

GREATER LONDON AUTHORITY

REQUEST FOR ASSISTANT DIRECTOR DECISION – ADD2457

Title: Costs of making a legal challenge to the Riverside Energy Park Generating Stations Order 2020

Executive Summary:

This request is seeking approval of expenditure of up to £40,000 required to proceed with a legal challenge to the Secretary of State's grant of a Development Consent Order in favour of Cory Environmental Limited for a new waste incinerator. The legal process is expected to take place across Q1, Q2 and Q3 of Financial Year 2020/21.

Note that officers will return with a separate decision seeking approval for payment of potential third-party costs should the Mayor lose at substantive hearing stage. For information only at this stage, we have a provisional indication that these adverse costs would be in the range of £12,000 -£50,000 payable to the Secretary of State and potentially Cory if the Mayor lost at the substantive hearing.

Decision:

That the Assistant Director for Environment approves:

Expenditure of up to £30,000 to proceed with a legal challenge of the Riverside Energy Park Generating Stations Order 2020, taking the total expenditure to £40,000 comprising:

- a) £10,000 on Counsel's fees arising in the preparation of a judicial review application claim
- b) £30,000 on Counsel's fees to cover preparation for and participation in a substantive hearing.

AUTHORISING ASSISTANT DIRECTOR/HEAD OF UNIT

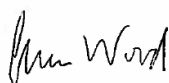
I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name: Aram Wood

Position: Assistant Director for Environment

Signature:



Date:

4 August 2020

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1. On 9 April 2020, the Secretary of State for Business, Energy and Industrial Strategy Alok Sharma, announced his decision to grant Cory Environmental (Cory) a development consent order (DCO) for a new waste incinerator in Belvedere, Bexley. The Mayor has been clear that no more energy from waste incinerators is needed in London and had called on Government to decline planning permission for this new incinerator.
- 1.2. This ADD follows on from DD2358 and DD2409 (Riverside Energy Park Examination legal and consultant costs) under cover of which the Executive Director of Development, Environment and Enterprise approved budget expenditure on the planning examination process. A judicial review claim is a new process not covered by the previous DDs and as such a new approval is required to consent the expenditure associated with it. The first step was to prepare and submit an application claim to bring a judicial review under cover of a DAR up to £10,000. Having now been granted permission to bring a judicial review by the court, this ADD now seeks approval to pay Counsel fees of £30,000 for the GLA to proceed to substantive hearing stage. This takes the total value of work to £40,000.
- 1.3. The GLA worked through the planning decision examination process during April to October 2019 to demonstrate that this facility is not needed to manage London's waste and will have a detrimental impact on recycling rates, climate change and air quality. In January 2020 the Examining Authority submitted a report to the Secretary of State recommending that the permission be granted a DCO.
- 1.4. Leading Counsel's advice was sought on the Secretary of State's decision papers and an Application for judicial review was issued into the High Court on 21 May. Acknowledgements of Service were received from the Defendant (Secretary of State) on 12 June, and from the Interested Party (Cory) on 10 June. On 27 June Mr Justice Kerr gave an Order granting permission to the Mayor to bring a judicial review. The Mayor wishes to proceed with his claim to a full substantive hearing.
- 1.5. The legal process could take around 3-12 months depending on the availability of the courts. The Secretary of State has sent a request to the Planning Court for the case to be designated as a "significant" planning case. If accepted the case would be prioritised and likely to be heard more quickly.
- 1.6. Officers will return with a separate decision request seeking approval for payment of potential third-party adverse costs (indicative range £12,000 - £50,000) should the Mayor lose at substantive hearing stage. It should be noted that the Court has a broad discretion as to the payment of legal costs by an unsuccessful party to the successful party, however in his Permission Order the Judge indicated that he does not expect significant additional costs to be incurred prior to the substantive hearing. The GLA may wish to challenge any costs award which is significantly above this indicative range.

2. Objectives and expected outcomes

- 2.1. To enable the Mayor to deliver a robust legal challenge, presenting clear evidence and grounds demonstrating that the Secretary of State's decision fails to adequately address London and national environmental policy and commitments.
- 2.2. The GLA presented evidence through the examination process to support the argument that further incineration capacity is not required in London and would be detrimental to implementing national and London Plan and Environment Strategy policies. Bringing a legal challenge with a view to

reversing the Secretary of State's decision on these grounds is a means by which these harmful impacts might be avoided.

3. Equality comments

- 3.1 Under section 149 of the Equality Act 2010, in considering whether to grant this approval "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. The Mayor opposes the DCO decision on the grounds that it conflicts with Energy, Waste and Air Quality policies in the London Environment Strategy and London Plan, both of which have been the subject of public consultation. Poor air quality in particular has the potential to impact disproportionately on the health of young people, elderly people and those with disabilities, and 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 Risks and issues

- 4.1 If the Mayor's opposition to the DCO is not robustly represented there is a risk that the London Plan would be undermined, thereby impacting the Mayor's ability to carry out his statutory duties.

Links to Mayoral strategies and priorities

- 4.2 The Mayor's London Plan and draft London Plan contain 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 his policies and strategies and as such the planning application should be rejected.
- 4.3 There are no conflict of interests in the drafting and clearance of this ADD.

5. Financial comments

- 5.1 Approval is sought for the additional expenditure of up to £30,000 on legal proceedings in challenging the CORY Development Consent Order.
- 5.2 The budget breakdown for this expenditure has been provided in the decision section above in which a delegated authority record granted permission for up to £10,000 to be spent on submitting an application claim for a judicial review. Therefore, permission is required for the additional £30,000 which will bring the total cost of this challenge to £40,000.
- 5.3 This challenge will be funded by underspends identified within the 2019/20 Environment Teams Zero Carbon budget which has been assigned to the 2020/21 CORY Incinerator Development budget. Dependent upon how far the Authority progresses within the judicial review process additional costs may be incurred, however this will be subject to further approval.

6. Legal comments

- 6.1 Part II Greater London Authority Act 1999 (as amended) (GLAA) sets out the general functions and procedure of the GLA, starting with the general power in section 30, which provides as follows:-
- (1) The Authority shall have power to do anything which it considers will further any one or more of its principal purposes.*
- (2) Any reference in this Act to the principal purposes of the Authority is a reference to the purposes of –*
- (a) promoting economic development and wealth creation in Greater London;*
- (b) promoting social development in Greater London; and*
- (c) promoting the improvement of the environment in Greater London.*
- 6.2 The section 30 functions are exercisable by the Mayor acting on behalf of the GLA (s.30(10)).
- 6.3 The powers in section 30 (2) (c) are interpreted broadly. It is considered that they are sufficiently broad to permit the GLA to incur the expenditure detailed above in bringing a judicial review claim to the Secretary of State's decision to approve the Riverside Energy Park Generating Stations Order, given the environmental impact of this, the Mayor's environmental policies and the London Environmental Strategy.
- 6.4 The decision is in accordance with the Authority's decision-making framework.
- 6.5 Officers should ensure that the services be procured by Transport for London Procurement who will determine the detail of the procurement strategy to be adopted in accordance with the GLA's Contracts and Funding Code. Officers must ensure that appropriate contract documentation is put in place and executed by the successful bidder(s) and the GLA before the commencement of the services.

7. Planned delivery approach and next steps

- 7.1 These timescales are largely outside GLA's control and depend on court resources and whether permission is granted

Activity	Indicative Timeline
Submission of Application to challenge	May 2020
Permission Hearing (not required)	July/August 2020
Substantive Hearing	July/August 2020

Supporting papers:

1. [DD2358](#) Riverside Energy Park Examination legal and consultant costs
2. [DD2409](#) Riverside Energy Park Examination legal and consultant costs
3. DAR Judicial Review Application

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) 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 it has been approved or on the defer date.

Part 1 - Deferral

Is the publication of Part 1 of this approval to be deferred? YES

If YES, for what reason: The information contained herein relates to legal proceedings.

Until what date: No earlier than 30 September. It may be necessary to extend depending on when a date is set for the substantive hearing.

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included 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:

Doug Simpson has drafted this report in accordance with GLA procedures and confirms the following:

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 3 August 2020.

ASSISTANT DIRECTOR OF FINANCE AND GOVERNANCE:

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

Signature



Date

3 August 2020