

DATE 11 June 1996

TO/DEST. Co-ordinator  
Corporate Services and Economic Development Committee

FROM/EXP. Councillor Alex Cullen

SUBJECT/OBJET **REQUEST TO PETITION THE FEDERAL GOVERNMENT FOR AN ENVIRONMENTAL ASSESSMENT RE. THE AYLMER POWER DAM PROPOSAL**

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### **REPORT RECOMMENDATIONS**

**That the Corporate Services and Economic Development Committee recommend Council approve that the Regional Municipality of Ottawa-Carleton petition:**

- 1. the Federal Minister of the Environment, under Section 29 of the *Canadian Environmental Assessment Act*;**
- 2. the Federal Minister of Fisheries & Oceans, under Section 5 of the *Navigable Waters Protection Act*;**

**to conduct an environmental assessment of the Aylmer Power Dam proposal.**

### **BACKGROUND**

Earlier this year, when Regional Council was considering the matter of the Aylmer Power Dam proposal, one of the outstanding related issues was the apparent lack of a federal government environmental assessment process governing such proposals, particularly given not only the potential floodplain impacts for Ottawa-Carleton, but also that this involved a river that formed the boundaries of two provinces. On March 11, 1996 I enquired of our legal staff (see memo attached as Annex "A") on what grounds there could be to trigger such an environmental assessment, and if there was an ability for the R.M.O.C. to do so.

Staff, in their June 7, 1996 response (see memo attached as Annex “B”), indicated that there were grounds for such a federal environmental assessment of this proposal, and that the R.M.O.C. had the ability to petition either the Minister of the Environment or the Minister of Fisheries & Oceans to conduct an environmental assessment., based on its position as an affected landowner (as the Britannia Filtration Plant is on the 100-year floodplain affected by the Aylmer Power Dam proposal).

You should be aware that the Aylmer Power Dam proposal is still an active file with the Quebec Government, despite Aylmer Council’s disavowal.

Therefore, I would ask that Corporate Services and Economic Development Committee consider, at the next appropriate meeting, a motion to petition the appropriate federal ministers to conduct an environmental assessment on the Aylmer Power Dam proposal.

*Approved by  
Alex Cullen*

Attach. ( 2 )

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON  
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

MEMORANDUM  
NOTE DE SERVICE

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DATE 11 March 1996

TO/DEST. Doug Cameron, Regional Solicitor

FROM/EXP. Councillor Alex Cullen

SUBJECT/OBJET **REQUIREMENT FOR A FEDERAL ENVIRONMENTAL ASSESSMENT**

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Recently I met with M.P. Marlene Catterall and community representatives regarding the Aylmer Power Dam issue, where a number of questions were raised regarding the lack of consistency in federal government environmental assessment policy in this matter. In particular, an issue raised was the federal requirement for an environmental assessment for the Cummings Bridge re-construction project, but not for the Aylmer Power Dam proposal. Further, it was brought to my attention that there is a section within the Navigable Waters Act (section 5) that would appear to require a federal environmental assessment for the work being proposed at the Deschênes Rapids (the Aylmer Power Dam). As well, I understand that the same Act permits certain parties to petition the Minister (in this case, the Minister of Fisheries & Oceans, I believe) to require a federal environmental assessment. Further, I am given to understand that the Federal Environment Review Process Guidelines also allow for public concern to trigger a federal environmental assessment. As well, the applicability of the Ottawa River Act of 1870 in this regard was also raised.

As both the Region's Environmental Services Department and Council itself have concerns about the possible effects of the proposed Aylmer Power Dam project, therefore I would ask you to respond to the following questions:

1. Are there grounds either under the Federal Environment Review Process Guidelines, or under the Navigable Waters Act, or under the Ottawa River Act to require a federal environmental assessment for the Aylmer Power Dam proposal?
2. Is there an ability for the Regional Municipality of Ottawa-Carleton, as a municipality who could potentially be affected by the floodplain implications of this proposal, or representing landowners who could similarly be affected, to trigger a federal environmental assessment?

Alex Cullen  
Councillor

JUN 07 1996

REGIONAL MUNICIPALITY OF OTTAWA CARLETON  
MUNICIPALITÉ RÉGIONALE D'OTTAWA CARLETON

MEMORANDUM  
NOTE DE SERVICE

Our File/N/Réf. E.1.2.21  
Your File/V/Réf.

DATE 7 June, 1996

TO/DEST. Councillor Alex Cullen

FROM/EXP. Eric A. Johnston  
Deputy Regional Solicitor

SUBJECT/OBJET **REQUIREMENT FOR AN ENVIRONMENTAL ASSESSMENT -  
AYLMER POWER DAM PROPOSAL**

Further to our meeting dated May 15, 1996, the following is a summary of the previous legal opinion given in response to the following question:

1. Is there an ability for the Regional Municipality of Ottawa-Carleton, as a municipality who could potentially be affected by the flood plain implications of this proposal, or landowners who could similarly be affected, to trigger a federal environmental assessment?

#### Background

The Aylmer Power Dam proposed by the Montreal based GTM-Hydrovolt, would harness energy from a narrow strait between the Aylmer shore of the Ottawa river and Conroy Island. The Québec Environment and Energy ministries have yet to approve the project. Public concern has been expressed in motions by the Ottawa City Council, by Regional Council and by the Council of Aylmer, which rejected the site plan application for the dam. The Rideau Valley Conservation Authority has also expressed concerns.

This project was deemed to be a re-building of an existing structure and a permit was issued under Section 10(1) of the *Navigable Waters Protection Act*, R.S.C. c. N-22. This section of the Act does not require a federal environmental assessment. Had the project been deemed to fall under section 5 of the *Navigable Waters Protection Act*, it would have been subject to an environmental assessment.

#### The application of the CEAA

The *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 [hereinafter the CEAA] was proclaimed into legal force in January, 1995. The CEAA would appear to be the relevant

legislative authority in this context, assuming that the assessment process for this project was initiated after 1995.

Section 46 of the CEAA makes provisions for public review of projects that are not otherwise subject to the Act. This section applies where a project in one province may cause significant environmental effects in another province.

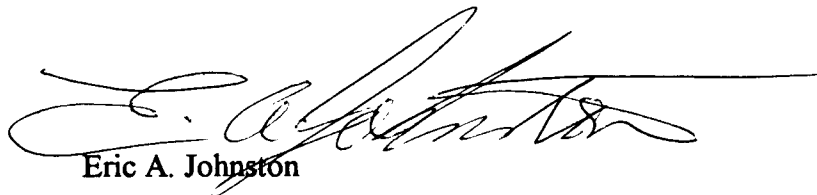
The Minister of the Environment must consider exercising the powers provided by this section of the Act when he or she receives a request from an affected government or in certain circumstances a petition from affected "landowners" who have an interest in lands on which the project may cause significant adverse environmental effects. "Interest in land" is interpreted under the legislation as a right, title to or legal share in land.

Section 46(3) of the CEAA provides a right of request for an environmental assessment. Any person on land affected by a project with significant adverse environmental effects may submit a petition to the Minister and the Minister has a duty to consider exercising the powers provided by section 46 of the Act.

This petition must be signed by one or more persons each of whom has an interest in lands on which the project may cause significant adverse environmental effects, and must be accompanied by a statement of evidence supporting the contention that the project may cause significant adverse environmental effect in a province other than the one in which it is carried out. (subsection 46(3)(b)).

The Region owns the Britannia Water Purification Plant, which water intake pipe is located approximately 700m. southeast and downstream of the proposed works. It is therefore conceivable that the Region would fall under section 46(3) of the CEAA as an affected landowner who has an interest in land which could be affected by the Aylmer Power Dam Proposal. The Region may petition the Minister of the Environment to refer the Aylmer Power Dam project to a mediator or a review panel in accordance with section 29 of the CEAA, for an assessment of the environmental effects of the project in the Region.

Alternatively, the Region may consider a petition the Minister of Fisheries and Oceans for a determination that section 5 of the Navigable Waters Protection Act, R.S. c. N-22, should apply and request that an environmental assessment be conducted.



Eric A. Johnston

EAJ/ATM/hm

c.c. P. Clark, Chair  
M. Beckstead, C.A.O.