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**LEGAL SUBMISSIONS**

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**WRWA: a statutory undertaker**

1. The Western Riverside Waste Authority (“WRWA”) came into being on the making of the Waste Regulation and Disposal (Authorities) Order 1985 (SI 1985/1884). See in particular article 2 and Part V of Schedule 1, which established the Authority; paragraph 5 and Schedule 2 dealing with functions. Schedule 3 applies local authority provisions to the London waste disposal authorities, which includes the Western Riverside Waste Authority.
2. WRWA is one of four autonomous statutory bodies to take responsibility for undertaking the waste disposal functions previously undertaken by the Greater London Council; and inherited the land and interests relating to that function. In that capacity, it assumed responsibility for the disposal of waste collected by the London Boroughs of Hammersmith and Fulham, Lambeth, Wandsworth and the Royal Borough of Kensington and Chelsea (“the constituent authorities”).
3. WRWA’s powers and duties are primarily derived from the Environmental Protection Act 1990 (“the EPA 1990”). It is a “disposal authority” (s.30(2)(b)(i) of the EPA 1990), responsible for making arrangements for waste disposal in conjunction with private waste disposal contractors (under s.51 of the EPA 1990). Under s.51, WRWA has a duty to create reception points where waste collection authorities (here, the constituent authorities) can deposit waste collected by them for disposal and has a power to direct the constituent authorities in its area to deposit waste collected by each of them at such collection points as it may select.

4. WRWA has two riparian waste transfer stations to which it directs its constituent authorities to deposit their collected waste: it has a dock at Smuggler's Way, Wandsworth and another at Cringle Dock, beside Battersea Power Station. From those docks, Cory transports the constituent authorities' waste to Belvedere, by river transport, pursuant to the contractual arrangements made by WRWA in order to fulfil its statutory waste disposal purpose.

**Section 127 of the Planning Act 2008 and section 8 of the Acquisition of Land Act 1981**

5. Section 127 of the Planning Act 2008 provides as follows:

“127 Statutory undertakers' land

- (1) This section applies in relation to land (“statutory undertakers' land”) if—
  - (a) the land has been acquired by statutory undertakers for the purposes of their undertaking,
  - (b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and
  - (c) as a result of the representation the Secretary of State is satisfied that—
    - (i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or
    - (ii) an interest in the land is held for those purposes.
- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).
- (3) The matters are that the nature and situation of the land are such that—
  - (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or
  - (b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.
- (4) Subsections (2) and (3) do not apply in a case within subsection (5).
- (5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the [Secretary of State is satisfied of the matters set out in subsection (6)].
- (6) The matters are that the nature and situation of the land are such that—
  - (a) the right can be purchased without serious detriment to the carrying on of the undertaking, or

(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

(8) In this section—

“*statutory undertakers*” has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).

(9) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990 (c. 19)), references to land acquired or available for acquisition by the statutory undertakers are to be construed as references to land acquired or available for acquisition by the Secretary of State for use or occupation by the body.”

### **WRWA submissions**

6. WRWA makes the following points:

a. Article 21 of the draft DCO would authorise the compulsory acquisition of WRWA’s leasehold interest in various plots listed in its written representation (“WR”) at p.13 para. 39.

b. The leasehold interest was acquired by WRWA pursuant to the Waste Management Services Agreement (WR annex 9) for the purpose of its undertaking and is held by WRWA as such.

c. WRWA is authorised by statute to carry on its undertaking, and does so directing constituent authorities to deposit waste to its docks; and arranging for Cory to transfer waste on its behalf via water transport on the River Thames.

d. WRWA is a statutory undertaker within the meaning of section 127, by section 127(8) which applies section 8 of the Acquisition of Land Act 1981. Section 8(1) says this:

“(1) In this Act, unless the context otherwise requires, “*statutory undertakers*” means—

(a) **any person authorised by any enactment to construct, work or carry on—**

- (i) **any** railway, light railway, tramway, road transport, **water transport**, canal or inland navigation **undertaking**, or
- (ii) **any dock**, harbour, pier or lighthouse **undertaking**, or
- (iii) ...” (Emphasis added.)

7. Cory has failed to treat WRWA appropriately, miscategorising it as “members of the public/business” in its recent Applicant Response to Relevant Representations (May 2019). In the same document the Applicant recognises the statutory status of the East London Waste Authority (which came into being via the same 1985 Order)<sup>1</sup>. The Applicant has not so far addressed the means by which the Secretary of State could be satisfied that no serious detriment arises on compulsory acquisition of WRWA’s lease.
  
8. WRWA’s WR alleges that serious detriment arises and details the impacts on its undertaking.

**Melissa Murphy**

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**Francis Taylor Building  
Inner Temple  
London EC4Y 7BY**

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<sup>1</sup> It can be noted that RRRL are treated as a statutory undertaker in the Applicant Response to First ExA Written Questions (May 2019) at p.141 para. 7.7.2(h).