

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2498

Title: Costs in the legal challenge to the Riverside Energy Park Generating Stations Order 2020

Executive Summary:

This request is seeking approval of expenditure of £60,925 to cover outstanding GLA legal costs and third party costs payable to the Secretary of State and to Cory Environmental Limited following the Mayor's decision to discontinue the legal challenge to the Riverside Energy Park Generating Stations Order 2020.

ADD2457 approved additional expenditure of up to £30,000 (£10,000 having already been authorised) to proceed with the legal challenge of the Secretary of State's grant of a Development Consent Order in favour of Cory Environmental Limited for a new waste incinerator. Total legal costs are £45,925.

Decision:

That the Executive Director of Good Growth approves expenditure of:

1. £25,000 to the Secretary of State;
2. £30,000 to Cory Environmental Limited; and
3. £5,925 to cover outstanding GLA legal costs (taking the total authorised expenditure on legal costs to £45,925)

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: Philip Graham

Position: Executive Director, Good Growth

Signature:



Date:

2 November 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 are needed in London and had called on the Government to decline consent for this new incinerator.
- 1.2. This DD 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 and ADD2457, under cover of which budget expenditure was approved to proceed with a legal challenge against the Secretary of State's grant of the DCO.
- 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 Cory be granted a DCO.
- 1.4. Leading Counsel's advice was sought on the Secretary of State's decision papers and an application for permission for judicial review was issued in the High Court on 21 May 2020. On 27 June 2020, Mr Justice Kerr gave an Order granting permission to the Mayor to bring a judicial review on all grounds, on the basis that the case was arguable. The Mayor decided to proceed with the claim to a full substantive hearing. The costs to proceed to a full hearing were approved in ADD2457 with Counsel fees of £30,000 taking the total value of the GLA's legal costs to £40,000.
- 1.5. ADD2457 also stated that officers would 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 the substantive hearing stage.
- 1.6. Since 27 June 2020, officers have been working closely with Counsel and TfL Legal to prepare for the court hearing which was listed to take place on 6 & 7 October 2020. During this time, discussions with the Mayor's Office were taking place about the developments in the case and whether there should be a change of strategy, having regard to all of the circumstances, including the need to consider the allocation of resources and the potential implications of losing at a substantive hearing. After consideration, a decision was made that the Mayor would withdraw the claim. A Notice of Discontinuance was filed with the Court on 23 September 2020.

2. Objectives and expected outcomes

- 2.1. To fulfil the Mayor's legal duty to pay third party costs as a result of withdrawing from the judicial review claim.

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). This decision does not raise any issues under the Equality Act.

4. Other considerations

- 4.1. The Mayor continues to oppose new incineration in London and will work with Bexley, the Environment Agency and Cory Environmental Ltd to ensure the concessions he secured to reduce the environmental impact of the Cory Riverside Energy Park are met.
- 4.2. These concessions are in line with the Mayor's London Plan and draft London Plan which 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 if the DCO concessions are not met.
- 4.3. There are no conflicts of interests in the drafting and clearance of this decision form.

5. Financial comments

- 5.1. Approval is sought for the additional expenditure of £60,925 on outstanding GLA legal and third party costs as a result of discontinuing the judicial review claim on 23 September 2020.
- 5.2. The budget breakdown for expenditure has been provided in the decision section above. Payment of the third parties costs must be made by the end of October 2020 (see section 7 below as to the specific dates for payment of these costs).
- 5.3. The total costs of the challenge, including GLA's legal costs of £40,000 approved under ADD2457, is £100,925. This is being funded from the Environment Waste budget (£90,000) which now incorporates the CORY Incinerator Development programme and available funds from the Energy Efficiency budget (£11,000).

6. Legal comments

- 6.1. Under the procedural rules applicable to judicial review claims, there are consequences in terms of costs if a Claimant discontinues a claim before the substantive hearing has taken place (as the Mayor has done here). The default position is that the Claimant will be liable to pay the costs of the Defendant (in this case the Secretary of State) incurred up to and including the date when the Notice of Discontinuance was served. The usual procedure is for the parties to attempt to agree a figure for these costs, failing which there is a formal process by which the costs will be assessed on behalf of the court.
- 6.2. It has been agreed that the Mayor will make a contribution to the Secretary of State's costs in the sum of £25,000. In addition, it has been agreed that the Mayor will make a contribution to the costs of Cory in the sum of £30,000.

7. Planned delivery approach and next steps

Activity	Timeline
Deadline for payment of Defendant (Secretary of State) costs	26 October 2020
Deadline for payment of third party (Cory) costs	29 October 2020 (30 calendar days from date of Order)

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? NO

If YES, for what reason:

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

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:

Anne-Marie Robinson has drafted this report in accordance with GLA procedures and confirms the following:

✓

Assistant Director/Head of Service:

Aram Wood 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.

✓

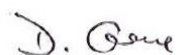
Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 26 October 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

27 October 2020