced fence remains in good condition. It has not been breached (see photo).



Reinforced Chain Link Fence down Cousins Drive as of June 3, 2020

In addition to the regulatory requirements, we take a risk-based approach to public and passenger safety. We regularly deploy members of our Transit Safety team to monitor this location for trespassing and/or vandalism. They will continue to coordinate with your local law enforcement as needed.

However, it is imperative to note that the solution to this challenge is not more fences or more patrols; it lies in a discussion about alternative access possibilities for pedestrians.

While our teams are available to continue earlier discussions about safety measures that would need to be in place to explore alternative access, we are not prepared to discuss the reopening of the level crossing. Instead, we would be open to exploring an infrastructure solution that is not at-grade (e.g., a grade-separated overpass or underpass).

As we increase service levels along the corridor as a part of our GO Expansion program, we are increasing safety by enhancing the level of warning protection at current grade crossings and exploring options for grade-separated crossings. We are also closing many level crossings where it is pragmatic to do so.

To discuss the risk assessment process at the site and to explore the potential for a new grade-separated pedestrian crossing, please contact Rajesh Khetarpal, Director, Stakeholder Relations at [Rajesh.Khetarpal@metrolinx.com](mailto:Rajesh.Khetarpal@metrolinx.com) or 416-202-3806.

Again, I look forward to furthering our collaborative efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phil Verster', with a stylized flourish extending to the right.

**Phil Verster**  
President & CEO

cc. Honourable Christine Elliott, MPP (Newmarket-Aurora), Deputy Premier and Minister of Health and Long-Term Care  
Michael Parsa, MPP (Aurora-Oak Ridges-Richmond Hill)