

Planning Act 2008

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

**Application by Cory¹ for an Order granting development consent for the
Riverside Energy Park**

**Comments on Applicant's responses to Relevant Representations
(Doc Ref. 8.02.03)
&
Comments on Applicant Responses to the ExA's First Written Questions
(Doc Ref. 8.02.04)**

on behalf of



**Western Riverside Waste Authority
18 June 2019**

¹ WRWA has contracted with a number of "Cory" associated operating companies over the years, but they are all referred to as "Cory" in this document other than Riverside Resource Recovery Limited and Riverside Energy Park Limited.

Comments on Applicant's responses to Relevant Representations
(Doc Ref. 8.02.03)

Introduction

1. Brief comments are provided on the Applicant's responses to the Relevant Representations. These comments should be read together with the written representations ("WR") of the Western Riverside Waste Authority ("WRWA") and its Written Summary of Oral Submissions made on 6 and 7 June 2019 ("WS"), which will not be repeated.

Status

2. WRWA has been miscategorised in the "Contents" section and in the structure of the document as "Member of the Public/Business" (cf. East London Waste Authority which has been categorised as a "statutory body"). For the reasons set out in WRWA's WR and WS, it properly categorised as a statutory undertaker. It can be noted that Riverside Resource Recovery Limited ("RRRL") has been categorised as a statutory undertaker.

Support for the scheme

3. In its relevant representation, WRWA noted that it is "supportive of development initiatives which enhance the waste treatment infrastructure available to its constituent councils". This has been interpreted by the Applicant as general support for its proposal (5.3.6). That was not what was intended. WRWA does not consider that the Applicant's proposals enhance the waste treatment infrastructure initiatives available to its constituent councils, for the reasons set out in its WR and WS.
4. Moreover, as the Applicant notes (5.3.6), facilities which are accessible by river are particularly important given the lack of suitable sites. It is thus all the more important not to undermine the existing facility and the mechanism for future-proofing incorporated within the contractual arrangements between WRWA and Cory, as per the WS.

Likelihood of a negotiated solution

5. The Applicant indicates (5.3.7) that it anticipates that it will come to a mutually agreeable position, addressing the Authority's concerns, prior to the end of the examination period. As at the date of writing, there are fundamental issues between WRWA and Cory; and the Authority does not share the Applicant's confidence; and has made well founded complaints about the Applicant's complete failure to conduct any meaningful negotiations prior to the date of the compulsory acquisition hearing.

Contractual relationship: funder of last resort

6. Para. 5.3.10 in the Applicant's response is not logical in seeking on the one hand to disagree with WRWA's characterisation of itself as a funder of last resort and on the other to argue that WRWA repaying RRRL's debt (as a funder of last resort is required to) "can only come about in extremely limited and unlikely circumstances". In its WR, at the hearing on 6 and 7 June 2019 and in its WS, WRWA explained the circumstances in which it would take ownership of the existing energy from waste facility; and none of what it said appeared to be in dispute.
7. Paras. 5.3.11-5.3.12 do not accurately explain the importance of the leasehold land. It is security:
 - a. In a termination (force majeure) scenario;
 - b. It provides an opportunity to address/mitigate change in law scenarios; and
 - c. In respect of the enforcement of the Residual Value Agreement, which allows WRWA to take royalties and/or waste capacity in the period 2032-2046.

Land needed for security; references to "surplus land"

8. Para. 5.12 refers to "surplus land". That term is used in the Waste Management Services Agreement (see WR annex 2 para. 9 and appendix A land edged blue) referring to land which at the time the contract was agreed, was identified as

surplus to requirements. That does not include WRWA's leasehold land. WRWA does not accept that the leasehold land is "in no way essential to protect the Authority's interests". Other land referred to in that paragraph as providing alternative security, the jetty and so on, does not offer the opportunity to locate development on it (which may be needed, for example, to mitigate loss), because it is used for other necessary purposes.

9. Comments on the draft protective provisions are provided separately.

Specific responses: change in law

10. In para. 5.3.16, the Applicant suggests that the Relevant Representation presented a simplified position in respect of the change in law provisions. It is accepted that the constraints of that process meant that WRWA's points had to be put simply. However, the representation was not inaccurate. WRWA relies upon its summary of the WMSA at annex 2 to the WR and on its note on the impact on the WMSA at annex 3 to the WR.

11. At the CA hearing, as has been summarised in the WS, WRWA explained that whilst it is accepted that the most likely change in law scenario we know about now is the need for separate treatment of food waste, it is not possible to say what future changes there may be in the period to 2046. For that reason, it is significant that the DCO and associated CA powers, giving rise to a loss of the leasehold land, removes the current future-proofing provided for contractually in relation to the existing energy from waste facility.

Specific response: sharing of facilities/compromise of existing energy from waste facility

12. WRWA has made its points in relation to the proposed sharing of infrastructure. Overall, it is apparent that the introduction of a new energy from waste facility next door to the existing energy from waste facility would result in a compromised asset, which harms WRWA's interests in the scenarios described. WR annex 8 and the WS refer.

Prejudicing future treatment routes

13. Para. 5.3.23 appears not to have acknowledged the issue identified by WRWA in relation to the period 2032-2046. Its security of waste disposal is dependent on the aggregate energy from waste throughput, in that this affects the amount of waste it can opt to have processed. WRWA's WR at p.9 para. 22; Mr Broxup's explanation at the hearing; and the WS refer.

Comments on Applicant Responses to the ExA's First Written Questions (Doc Ref. 8.02.04)

14. WRWA wishes to make one comment in respect of ExA question reference Q7.0.7 and response 7.7.2(h). RRRL appears to have been treated as a statutory undertaker. It is not clear why RRRL has been treated as a statutory undertaker, and WRWA not treated as such.