

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2358

Title: Riverside Energy Park Examination legal and consultant costs

Executive Summary:

Cory Riverside Energy has submitted a Development Consent Order application to the Secretary of State for Business, Energy and Industrial Strategy for a 50-megawatt energy park including a new energy from waste facility. The Mayor is a statutory consultee for this application and opposes the proposals as they are considered contrary to the London Plan. The application will be considered by the Planning Inspectorate (PINS) by Examination, including issue specific hearings in June 2019.

The GLA is required to submit written representations, a local impact report and a statement of common ground to PINS on 20 May 2019, and the GLA will need to be represented at the Examination. Leading Counsel advice and specialist consultant input is required to support GLA staff in presenting the Mayor's case at the forthcoming Examination.

This Director Decision asks that the Executive Director of Development, Enterprise and Environment approves expenditure of up to £90,000 to allow the GLA to robustly present the Mayor's case to the Planning Inspectorate at the forthcoming examination in May/June 2019.

Decision:

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

1. Expenditure of up to £90,000 on legal representation and consultant input to support GLA and TFL officers in expanding on and presenting the Mayor's opposition to the proposed development at the forthcoming Examination for the Nationally Significant Infrastructure Project.
2. In relation to services to be procured from SLR consult for up to £20,000, a related exemption from the requirement in the Contracts and Funding Code to procure such services competitively on the grounds set out in para 1.9.

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: Executive Director –Development, Enterprise & Environment

Signature:



Date: 06/06/19

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 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. The decision is 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 Greg Clark, SoS for Business, Energy and Industrial Strategy.
- 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 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.
 - 20 May 2019:** Submit Written Representation, Local Impact Report and Statement of Common Ground
 - 5 June 2019:** Issue specific hearing on Environmental Matters
 - 6 June 2019:** Issue specific hearing on the draft Development Consent Order
 - 11 June 2019:** Submit responses to Inspector’s questions (where relevant) and comments on other parties Written Representations and Local Impact Reports (where appropriate).
 - 16 July 2019:** Submit responses to Inspector’s further questions (where relevant) and comments on the applicant’s revised DCO (if required).
 - 13 August 2019, 3 September 2019 and 23 September 2019:** Submission of responses to draft DCO and further responses to questions (if necessary).
- 1.7 Legal advice is required to assist in the DCO application. Based on fee estimates from the chambers approached (Francis Taylor Buildings), legal fees are estimated to be up to £30,000 (excluding VAT) based on the following breakdown:
 - Daily fee for Examination: £5,000 (with assumption that up to 4 days will be required, totaling £20,000);

- Contingency (including conferences, preparation, reviewing/drafting/amending of documents): £10,000.

- 1.8 Professional specialist consultant fees are estimated to be up to £50,000. This would be a split across a number of consultants to provide resource to strengthen the Mayor's arguments for effectively implementing his policies on Planning and Waste (£25k), Energy (£10k), Air Quality (£10k), and £15k Contingency (including reviewing documents, responding to questions from the Examiner, and supporting the GLA to undertake additional work following the Planning Examination process). Procurement will be carried out in accordance with the Contracts and Funding Code.
- 1.9 This DD is however seeking approval to appoint one specialist consultant (SLR Consulting) under a Single Source arrangement (total value £20k) 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 national planning application. SLR's continued consultancy support is required to enable the GLA to make robust representations on behalf of the Mayor throughout the Planning Application Examination period (March until October 2019). A Single Source Request is attached as Appendix 4.
- 1.10 No current budget allocation exists to cover the cost of these legal and consultant fees. It is therefore requested that the Executive Director authorises expenditure up to this figure to be funded by a draw-down on the Authority's earmarked reserves. This figure is based on fee quotes from a barrister chambers and respective professional consultancies.

2. Objectives and expected outcomes

- 2.1 To enable preparation for, and ensure a robust case at the Examination, which is scheduled to run from June until late September 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. 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, 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 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.

5. Financial comments

- 5.1 Approval is sought for the Executive Director of Development, Enterprise and Environment to approve expenditure of up to £90k 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 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 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, gender, 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 Director should have particular regard to section 3 (above) of this report.
- 6.3 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.
- 6.4 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 1.9 of this report that this ground applies and that the proposed contracts affords value for money.

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. Mayor's pre-application consultation response to Cory Riverside Energy, dated 30 July 2018.
2. Rule 6 letter from the Planning Inspectorate, dated 13 March 2019.
3. DAR approving previous work undertaken by SLR Consulting
4. SSR form for appointing 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:

Vanessa Harrison 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 28 May 2019.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Helle

Date

7.6.19