

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2409

Title: Riverside Energy Park Examination legal and consultant costs

Executive Summary:

Cory Riverside Energy's Development Consent Order application for a new energy from waste facility is being considered by the Planning Inspectorate (PINS) by Examination. The Mayor is a statutory consultee and opposes the proposals as they are considered contrary to the London Plan.

DD2358 authorised expenditure of up to £90,000 on Leading Counsel advice and specialist consultant input required to assist the GLA in opposing the proposal. The costs of continuing to robustly defend the Mayor's position are now projected to exceed this budget. The additional cost of commissioning our existing consultants to undertake additional work is estimated to be £63,450, of which £4,450 remained from the previous budget, leaving an additional budget requirement of £59,000.

Decision:

That the Executive Director of Development, Environment and Enterprise approves:

1. Additional expenditure of up to £59,000 to be funded by a further draw-down on the Authority's earmarked reserves, to be allocated as follows:
 - £30,300 on environmental consultancy services from SLR Consulting, bringing the total expenditure to SLR Consulting to £50,300; and
 - £28,700 (plus £4,450 from previous budget) to Francis Taylor Buildings (FTB) for legal advice, bringing the total expenditure to FTB to £78,650.
2. Continued application of a related exemption from the requirement of the GLA's Contracts and Funding Code to procure the environmental consultancy services competitively and to continue to receive the above services from SLR Consulting without procuring competitively on the basis that SLR have previous involvement in the current project and the additional work necessary cannot be separated from this previous work.

AUTHORISING DIRECTOR

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities. It has my approval.

Name: Debbie Jackson

Position: Interim Executive Director of Development, Enterprise & Environment

Signature:



Date:

09/10/19.

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 Riverside Energy Park (REP) is a proposed development by Cory Riverside Energy (Cory) in Belvedere, London Borough of Bexley for “an integrated energy park of over 50 megawatts generating capacity (comprising waste energy recovery, waste anaerobic digestion, battery storage and solar generation) and associated electrical connection”.
- 1.2 Due to its size, the development is a Nationally Significant Infrastructure Project, which means that the applicant seeks a Development Consent Order (DCO) and the decision-maker is the relevant Secretary of State (SoS), rather than a planning application that is determined by the local planning authority. The planning powers set out within the Mayor of London Order (2008) do not apply and the Mayor will act as a consultee.
- 1.3 Cory ran a pre-application consultation from 12 June 2018 until 30 July 2018. On 30 July 2018, the Mayor considered a report, which set out the reasons why the proposals were contrary to the London Plan and his draft London Plan and why he could not support the development.
- 1.4 On 16 November 2018, the Planning Inspectorate received an application from Cory for the development. A recommendation will be made by an Inspector, appointed by the Planning Inspectorate on behalf of the relevant Secretary of State and through an Examination in public. The relevant Secretary of State in this case is the SoS for Business, Energy and Industrial Strategy who will make the decision based on the Inspector’s report and recommendation.
- 1.5 The REP application includes a proposal for a new Energy from Waste (EFW) facility. The Mayor is opposing this facility on the grounds that it conflicts with his Energy, Waste and Air Quality Policies.
- 1.6 The Mayor is a statutory consultee and a registered interested party in the Examination process. A bespoke timetable for the Examination has been set by the Planning Inspectorate as follows:

10 April 2019: Preliminary meeting to discuss indicative timetable and principal issues *(GLA officers attended this meeting)*

20 May 2019: Submit Written Representation, Local Impact Report and Statement of Common Ground *(GLA officers prepared and submitted these documents)*

5 June 2019: Issue specific hearing on Environmental Matters *(GLA officers attended and presented oral representations at this hearing)*

6 June 2019: Issue specific hearing on the draft Development Consent Order *(GLA officers attended and presented oral representations at this hearing)*

11 June 2019: Submit responses to Inspector’s questions and comments on other parties Written Representations and Local Impact Reports. *(GLA officers prepared responses to the Inspector’s questions for this submission deadline)*

18 July 2019: Submit responses to Inspector’s further questions (where relevant) and comments on the applicant’s revised DCO. *(GLA officers submitted comments on new documents submitted by the applicant, the applicant’s revised DCO (Planning conditions), and questions to from the Examiner)*

13 August 2019, 3 September 2019 and 23 September: Submission of responses to draft DCO and further responses to questions. *(GLA officers submitted further comments and evidence to meet two of these deadlines and are likely to need to submit responses for the remaining deadline).*

19 September: Participation in further Examination Hearing (GLA participation in this Hearing is required (with support from the QC (Andrew Tait QC and Michael Fry (Francis Taylor Buildings)) and SLR Consulting - note that this additional Hearing was not anticipated at the time the previous Directors Decision (DD2358) was approved)

- 1.7 The ongoing work on the Examination process is being undertaken by a small project team comprising one officer each from the Waste, Energy, and Air Quality units within the Environment Team, and one officer from GLA Planning. Due to a shortfall in capacity to manage all the work in-house, and insufficient working knowledge of DCO planning applications of this nature, the project team is supported by consultants providing technical expertise across each of the policy areas relevant to our Written Representations and providing expertise on national planning policy and DCOs. These are AQ Consultancy (AQ), SLR Consulting (Planning and Waste), and Calorem (Energy). TfL is providing legal support along with external legal support from Andrew Tait QC and Michael Fry (Francis Taylor Buildings).
- 1.8 The total budget for external services to meet all 9 original deadlines (noting that it was not anticipated that participation at a further hearing would be necessary, now scheduled for 19 September) was forecast at £90,000 including 15% contingency, approved via DD2358. The work required to meet the deadlines up to 3 September 2019 has cost £85,550, leaving £4,450 in the current approved budget. The money already spent up to 3 September 2019 is broken down as:
- £20,000 - SLR
 - £45,550 – Francis Taylor Buildings
 - £10,000 – Calorem
 - £10,000 - AQ Consulting
- 1.9 Based on quotes received by SLR consultants and Francis Taylor Buildings, it is estimated that a further £63,450 was required to undertake work to effectively meet the remaining deadlines (i.e. the participation at the additional Examination Hearing on 19 September, and the final submission deadline of 23 September), as follows:
- £30,300 -SLR
 - £33,150 – QC advice
- *Netting off the remaining £4,450 budget takes the additional budget need to £59,000.*
- 1.10 Adding the current approved budget (£90,000) to the requested additional budget (£59,000) would make the total project cost £149,000.
- 1.11 No current budget allocation exists to cover the cost of these additional legal and consultant fees. It is therefore requested that the Executive Director authorises additional expenditure of up to £59,000 (as per the breakdown in paragraph 1.9 above) to be funded by a further draw-down on the Authority's earmarked reserves.
- 1.12 . The GLA is obliged to respond to deadlines set by the Planning Inspectorate (PINS), and our continued active participation in the Examination process is necessary in order that the Mayor's opposition to the proposals is robustly defended. In particular, the further Examination Hearing on 19 September, at which the GLA's attendance is necessary, was not known at the time of the approval of

the original budget. Support from SLR and the QC was required at this Hearing in order for the GLA to complete its case for the Examination.

- 1.13 SLR Consulting were appointed directly, as approved under DD2358, under a Single Source arrangement to ensure consistency with services already provided, and due to their working knowledge of the evidence base and technical modelling used to inform the GLA's waste policies. SLR Consulting is already providing specialist planning and waste policy advice and services supporting the preparation of the Mayor's representations for opposing the Cory's development consent order application. SLR's continued consultancy support is required to enable the GLA to make robust representations on behalf of the Mayor throughout the DCO Examination period. Approval is therefore sought for the continued application of the exemption from the requirement of the GLA's Contracts and Funding Code to procure these environmental consultancy services competitively, and to continue to receive the above services from SLR Consulting without procuring competitively, on the basis that SLR are already providing this service, and as compatibility with an existing service is being provided this meets an exemption as outlined under section 10 of the GLA's Contracts and Funding Code. The original and updated SSJ forms are attached at Appendix 2.

2. Objectives and expected outcomes

- 2.1 To continue to ensure the Mayor puts forward a robust case at the Examination, which is scheduled to run until 9 October 2019.

3. Equality comments

- 3.1 Under section 149 of the Equality Act 2010, in making these decisions "due regard" must be had to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not. Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender, sexual orientation (and marriage or civil partnership status for the purpose of the duty to eliminate unlawful discrimination only).
- 3.2 This duty has been taken into account, having had regard to the application details, including the Environmental Statement submitted by the applicant. Having undertaken an assessment of the impacts of the development, based on the details of the proposal submitted by the applicant, GLA officers have come to a view on whether the proposals are likely to cause undue discrimination, including towards those with protected characteristics as outlined in section 149 of the Act.
- 3.3 The Mayor is opposing the DCO application on the grounds that it conflicts with Energy, Waste and Air Quality policies in the London Plan. Poor air quality in particular has the potential to impact disproportionately on the health of young people, elderly people and those with disabilities. As the proposals could therefore impact disproportionately on those with protected characteristics, it is important that the Mayor's view is represented robustly. No other equalities issues have been identified having regard to the nature of the proposals.

4. Other considerations

Key issues and risks

- 4.1 If the Mayor's opposition to the proposals is not robustly represented there is a risk that the London Plan would be undermined and London's strategic planning and environmental interests would not be

properly taken into account by the Secretary of State when he considers the application at the Hearings, thereby impacting the Mayor's ability to carry out his statutory duties.

Link to Mayoral strategies and priorities

- 4.2 The Mayor's London Plan and draft London Plan contains strategic planning policies promoting carbon reduction, managing waste efficiently, promoting recycling and protecting Londoners against the effects of poor air quality. The London Environment Strategy similarly contains strategies aimed at promoting renewable energy, reducing the climate-change impacts of London's waste activities, and the acceleration of London towards a low-carbon circular economy. It is the Mayor's position that the proposed energy from waste proposal fails to meet a number of the Mayor's policies and strategies and as such the proposal must be resisted.

Conflicts of interest

- 4.3 There are no conflicts of interest to note for any of those involved in the drafting or clearance of the decision.

5. Financial comments

- 5.1 Approval is sought for additional expenditure of up to £59k (total project cost: £149k) on legal representation and consultancy services to support GLA officers in the development, collation and refinement of submission material for the Examination.
- 5.2 This work is to be funded by a draw-down on the Authority's earmarked reserves.

6. Legal comments

- 6.1 Sections 1 to 5 of this report indicate that the decisions requested of the Executive Director (in accordance with the GLA's Contracts and Funding Code) concern the exercise of the GLA's general powers, falling within the GLA's statutory powers to do such things considered to further or which are facilitative of, conducive or incidental to the promotion of economic development and wealth creation, social development or the promotion of the improvement of the environment in Greater London; and in formulating the proposals in respect of which a decision is sought officers have complied with the Authority's related statutory duties to:
- pay due regard to the principle that there should be equality of opportunity for all people;
 - consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom; and
 - consult with appropriate bodies.
- 6.2 In taking the decisions requested, the Executive Director must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic (race, disability, sex, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it (section 149 of the Equality Act 2010). To this end, the Executive Director should have particular regard to section 3 (above) of this report.

- 6.3 Section 9.1 of the Contracts and Funding Code (the 'Code') requires the GLA to seek a call-off from a suitable framework, where possible, or if not, undertake a formal tender process which will be managed by TfL in respect of the services. However, the director may approve an exemption from this requirement under section 10 of the Code upon certain specified grounds. One of those grounds is where there is compatibility with an existing service. Officers have indicated at paragraph 1.13 of this report that this ground applies and that the proposed contracts affords value for money.
- 6.4 On this basis the Director may approve the proposed exemption if satisfied with the content of this report.

7. Planned delivery approach and next steps

Activity	Timeline
Preparation of submission documentation	March 2019 – May 2019
Preparation of responses to questions / other parties' representations (where necessary or where appropriate)	June 2019 – September 2019
Examination	June 2019 – September 2019

Appendices and supporting papers:

1. DD2358
2. Original SSJ for SLR Consulting
3. Updated SSJ for SLR Consulting

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Note: This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

If YES, for what reason:

Until what date: (a date is required if deferring)

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer
to confirm the
following (✓)

Drafting officer:

Katherine Wood has drafted this report in accordance with GLA procedures and confirms that:

✓

Assistant Director/Head of Service:

Juliemma McLoughlin has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Financial and Legal advice:

The Finance and Legal teams have commented on this proposal, and this decision reflects their comments.

✓

Corporate Investment Board:

The Corporate Investment Board reviewed this proposal on 7 October 2019.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. D. Ollé

Date

7.10.19

