

**Planning Act 2008**

**The Infrastructure Planning (Examination Procedure) Rules  
2010**

**Application by Cory<sup>1</sup> for an Order granting development  
consent for the Riverside Energy Park**

**Summary Written Representation**

**on behalf of**



**Western Riverside Waste Authority  
20 May 2019**

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<sup>1</sup> WRWA has contracted with a number of “Cory” associated operating companies over the years, but they are all referred to as “Cory” in this Written Representation other than Riverside Resource Recovery Limited and Riverside Energy Park Limited.

## **Introduction**

1. This representation is made on behalf of the Western Riverside Waste Authority (“WRWA”), in advance of a Compulsory Acquisition examination hearing scheduled for 6/7 June 2019.
2. WRWA objects to the making of any order granting development consent for the Riverside Energy Park which includes the compulsory acquisition of plots 02/02, 02/09, 02/12, 02/16, 02/17, 02/30 and 02/56 identified on the land plans and in the book of reference, and in which WRWA holds a leasehold interest.

## **Background**

### **WRWA waste management responsibilities & arrangements**

3. WRWA is a “statutory joint waste disposal authority” which was formed in 1986.
4. WRWA and its constituent councils are responsible for the collection, recycling, composting and treatment of some 380,000 tonnes per annum of household and commercial waste generated within their boundaries. The Belvedere EfW is WRWA’s sole means of recovery of waste that cannot be reused or recycled. It is therefore an important strategic waste management facility both for WRWA and London as a whole.

### **WRWA’s status as a statutory undertaker under section 8 of the Acquisition of Land Act 1981**

5. WRWA is a statutory undertaker under section 8 of the Acquisition of Land Act 1981. It is a person “authorised by enactment” to carry on an undertaking which falls within section 8(1)(a), in that not only does it work docks from which its waste barges operate, but its undertaking is concerned with the transportation of waste by water.
6. As such, WRWA benefits from the protection afforded by section 127 of the Planning Act 2008. Compulsory acquisition in relation to its interests can only be

authorised provided the Secretary of State is satisfied that “the nature and situation of land [is such] that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking”.

### **The history of the Belvedere EfW facility**

7. A Waste Management Services Agreement (WMSA) was signed between Cory and WRWA and commenced in 2002. Under the WMSA, WRWA has to direct all waste under its ‘power of direction’ to Cory. The contractual arrangements with Cory are of central importance to this representation, and the impact on the WMSA is a matter of real public interest. It is therefore necessary to reach a clear understanding of the way the WMSA works. To that end, two documents are appended to the full version of this Written Representation. The first is a Summary Overview of the WMSA, produced by WRWA’s solicitor). That is Annex 2 of the Written Representation. The second is a Note on Impact, which seeks to explain the effect of the proposed compulsory acquisition on the WMSA. That note is appended as Annex 3.

### **The financing of the EfW facility**

8. Originally, in 2002, the intention was that the plant would have been a “merchant facility” and the WMSA worked on a simple supply and pay basis. However, prospective funders became concerned with condition 5 of the planning permission, which restricted the source of the waste to Greater London.
9. This meant that, without access to WRWA’s transfer stations, the EfW Facility was a stranded asset. Consequently, to finance the project, the funders required WRWA to become the funder of last resort and the project evolved into a Public Private Partnership.
10. In 2008, the economic climate was fraught. The WRWA gate fee effectively became the balancing figure within the financial model. WRWA was the anchor contract for the EfW Facility (representing 72% of the design throughput at the time) and, in

exchange for its increased risk on termination and higher gate fees, it received a number of important benefits in exchange. WRWA entered into a lease and sub-lease arrangements which, together with contractual rights over the RRRL land, provided it with protection in case of changes in law as to how waste needed to be treated in the future. WRWA also received residual rights for 14 years beyond expiry of the WMSA when it can choose either to receive a royalty from RRRL or have its waste processed at effectively cost plus 10% or a combination of the two. The lease over the RRRL land, which runs until 2058, provides the security to WRWA that it will receive those residual rights.

### **The refinancing of the EfW facility**

11. On two occasions, in March 2017 and October 2018, WRWA and Cory have negotiated revised commercial agreements enabling Cory to refinance the project.

### **The ongoing commercial relationship between WRWA and the same group of companies as the Applicant**

12. The WRWA has an ongoing commercial relationship with Cory. WRWA's purpose is a statutory one, and so although its approach must be commercial, it is with the public interest in mind. Given WRWA's protected status as a statutory undertaker, and bearing in mind that long established and close commercial relationship, it is unacceptable that no meaningful attempts were made before the DCO application to either acquire the necessary land and interests by agreement, and/or to renegotiate the WMSA. It is flatly contrary to the Government's guidance. It should be recognised that (unusually), this is not a situation in which the public interest is to be balanced against private loss. There is clear public interest in ensuring that WRWA's contractual position is not undermined with the compulsory acquisition powers sought.

## **Contractual implications**

13. The implication of the compulsory acquisition of the leasehold interest is very significant in the context of a contractual arrangement which balances risk and mitigation carefully. The loss of scope to mitigate against changes in circumstances weighs heavily against the public interest invested in the security of waste disposal arrangements. For example:

- a. During the currency of the WMSA/Residual Value Agreement, WRWA's change in law exposure would be significantly increased. If those provisions in the contract are triggered, it is highly detrimental to WRWA and to the public interest if the ability to either adapt by using the currently available land, or to construct a facility to address directly that change, is lost.
- b. Upon an early termination of the contractual arrangements, the scope to mitigate WRWA's losses would be removed by its inability to use the land to construct another facility. Such land is extremely scarce; taken together with the existing jetty and other infrastructure, that security is difficult if not impossible to replace. It is unclear how compensation might address that loss: in circumstances in which that security would be necessary, the land would be enormously valuable, rivalling that of the DCO scheme value.

## **Technical implications for the EfW**

14. Wood Environment & Infrastructure Solutions UK has undertaken a technical risk assessment dealing with:

- a. The REP construction phase, in which there is clear potential for conflict; and risk to the smooth operation of the existing EfW facility;
- b. The REP operational phase, in which, again numerous points of conflict have been identified; and

- c. The fact that although the facility is promoted via the Planning Act 2008 regime as a result of its energy generating capacity (and no point is taken on “need” in that context), there is no demonstrable need for its waste capacity.

15. It can be noted that if there is limited need for the proposed additional waste capacity, the provision of the new facility has the potential to undermine WRWA’s position in respect of the existing EfW still further.

### **Serious detriment to the carrying on of the undertaking**

16. The use of compulsory acquisition powers as proposed would cause serious detriment to WRWA’s carrying on of its undertaking. No serious attempt has been made to address, let alone mitigate that detriment.

### **Attempted misuse of the Planning Act 2008 powers**

#### **Importance of a failure to negotiate**

17. In the period of more than three decades since WRWA inherited contractual arrangements with Cory from the GLC, on numerous occasions, the parties have successfully negotiated the construction and provision of new and improved facilities; major financing and refinancing arrangements, amongst other more mundane changes to the relationships between them. It is therefore egregious that Cory seek to bypass those normal processes by using Planning Act 2008 powers.

#### **Availability and sufficiency of compensation following compulsory acquisition**

18. It is wholly unclear how the impacts of the acquisition could be compensated for under the Compensation Code so as to provide equivalence in these circumstances.

### **Compelling case in the public interest?**

19. It is WRWA’s position that even taking into account all the benefits claimed in the DCO application materials, there is no compelling case in the public interest. On the contrary, the public interest is undermined by the harm to WRWA’s interests.