Riverside Energy Park

Applicant's response to Western Riverside Waste Authority Deadline 3 Submission

VOLUME NUMBER:

08

PLANNING INSPECTORATE REFERENCE NUMBER:

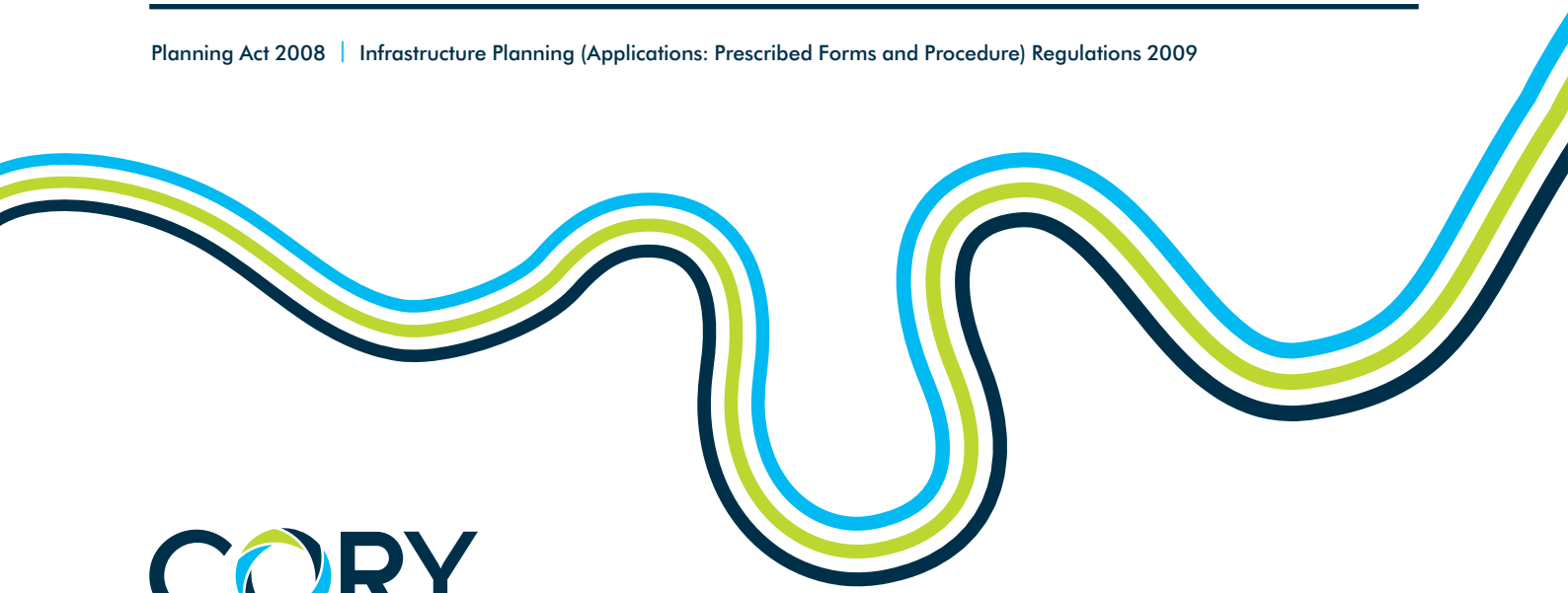
EN010093

DOCUMENT REFERENCE:

8.02.37

July 2019 | Revision 0 (Deadline 4)

Planning Act 2008 | Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009



CORY
RIVERSIDE ENERGY

Contents

Tables

Appendices

1 INTRODUCTION

1.1.1 Western Riverside Waste Authority (the **"Authority"**) has objected to the application made by Cory Environmental Holdings Limited (the **"Applicant"**) for a development consent order (**"DCO"**) for Riverside Energy Park (**"REP"**). Originally, in particular in its response to Section 42 Notification and in its Relevant Representation, the Authority did not object to the principle of REP, but rather only to the Applicant's request that, in granting the DCO, the Secretary of State authorise powers of compulsory acquisition in respect of interests held by the Authority. The Authority has sought to clarify its position in its document entitled 'Comments on the Applicant's responses to Relevant Representations and the Examining Authority's Written Questions' (**REP3-052)** submitted at Deadline 3. In its Deadline 3 submissions, the Authority not only maintains its objection to the authorisation of compulsory acquisition powers, but also rejects the suggestion that its position is one of "general support" for the Proposed Development (see **Paragraph 3** of **REP3-052**).

1.1.2 Importantly however, there is still no suggestion that the Authority *objects* to the Proposed Development in terms of principle. Further, all its various complaints are directed at issues related to compulsory acquisition.

1.1.3 The Authority has submitted the following documents to the Examination:

- Relevant Representation dated 1 February 2019 (**RR-029**);
- Written Representation, together with 9 annexures, dated 20 May 2019 (**REP2-093 – REP2-103**) ("**Written Representation**");
- Additional submissions handed in at the Compulsory Acquisition Hearing (**"CAH"**) dated 6 June 2019 and accepted at the discretion of the Examining Authority ("**Additional Submissions**"):
  - Legal Submissions (**AS-016**);
  - Preliminary Submissions in respect of protective provisions (**AS-017**);
  - Annex to the Preliminary Submissions in respect of protective provisions (**AS-018**); and
  - Authority letter to the Applicant dated 4 June 2019 (**AS-019**).
- Written Summary of oral representations made at the CAH dated 6/7 June 2019 (**REP3-051**) (**"Written Summary"**).
- Comments on the Applicant's responses to Relevant Representations and the Examining Authority's Written Questions' (**REP3-052)**;
- RRRL Protective Provisions – WRWA proposed amendments **(REP3-053)**.

1.1.4 The Applicant has responded to the Authority's Relevant Representation (**REP2-054**) and Written Representation (excluding the annexures) (**REP3-022**).

1.1.5 This document responds to the Authority's Annexures to the Written Representation, the Additional Submissions handed in at the CAH and the Written Summary of oral representations.

1.1.6 The Applicant and the Authority are in ongoing negotiations and expect to reach an agreed position, with the objective being that the Authority can withdraw its objection prior to the close of the Examination. Indeed, notwithstanding the concerns that the Authority voices regarding the prospect of agreement being reached (see paragraph 5 of **REP3-052**), the position as of today's date is that on 15 July 2019 the constituent councils of the Authority provided delegated authority to the officers to finalise a deal with the Applicant within certain parameters ('the **Agreement**'). If the Agreement is completed as anticipated, it will provide for the Authority to withdraw its objection to REP. As such, the Applicant now fully expects those remaining areas of disagreement to be resolved.

1.1.7 Accordingly, whilst this document now sets out the Applicant's response to the formal position of the Authority, such response is only provided on a precautionary basis, having regard to the fact that – as matters currently stand – the Authority's objection remains 'live' and the Agreement is still to be completed. Once the Agreement reaches completion the relevance of many of the matters addressed in this document will fall away.

1.1.8 The only further, overarching observation which the Applicant makes before turning to the substance of the Authority's current, stated objection, is that it is the Applicant's position that the vast majority of the issues raised by the Authority are 'commercial' points which fall outside the scope of the Compulsory Acquisition Hearing and the Examination generally, and therefore outside the consideration by the Examining Authority/Secretary of State as to whether to grant compulsory acquisition powers. In this document, the Applicant seeks to identify those points which are 'commercial' in nature, and those which are relevant to the Examining Authority's/ Secretary of State's assessment of the compulsory acquisition issue and the impact of REP on the Authority.

2 NEGOTIATIONS

2.1.1 The Applicant has responded to the Authority's submissions in relation to the "Negotiations Issue" in some detail at paragraphs 3.5.23 to 3.5.29 in the **Applicant's responses to Written Representations** (**8.02.14; REP3-022**).The Applicant also attaches at **Appendix A**, a Schedule of Negotiations with the Authority. However, as the Authority augmented its submissions at the CAH and has submitted the Written Summary summarising these submissions (see paragraphs 69 to 81 of the Written Summary), the Applicant considers it necessary to respond to the submissions made by the Authority again in this document. In particular, the Applicant strongly refutes the contentions at paragraphs 80-81 of the Written Summary**.** In summary they are:

- Compulsory acquisition is being used as a first rather than last resort by the Applicant;
- The Applicant is attempting to use the DCO regime to undermine key components of the contractual relationship between the Applicant and the Authority; and
- No meaningful offer capable of acceptance by the Authority (acting reasonably) had been made prior to the date of the CAH.

2.1.2 The Authority's submission at paragraph 79 of the Written Summary notes that "*Applicants should seek to acquire land by negotiation wherever practicable*", consistent with the "general rule" set out at paragraph 25 of the DCLG document entitled 'Guidance related to procedures for the compulsory acquisition of land' dated September 2013 (the **"Guidance"**). The Applicant has sought to acquire the Authority's leasehold interests in plots 02/02, 02/09, 02/11, 02/16, 02/17, 02/30, and 02/56 (the **"REP Required Land"**) by negotiation, and indeed, considers that it is close to agreeing a settlement with the Authority to this effect. However, the Authority has sought from the beginning of consultation and discussions to link commercial – and extra-contractual – matters with the acquisition of its leasehold interest rights. As the Applicant has sought to accommodate the Authority (as its major and long-standing customer) in this regard, discussions have been long, detailed and complex.

2.1.3 The first point to make, therefore, is that the Applicant maintains robustly that its approach to the acquisition of relevant interests – in particular those of the Authority – required in connection with REP, has been entirely in keeping with the spirit and direction provided in the Guidance.

2.1.4 The Applicant considers it is no longer helpful to dissect individual letters, nor respond directly to paragraphs in which the Authority has extracted aspects of selected correspondence to support its argument. Instead, the Applicant wishes to summarise the extent of the discussions between the parties to illustrate the genuine attempts to come to a comprehensive, holistic deal with

the Authority addressing land rights, contractual amendments and a commercial settlement. The full schedule of negotiations is contained in **Appendix A**:

- The Applicant first shared its ideas for the Proposed Development with the Authority in August 2017 and *formally* presented its plans for the REP development to the Authority at its board meeting on 22 November 2017, being the same time it notified PINS of its intention to submit an application in circa one year's time. Prior to and following this formal meeting, the Applicant had various informal discussions with Mr Broxup (General Manager for the Authority) on the issue, some of which have been captured in the Schedule of Negotiations in **Appendix A**, others of which were verbally during other meetings with Mr Broxup (whom the Applicant has regular dialogue with on a wide range of issues relating to the services it provides to the Authority).

- The Applicant provided a further presentation to the Authority's constituent council board meeting in November 2017 which included an overview of the proposed HZI Kompogas AD technology for REP. The Authority provided details of actual and forecast food / green waste tonnages for the proposed Anaerobic Digestion facility in December 2017.

- The Applicant initiated more comprehensive discussions with the Authority in February and March 2018, some months before submitting its application to the Secretary of State. As the Authority has always made it clear that it wished the Applicant to address commercial/contractual matters, as well as matters regarding the leasehold interests in land, the Applicant took the view that all matters were best addressed in a single deal rather than the land rights acquisition issue being addressed earlier and separately, and believed that the Authority wished for this also.

- The Applicant, through its agent Ardent, issued an RFI to the Authority on 30 April 2018. Ardent followed up with the Authority in May 2018, and after determining that the Authority may not have received the RFI, the relevant documents were forwarded directly to the Authority by email. The Applicant chased a response to the RFI later in May, and a response was received in early June. As a consequence, Section 42 documentation was issued to the Authority on 12 June 2018.

- The Applicant and the Authority exchanged various emails on the matter through July 2018. The Authority's response to Section 42 commented that the Applicant should not be awarded compulsory acquisition powers over Riverside Resource Recovery Limited's (**"RRRL"**) land but did not elaborate, nor did the Applicant receive any further separate correspondence from the Authority explaining its position in any detail.

- In August 2018, the Applicant introduced the REP project.

- During the remainder of 2018, the Applicant and Authority were in regular contact and held complex negotiations in relation to the refinancing of

RRRL's Riverside Resource Recovery Facility (**"RRRF"**). Verbal updates in relation to the proposed REP development were provided at various meetings, however no formal records of these were made. The Authority understood that a comprehensive offer in relation to the proposed REP project, including in relation to the acquisition of the REP Required Land, would be made to the Authority following the conclusion of RRRL's refinancing.

- Ahead of submitting its application to the Secretary of State on 21 November 2018, the Applicant as a courtesy informed the Authority of its intention to do so.

- Shortly following the Christmas break (during which the Applicant was working with its new shareholders and board to develop an appropriate, comprehensive offer to make to the Authority – which went beyond land issues and into significant, substantive commercial issues) the Applicant initiated further discussions with the Authority. The Authority first raised its concerns regarding change of law, particularly the one anticipated in Defra's Waste and Resources Strategy relating to food waste, informally during this time (4 January 2019).

- A meeting was arranged for 28 February 2019, ahead of which the Applicant shared a detailed presentation with the Authority. The purpose of the meeting was to present the development and the issues as the Applicant saw it, to allow the Authority to identify any and all concerns it had with the REP development. This meeting helped to inform the Applicant of the matters that it should address in a comprehensive deal, allowing the Applicant to develop and agree its offer further with its new board and shareholders.

- A letter was sent to the Authority on 24 March 2019 which sought to address all concerns raised by the Authority at the February 2019 meeting (land, loss of security, change in law, shared assets, avoiding benefits, sale of heat, and termination) accompanied by a financial model. Certain matters were addressed in more detail than others, due to the complex nature of the commercial deal to be struck. The form of letter and engagement was similar to that of previous deals struck with the Authority, so the Applicant had no cause to believe that the Authority would be unhappy at the manner in which discussions had progressed to this stage.

- The Applicant acknowledges that complications remained in respect of the package of measures provided to the Authority on 24 March 2019. The complexity of the deal to be done, the detail to be worked through, and the Applicant's previous experience in dealing with the Authority (with most commercial negotiation to occur in person), meant that this was always going to be the case. However, the letter included meaningful offers to address each of the Authority's concerns and form the basis of further discussions, in particular the parts of the letter relating to land issues (and therefore the subject of compulsory acquisition of the REP Required Land).

- The Applicant did not receive a substantive response to its March 2019 letter. Instead, it received on 5 April what the Applicant perceived to be a series of issues but no real solutions to be worked through. The Applicant repeatedly asked for detailed responses from the Authority in reply to the detail proposals made in its March 2019 letter, so as to facilitate discussions on a comprehensive agreement covering all outstanding matters.

- The Applicant delivered a further letter to the Authority in draft on 11 April 2019, which was followed immediately by a meeting to discuss this draft. The purpose of sending the letter in draft was to ensure that the Authority's feedback was addressed to the greatest extent feasible in the final form of the letter sent on 24 April. Supporting documents, and further discussions, followed over the following weeks to progress negotiations. This included a proposed amendment to the change of law provision within the waste management services contract (**"WMSA"**) that exists between the Authority and Cory Environmental Limited (a separate entity within the Cory Group[1]), the draft Master Interface Agreement, the draft RRRL protective provisions to be attached to the draft Development Consent Order ("**DCO**"), the draft binding deed of understanding and other proposals for ensuring that the deal made between the Applicant and the Authority would be binding (noting that the project required consent from funders to go ahead, as is usual in a large project financed infrastructure project).

- The Applicant received a response to its letters on the evening of 4 June 2019, a day before the CAH. This letter, to a very limited extent, further explained the Authority's position but did not respond in any substantive manner to the offers made in the letters from the Applicant earlier that year.

- The Applicant received the first substantive response to its letters on 12 June 2019, which (along with the various correspondence sent by the Applicant to the Authority previously) would form the basis of discussions held on 17 June. This was the first time that the Applicant had the opportunity to fully understand all of the Authority's concerns in a way that would allow the Applicant to properly address them. Since the meeting on 17 June 2019, discussions have progressed constructively and at pace, with both parties of the view that reaching an agreed position shortly is achievable, with the objective being that the Authority can withdraw its objection prior to the close of the Examination.

2.1.5 It is important to note that the REP development will not undermine any of the key components of the WMSA. All of the services being provided to the Authority will continue to be provided for the same fee and on the same terms as before. Any adverse consequences for the Authority will be mitigated through a series of contractual amendments as well as through the protective

[1] As defined within paragraph 1.2 of the **Funding Statement** (**4.2, APP-017**)

provisions in favour of RRRL within the DCO. The Applicant would not be carrying out or promoting the development of the REP project if this were expected to have any material adverse effect upon the provision of services under the WSMA or the Cory Group's ability to meet its contractual obligations.

2.1.6 As is evident from the above, the Applicant has never intended to undermine the contractual relationship between the Cory Group and the Authority.

2.1.7 The fact that offers made by the Applicant to the Authority at earlier stages of the negotiations were not immediately to the satisfaction of the Authority does not mean they are lacking in substance. The Applicant has made substantial efforts to understand the requirements of the Authority in order to be able to formulate an appropriate commercial offer. However, in any negotiation, the two sides will have different perspectives on the same set of facts, and then need to work through any differences to come to an acceptable solution. Importantly, as the process has developed, the Applicant has better understood the Authority's concerns the more that the Authority has engaged in the process, which has been constructive for both parties.

3 RELEVANT ISSUES FOR EXAMINATION

3.1 Statutory undertaker status

3.1.1 The Authority contends that it is a statutory undertaker for the purposes of section 127 of the Planning Act 2008 (**"PA 2008"**).

3.1.2 The Authority's position to support its contention that it is a statutory undertaker is set out in its **Legal Submissions (AS-016)** and the Written Summary. In summary those are:

a. Article 21 of the draft DCO would authorise the compulsory acquisition of the Authority's leasehold interest in various plots listed in its Written Representation at page13 paragraph 39.

b. The leasehold interest was acquired by the Authority pursuant to the Waste Management Services Agreement for the purpose of its undertaking and is held by the Authority as such.

c. The Authority is authorised by statute[2] to carry on its undertaking, and does so directing constituent authorities to deposit waste to its docks; and arranging for Cory to transfer waste, under contract and on its behalf via water transport on the River Thames.

3.1.3 The Examining Authority has already heard and received detailed submissions from the Applicant in respect of its position that the Authority is not a statutory undertaker for the purposes of section 127 of the PA 2008. Those submissions are not repeated in full in this document, but should be read in conjunction with this representation. The relevant documents are the **Oral Summary for the Compulsory Acquisition Hearing** (**8.02.21, REP3-029**) and **Paragraphs 3.5.14** to **3.5.22** of the **Applicant's Response to Written Representations** (**8.2.014, REP3-022**).

3.1.4 In summary, section 127 of the PA 2008 defines statutory undertakers by reference to Section 8 of the Acquisition of Land Act 1981 (**"ALA 1981"**). The relevant provisions of section 8 of the ALA 1981 state:

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,

3.1.5 Section 8(1)(a) is clear that the term "statutory undertaker" refers to a person "*authorised by any enactment to construct, work or carry on…*" one of the cited

[2] Waste Regulation and Disposal (Authorities) Order 1985. It is said that its powers and duties are primarily derived from section 51 of the Environmental Protection Act 1990

types of undertaking. In this instance, the Authority says its undertaking is the working of docks and water transport. This is simply not the case; the Authority's undertaking is a waste undertaking. In this regard there must be a specific enactment authorising the construction and operation of the relevant undertaking. The only relevant enactment which exists in the present case is concerned with waste.

3.1.6 The Authority is seeking to confuse the position by referring to its "undertaking" as being both waste disposal, which it is authorised by enactment to undertake, and as water transport, which it is not authorised by enactment to undertake. Simply "inheriting" riparian waste transfer stations, including docks, does not make the Authority a statutory undertaker under section 8 of the ALA 1981, as it is not authorised by enactment to work water transport or docks. What the Authority fails to understand is that there is a significant, legal distinction between a "statutory body" and a "statutory undertaker." The former is not within section 127 of the PA 2008; the latter is.

3.1.7 By reason of this issue alone, as a matter of law it follows that Authority is not a statutory undertaker for the purposes of section 8 of the ALA 1981 / section 127 of the PA 2008.

3.1.8 The expansive application of section 8, as advanced by the Authority, is simply not justified. Such an interpretation would be in conflict with the words of the statutory provisions.

3.1.9 The Applicant has also made the following points:

3.1.10 The Authority does not work any docks. The Authority owns the freehold to Cringle Dock and Smuggler's Way Waste Transfer Stations (WTS) but it does not work these WTSs – Cory Environmental Limited (an entity in the Cory Group) does and has a right to until 2032. Cory presently operates additional riparian transfer stations at Northumberland Wharf, Walbrook Wharf and Tilbury, which are also used for transporting waste to the RRRF. These WTS are used to transport waste on the river for the City of London, the London Borough of Tower Hamlets, the London Borough of Bexley and the City of Westminster, amongst others. The RRRF is not therefore totally reliant upon the Authority's riparian transfer stations.

3.1.11 The tugs and/or barges that are used by Riverside (Thames) Limited (a subsidiary of RRRL and part of the Cory Group) to transfer waste from the WTSs to the existing RRRF are owned by RRRL, not the Authority. Thus the Authority has no role in the transport of waste by water. In contrast, the Cory Group has operated a lighterage service on the River Thames since 1896 and has transported waste on the river continually for the last 40 years, since prior to the Authority's formation

3.1.12 The Authority's statutory role and purpose is to dispose of waste; it is not a water transport or dock undertaking. How the Authority opts to dispose of waste is not determined by statutory provision; it is a matter of election for the Authority. That the Authority elects to dispose of waste via a contract with a

third party that utilises docks and water transport as its solution does not render it a water transport undertaking / dock undertaking as there is no enactment authorising the Authority to construct, work or carry on the water transport and/or dock undertaking.

3.1.13 It cannot have been the intention of Parliament that this 'election' on the part of Authority means that it is conferred with the status of statutory undertaker. Such application of the legislation would mean that whilst the Authority has the status of statutory undertaker, the East London Waste Authority (which has not elected to have its waste transferred by means of docks and river) does not have that status, notwithstanding that both organisations were created by the same statutory instruments/enactments. Similarly, it would mean that the Authority is currently a statutory undertaker, but would lose/regain that status periodically depending on how they elected to dispose of their waste in any particular year (i.e. whether or not they elected to contract that their waste be transferred by way of docks/river). Again, such is clearly not a sensible approach to the legislation.

3.1.14 Indeed, if one pursues the Authority's argument to its ultimate conclusion, (i.e. that they are a water transport undertaker, because waste for which they have statutory responsibility for is transported by water), then such argument would also make West London Waste Authority a railway undertaking on the basis that its waste is transferred from waste transfer stations in the capital to Severnside in Avonmouth by rail. Such proposition is clearly incorrect.

3.1.15 On the basis of the foregoing, the Applicant is entirely satisfied that the Authority is not a statutory undertaker for the purposes of section 127 of the PA 2008, rather it is a *statutory body* for the purposes of waste disposal, just like a local authority is a statutory body (a local authority is not a statutory undertaker).

3.1.16 The Applicant notes the various arguments set out by the Authority in Paragraphs 6 – 16 of the Written Summary. Notwithstanding that document contains submissions which go beyond what was stated by the Authority's team at that Hearing (for example, at paragraphs 13-15 the Authority now seeks to respond to matters raised by the Applicant at the Hearing), it contains no argument of substance; there is nothing which advances the Authority's case beyond that position which it adopted at the Hearing, which position is misconceived (see further below).

3.1.17 Further and in any event, even if the Examination were to accept the Authority's (misconceived) position that it is a statutory undertaker, the Authority has not demonstrated how the compulsory acquisition of its leasehold interest at the REP site has any effect whatsoever, let alone "serious detriment", on its alleged statutory undertaking, (which would be water transport and / or dock undertaking, not waste disposal).

3.1.18 The reason why the Authority does not demonstrate this is because there is no material connection between the development of REP and the riparian transfer stations in Battersea and Wandsworth.

Authority's Written Summary

3.1.19 As noted above, the position of the Authority has been developed in the Written Summary. We respond below to the additional points raised.

Specific Statutory Purpose

3.1.20 It is the Authority's position that it inherited the riparian transfer station including docks from the GLC and therefore it must have been Parliament's intention that it used those waste transfer stations and docks to effect the disposal of waste and transfer by water. In support of this contention it refers to paragraph 1 of the Local Government Reorganisation (property etc.) (No.2) Order 1986 which states that: *Any reference in this or the principal order to the vesting of land shall be construed as including a reference to the vesting of any right to the use or occupation of land conferred by any statutory provision*

3.1.21 The Applicant does not consider that the additional submissions change the position at all. Fundamentally, the Authority has not been able to demonstrate that there is any enactment that enables it to establish a dock or water transport undertaking thereby bringing it under section 8 of the ALA 1981.

Operation of docks/barges

3.1.22 The Authority accepts that Cory operates the waste transfer stations, the docks and transport waste by water, all under contract from the Authority. It also notes that it owns the freehold of the docks following inheritance of the asset from the GLA.

3.1.23 This does not change the Applicant's position as set out above, that is to say that this does not make it a statutory undertaker under the definition of section 8 of the ALA 1981.

3.2 Waste capacity protection

3.2.1 Paragraphs 40, 41 and 68 of the Written Summary note that the development of a competing waste facility may impact on a provision in its Residual Value Agreement (**"RVA"**) with RRRL relating to the capacity it can reserve at the RRRF for disposal during the residual value period ((2032-2046).

3.2.2 There are a number of points to make in this respect. First, the development of the new REP facility would not have a material impact on the UK waste market (due to the significance of the waste treatment capacity gap), so the Authority's competition concerns are unfounded. Whilst competition is not a relevant planning or compulsory acquisition matter, as the Applicant has shown in **The Project and Its Benefits Report (APP-103)** and the **Supplementary Report to the Project and Its Benefits Report (REP2-045)**, there a clear need for REP in order to bring waste higher up the Waste Hierarchy and to deal with capacity gap, not forgetting the electricity it will generate.

3.2.3 Second, the issue which the Authority seeks to raise is a commercial matter that is not properly the subject of consideration by the Examining Authority/Secretary of State at a Compulsory Acquisition Hearing (we refer to it here, as it is linked to waste capacity as referred to above). In this regard, the provision in the RVA relating to the calculation of capacity to be reserved has no connection whatsoever with the interest in the REP Required Land that is sought to be acquired and so the "security" contention is spurious. The Authority will continue to hold a lease over the remaining RRRL site, acting as a mechanism to ensure that RRRL complies with the RVA and the Authority receives its residual rights. **This matter is not for the Examination.**

3.2.4 Furthermore, the Authority's concern regarding the drafting of the calculation of its reserved capacity at RRRF during the residual value period (a) exists irrespective of REP and (b) is a concern that is entirely capable of being addressed through a simple amendment to the RVA between the Authority and RRRL. Once the Authority clearly articulated its concerns to the Applicant on 12 June 2019, this point was able to be easily addressed during subsequent discussions resulting in an agreement to amend the drafting in the RVA to ensure that the Authority will have the reserved capacity that it requires, even if overall waste volumes decline at RRRF. Therefore, the existence of REP will have no detrimental impact the Authority's ability to meet its statutory duty to dispose of waste in the future.

3.3 Disruption to RRRL Facility during construction and operation of REP

3.3.1 The technical note submitted as Annex 8 to the Authority's Written Representation (**REP2-102)**, prepared by Wood, is identified by its authors as being "*a rapid review and high level analysis of the potential technical impacts arising from the proposed development of Riverside Energy Park (REP)*". This statement highlights the limited scope of the technical note and the limited weight that the Secretary of State can place on the document.

3.3.2 The assumptions set out in **Section 1.2** of the technical note confirm that the review is based on a limited selection of publicly available information, that no site visit has been undertaken and that desk-based information is assumed to be accurate without further verification. Wood also notes, in paragraph 2.1.2 that "*scoring of risks has not been undertaken at this stage, as it would necessitate a more detailed understanding of the two facilities and underlying contractual arrangements*". It is therefore evident that the author's understanding of both physical infrastructure present and the existing and proposed contractual arrangements is insufficient to warrant a comprehensive and valuable appraisal.

3.3.3 Wood has identified twelve construction phase risks and thirteen operational phase risks associated with the Proposed Development. Wood opines on the effect each risk would have on RRRF and the resulting consequences for RRRF operations. We have responded to each of these risks in the following tables.

Table 3.1: Applicant's response to REP construction phase risks

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
CONST-1	REP construction works disrupt utility supplies to RRRF – Utility connections for the REP require outages for gas/water/data that affect operation of RRRF, Significant excavations may be required; also impacting on traffic movements	The Applicant has developed an outline Code of Construction Practice (CoCP) which is secured through Requirement 11 of the **draft DCO** (**3.1, REP3-003**). This will manage the construction process and ensure that utilities are not adversely affected. In addition the DCO includes protective provisions in Schedule 10 which will ensure the protection of existing apparatus. All relevant parties (the Applicant, the preferred construction contractor and project manager) hold extensive details of existing underground utilities. The Applicant maintains a dialogue with utility suppliers. Therefore, the extent and location of utilities are well understood and can be avoided / protected as appropriate. The Applicant intends to procure REP under an engineering, procurement and construction (EPC) contract. This contract would set out the commercial, legal and technical terms of the engagement between the Applicant (as purchaser) and EPC contractor in delivering REP. The Applicant has engaged with a preferred EPC contractor in developing REP and intends to adopt a standard form of contract, as a balanced and relatively low risk approach to project delivery. Within the EPC contract would sit a headline agreement, general and special conditions, a technical specification and associated schedules. The technical specification would set out the scope of works and services to be delivered, the standards, allocation of responsibilities between parties, and the establishment of minimum requirements to be delivered in terms of functionality, quality and performance. The technical specification requires the contractor to ascertain the location and nature of any existing buried services / structures and to take all necessary precautions required to prevent damage or interference, including the production of risk assessments and method statements for proposed methods of working. The contractor is also obliged to provide a banksman to supervise all excavation

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
		works and to carry out excavation by hand in the vicinity of buried services. Legal obligations accord with safe dig practices including trial holes and ground penetrating radar scans. These requirements are covered by a number of different standards and guidance notes integrated within the technical specification which can be provided on request. Specifically regarding gas supply, RRRF relies on fuel oil delivered by tanker for its auxiliary burners and back-up generators, therefore there would be no risk of disruption to supply.
CONST-2	Electrical installation works up to the substation in Littleford and onward to Dartford cause disruption at the RRRF– Periods where the RRRF cannot operate at full capacity or at all	As response to CONST 1 Any required outage will be managed and communicated to all relevant parties as soon as possible to minimise disruption. As far as is possible, outages will be scheduled to coincide with RRRF planned maintenance outages. RRRF includes high resilience by virtue of its ability to process waste without exporting electricity, surplus storage capacity for incoming waste and residues, alternative waste acceptance and residue disposal routes (river and road). The likelihood of prolonged interruptions to waste processing capacity are therefore significantly reduced.
CONST-3	Capacity of receiving foul/surface water drainage needs to be increased for new development – Excavations required on RRRF site to reconstruct drainage	As response to CONST 1 (in respect of utility supplies). Site drainage has been reviewed in detail with the preferred construction contractor, and a drainage strategy has been developed in accordance with latest technical standards, National Planning Policy Framework, regional policy (Bexley Sustainable Design & Construction Guide (October 2007) and the London Plan, Policy 5.13, Sustainable Drainage), and Environment Agency guidelines. The existing watercourse network has been assessed to be capable of accepting surface water discharge from RRRF and REP. The existing REP Required Land is estimated to have 60% impermeable surfacing. As a result, the proposed

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
		drainage strategy, incorporating sustainable and effective methods, represents a significant reduction to the surface water flow relative to the pre-developed site. The Proposed Development would therefore result in a consequential reduction in flood risk at RRRF. Effluent, process water, washdown water, and (potential) contaminated surface water has been accounted for in the proposed foul drainage network and would be routed to a sedimentation tank for reuse in industrial processes. Foul water from welfare facilities would be routed to a wastewater treatment plant and treated effluent would be reused in industrial processes or discharged to underlying groundwater.
CONST-4	Disposal of groundwater causes flooding – Impacts on RRRF including disposal of surface water	As agreed in **Section 2.3** of the **SoCG with Environment Agency** (**8.01.03, REP2-049**), the need to apply for a Flood Risk Activity Permit will be disapplied as part of the DCO, with all necessary controls being provided for in the protective provisions for the benefit of the Environment Agency to be included in **Part 4** of **Schedule 10** of **the draft DCO (dDCO) (3.1; REP3-003**). This will include a requirement for the Applicant to notify the Environment Agency of any works anticipated within this area (both during construction and operation). A technical specification would be enacted as part of an EPC contract between the Applicant and EPC contractor, placing legally binding and commercially incentivised obligations on the contractor. The technical specification requires the contractor, through surveys and monitoring, to provide evidence that RRRF is protected from adverse impacts of groundwater. In addition, groundwater must be protected from contamination and if required, the groundwater must be treated prior to discharge and a temporary discharge consent applied for. These requirements are covered by other standards and guidance notes integrated within the technical specification.

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
CONST-5	Displacement of ground gas causes migration into RRRF – Ground gas entering building	A combined gas barrier and damp-proof membrane is provided under the substructure of RRRF buildings therefore ground gas migration is highly unlikely to impact RRRF operations. Ground conditions are well understood following continued ground conditions assessment, most recently **ES Chapter Ground Conditions (Rev 1) (6.1, REP2-027**), which concludes that following appropriate additional specific ground investigation, monitoring and assessment work (undertaken prior to commencement of construction) appropriate mitigation measures will be included in the construction of the Proposed Development where necessary. These, combined with protocols and specific personal protection measures to be included in the final Code of Construction Practice, result in the anticipated potential effects on all sensitive receptors being negligible. The Code of Construction Practice is secured by requirement 11 of the **DCO** (**3.1; REP3-003**). A technical specification would be enacted as part of an EPC contract between the Applicant and EPC contractor, and places legally binding and commercially incentivised obligations on the contractor. The technical specification requires the contractor, through surveys and monitoring, to provide evidence that RRRF is protected from adverse impacts of migrating ground gas. This requirement is covered by a number of different standards and guidance notes integrated within the technical specification which can be provided on request.
CONST-6	REP construction works damage flood wall – Breach of wall resulting in flooding of site	As set out in **Section 2.2** of the **SoCG with Environment Agency** (**8.01.03, REP2-049**), the Environment Agency is satisfied that the proposals accord with the Thames Estuary 2100 Plan and that the remedial works proposed within **Section 5.6** of the **Flood Defence Condition Survey Summary Report (Appendix E of the Flood Risk Assessment** (**5.2, APP-033**) are acceptable. A technical specification would be enacted as part of

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
		an EPC contract between the Applicant and EPC contractor, and places legally binding and commercially incentivised obligations on the contractor. In accordance with the technical specification, the contractor is responsible for the design and construction of all foundations for buildings and other structures, and must obtain all necessary approvals from the local authority and Environment Agency for installation of foundations prior to construction commencement. These requirements are covered by a number of different standards and guidance notes integrated within the technical specification which can be provided on request.
CONST-7	Insufficient space on new site for cranage and laydown areas for process plant and construction materials – Encroachment onto RRRF land	The Applicant is using a temporary construction compound for construction laydown and contractor welfare facilities. There is therefore no need to encroach onto RRRF land. Site access and laydown space has been reviewed in detail with the preferred construction contractor and a CoCP has been developed which is secured through requirement 11 of the **dDCO** (**3.1; REP3-003**).
CONST-8	UXO encountered during construction of new facility – Evacuation of site	A technical specification would be enacted as part of an EPC contract between the Applicant and EPC contractor, and places legally binding and commercially incentivised obligations on the contractor. The technical specification requires the contractor to engage a qualified advisor on UXO before piling or ground works commence. A risk assessment shall be conducted in accordance with Construction Industry Research and Information Association (CIRIA) Unexploded ordnance (UXO) A guide for the construction industry (C681).
CONST-9	Jetty has not been designed for increased frequency of vehicle movements associated with this proposal – Structural modifications or	The Applicant has commissioned an independent survey of the jetty capacity, **Middleton Jetty Ops Review Workshop Note** (**8.02.29, REP3-034**), which verifies that that all anticipated additional throughput can be safely accommodated while adopting conservative assumptions. The design basis of the jetty specifies a design life of 60 years for structural elements and a factor of safety of

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
	repairs required to jetty	between 2.0 and 2.5 for static capacities of the piles under varying loading regimes. The design approach is underpinned by a number of different standards. The jetty design therefore incorporates significant margins which would not be undermined as a result of projected additional vehicle movements. A technical specification would be enacted as part of an EPC contract between the Applicant and EPC contractor, and places legally binding and commercially incentivised obligations on the contractor. Further to the independent assessment already undertaken. The technical specification requires the contractor to verify the design loading and structural integrity of the jetty to achieve the design life of 25 years under the varied operational regime. These requirements are covered by a number of different standards and guidance notes integrated within the technical specification. This matter has been explored in detail through collaboration with the preferred construction contractor who undertook original structural design calculations, noting significant margins built into the original design.
CONST-10	REP construction works impact on RRRF operations, Replacement of Cranes – Delays in waste deliveries to RRRF and impact on operations, Delays to throughput on the Jetty and turnaround times	The Applicant has considered the impact of a jetty outage in its note submitted at Deadline 3 **Temporary Jetty Outage Review** (**8.02.31, REP3-036**), which concludes that Norman Road and the adjacent junctions on Picardy Manorway would operate with sufficient reserve capacity should both REP and RRRF need to revert to a temporary jetty outage scenario. The unlikely event of jetty outage is therefore not likely to give rise to waste delivery delays or throughput curtailment. A technical specification would be enacted as part of an EPC contract between the Applicant and EPC contractor, and places legally binding and commercially incentivised obligations on the contractor. The technical specification requires the contractor to undertake a site traffic management study, including vehicular tracking analyses to confirm that the scheme design layouts are suitable, and turning and access can be achieved to all areas

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
		by vehicles commensurate to the activities being undertaken. This requirement is covered by a number of different standards and guidance notes integrated within the technical specification which can be provided on request.
CONST-11	Peak periods of REP construction traffic may interfere with RRRF operational traffic – Delays in waste deliveries to RRRF, and impact on operations (staff, deliveries of consumables, offtake of APCR ash)	The majority of incoming waste deliveries and all offtake of incinerator bottom ash (IBA) is via the River Thames, therefore construction traffic has limited impact on such materials. Construction traffic impacts have been assessed within the Environmental Statement which identifies the need for an **Outline Construction Traffic Management Plan** (**6.3 Appendix L to B.1, REP3-010**) which identifies that the access strategy for the construction site would include safe corridors for REP construction workforce and RRRF employees, including coordination to ensure minimal impact with clear directional signing provided as part of the temporary traffic management. Preferred traffic management would be determined during detailed design as part of the CTMP. A technical specification would be enacted as part of an EPC contract between the Applicant and EPC contractor, and places legally binding and commercially incentivised obligations on the contractor. The technical specification requires the contractor to undertake a site traffic management study, including vehicular tracking analyses to confirm that the scheme design layouts are suitable, and turning and access can be achieved to all areas by vehicles commensurate to the activities being undertaken. This requirement is covered by a number of different standards and guidance notes integrated within the technical specification which can be provided on request.
CONST-12	REP construction works impact on RRRF operations – Delays in waste deliveries to RRRL. And impact on	See response to CONST11.

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
	operations (staff, deliveries of consumables, offtake of APCR ash).	

Table 3.2: Applicant's response to REP operational phase risks

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
OPS-1	New development exacerbates flood risk on RRRF – Unable to access site during flood and/or flood damage	As set out in Table 3.1, risk ID CONST-3 and CONST-4.
OPS-2	REP operational traffic to/from jetty could cause congestion – Vehicle congestion if jetty cannot satisfy increased demand and delays in waste deliveries to RRRL, Barge movements to/from RRRL are disrupted if unloading is delayed	As set out in Table 3.1, risk ID CONST-10.
OPS-3	Jetty cranes do not remain operational under increased load – Outages required to repair cranes	As set out in Table 3.1, risk ID CONST-9 and CONST-10.
OPS-4	REP staffing requirements may place a high demand on the skilled labour force currently employed at the RRRF – Increased labour costs and difficulty in retaining staff due to the proximity of a competitor for available specialist labour	Concern over increased labour costs is not a valid planning or compulsory acquisition objection. It is plainly an anti-competition comment. REP will have socio-economic benefits, as set out in paragraph 1.1.7 of **The Project and its Benefits Report (7.2, APP-103)**. REP would create approximately 85 new jobs in addition to the 365 people already employed by Cory in London.

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
OPS-5	REP construction works impact on RRRL operations with the removal of the current ash storage and container area – Reduced ash storage capacity for both facilities	The proposal put forward in the original RRRF application was that incinerator bottom ash (IBA) would be immediately moved to a storage area and then transported offsite via the jetty. However, RRRF does not operate in that way, therefore the event described would not give rise to an operational interruption. IBA is ejected from each boiler line into a common ash bunker, which is sized to accommodate approximately one week of IBA when RRRF is operating at full capacity. IBA from the bunker is loaded into containers and the containers are transported directly to the barges, via the jetty, for transfer to the Port of Tilbury. The storage capacity within the bunker is capable of storing ash in the unlikely event of jetty outage for all but major events.
OPS-6	Increased discharge to sewer as a result of the operation of the REP could result in overloading of the oil/water separators – Enforcement action form the Environment agency	RRRF does not have a sewer connection and neither would REP. Both facilities would be operated on the basis of zero effluent discharge, incorporating onsite sewage treatment units and recovery of sanitised effluent into the process via the slag water basin. Effluent can also be discharged by vacuum tanker for removal from site. Permitted discharges would be updated to account for REP operations under its Environmental Permit.
OPS-7	The AD facility will have flammable biogas, and other hazardous chemicals stored onsite – The presence of the management and storage of biogas and other dangerous substances bring an increased risk of fire and or	Hazards associated with the proposed anaerobic digestion facility are no greater than those currently managed successfully at RRRF, for example flammable welding gases, fuel oil, flue gas treatment reagents, etc. The anaerobic digestion facility is

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
	explosion.	proposed to be located at the maximum possible distance from RRRF on the site and will be designed to the relevant safety standards. Legal obligations include the need to conduct a hazard and operability study (HAZOP), comply with the Construction Design and Management (CDM) Regulations, and to establish zoning in accordance with equipment and protective systems intended for use in potentially explosive atmospheres (ATEX). A fire prevention plan will be established at the site as required under the Environmental Permit. Both construction and operational phase insurers will need to be satisfied that risks are controlled.
OPS-8	Increased use of Norman Road by REP, Increased risks of road accidents – Delays in waste deliveries to RRRL and impact on operations	As set out in Table 3.1, risk ID CONST-11.
OPS-9	REP tugs pulling barges into place, Increased chances of accidents/near miss, Delays in waste deliveries to RRRL and impact on operations, Environmental risk	As set out in Table 3.1, risk ID CONST-9 and CONST-10.
OPS-10	The local CHP opportunities do not support both the REP and RRRF – REPL Facility will either not secure CHP outlets, or utilise those which RRRL Facility may otherwise have delivered	The Applicant has responded in detail to the benefit of combined heat and power (CHP) operation, and specifically the volume of heat demand in the region. This detail is set out in the **Combined Heat and Power Supplementary Report (5.4.1, REP2-012)**. In summary, the Applicant's heat demand investigation and economic assessment are underpinned by and

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
		support the requirements of the national, regional and local policy position in relation to the provision and/or opportunity for CHP. Assessments are carried out in accordance with applicable Government and Environment Agency guidance and toolsets. The Applicant therefore considers that the assessments are robust. The conclusions of the analysis indicate that there is sufficient heat demand in the region to warrant heat supply from both REP and RRRF. This conclusion is mirrored by Ramboll in its independent Phase 2 feasibility study - Thamesmead & Belvedere Heat Network Feasibility Study: Work Package 2' (**REP2-073**)**,** submitted as Appendix 2 to the GLA's submission at Deadline 2.
OPS-11	REP would be in direct competition with the RRRL Facility for securing waste supplies – The RRRL facility receiving lower waste stream quantities or quality	This is not a comment about "need" or about the waste capacity gap, rather this comment is once again concerned with competition, which is not a relevant consideration in the context of the Authority's objection. In any event, an interface agreement / waste supply agreement is being negotiated between the parties.
OPS-12	REP will generate quantities of increased IBA – Increased demand for local and competitively priced IBA processing capacity	IBA generated by REP (approximately 25% of throughput, or 163,750 tonnes per annum) would be processed at the existing IBA offtake site at the Port of Tilbury. The disposal route for IBA is secure and sustainable in the long-term. In the unlikely event of fall away of the IBA offtaker, a healthy market exists for IBA recycling and alternative outlets exist.

Risk ID (Wood)	Risk event – effect (Wood)[1]	Applicant response
OPS-13	REP will generate increased quantities of ACPR – Increased demand for local and competitively priced disposal and / or recycling processing capacity	Air pollution control residues (APCR) generated by REP (approximately 3% of throughput, or 19,650 tonnes per annum) would be discharged to collecting silos and transported from site in tankers for recycling at specialist treatment facilities. There are established markets within the construction sector for APCR, such as the existing treatment solution offered by Carbon8, so it is feasible that contracts would be secured without difficulty for this relatively small additional volume.

3.4 Need

3.4.1 The issue of need was extensively considered at the Issue Specific Hearing on 5 June 2019 and it is noted that the Authority did not attend that hearing so will be unaware of the details of the Applicant's need case. This is presented primarily in:

a. London Waste Strategy Assessment ("LWSA"), **Annex A** of the **Project and its Benefits Report** (**7.2, APP-103**)**;** and

b. the **Supplementary Report to the Project and its Benefits Report** (**7.2.1; REP2-045**).

3.4.2 The Applicant does not agree that there is any uncertainty about the level of need for REP. The Applicant has consistently demonstrated, and most recently confirmed at **Section 2 and Appendix A of the Applicant's responses to GLA Deadline 3 Submissions (8.02.35)** that even when the GLA's challenging waste reduction and recycling targets are met, there remains still a need for c.900.000 tonnes of additional residual waste recovery infrastructure in London. Beyond London, within the South East there remains a further need for at least 1.5 million tonnes of new residual waste treatment capacity.

3.4.3 To be clear, the Applicant's assessment incorporates the assumptions that the GLA's waste reduction and recycling aspirations will be met and that RRRF will continue to operate at its permitted capacity of 785,000 tonnes per annum.

3.4.4 There remains a very substantial level of need for new, residual waste treatment capacity such that there can be little uncertainty regarding the

sufficiency of waste to supply both REP and RRRF now and into the future. This is not a material consideration.

3.4.5 In any event, the Examination can note that the Authority does not disagree with the Applicant in this regard. Indeed, at the CAH the Authority publically stated that it did not agree with the GLA's position alleging a 'lack of need' for the facility. This aligns to the Authority's letter to the GLA dated March 2018, in which it said:

"For sound environmental reasons landfill capacity is disappearing…if London fails to meet the Mayor's 65% recycling target, which recent research suggests is unlikely to be met, or if Brexit prevents export to Europe of residual waste, London will probably experience a significant shortfall in treatment capacity";

"…it is the strategic significance of EfW which is so important to London".

3.4.6 Accordingly, "need" is not an issue between the Applicant and the Authority.

3.5 Change in law protection

3.5.1 The Authority contends in paragraph 8 of Annex 2 to the Authority's Written Representation (**REP2-102**) and paragraph 51 of the Written Summary that paragraph 6.1A of Schedule 15 of the WMSA "*affords rights to WRWA over the unused section of the site*". This is not strictly true. This clause does not give the Authority any rights over the REP Required Land. It merely indicates that RRRL should make available such land for the purposes of addressing an EfW Authority Change in certain circumstances.

3.5.2 However, any such use of the REP Required Land will still be subject to:

- all other considerations affecting the use of this land in terms of its size, nature and quality etc;
- planning and permitting requirements which may be imposed by the London Borough of Bexley and the Environment Agency respectively;
- the ability of the Authority and/or Cory Environmental Limited (**"CEL"**)/RRRL to obtain finance for such a development.

3.5.3 Furthermore, any use of this land to deal with an EfW Qualifying Change in Law would be undertaken by RRRL as the tenant of the site. Therefore, the site would not be available for the Authority's own use, as suggested by paragraph 8 of Annex 2 to the Authority's Written Representation.

3.5.4 Contrary to the assertion made by the Authority at paragraph 8 of Annex 2 to the Authority's Written Representation, as augmented at the CAH (refer to paragraphs 36-39 of the Written Summary), the Applicant does not accept that any importance was placed by the Authority on "*maintaining a spare footprint capacity at the site to mitigate its future needs*" when the arrangements for RRRF were being drawn up. The REP Required Land is land that formed part of the RRRL development site and there was never an obligation on RRRL to

provide this land for change in law – the land purchased for the development merely happened to be a larger size than required. Once the designs of the plant were settled and it became known that there was additional land at the Belvedere site, however, the Authority, as an incentive for indirectly funding the costs of the RRRL development, asked that such land should be made available to cope with any future change in law. Therefore, the reality is that the identification of the REP Required Land for this purpose was something of an afterthought, as illustrated by the numbering of paragraph 6.1A of Schedule 15. The Applicant believes that the Authority has subsequently come to the conclusion that this is an important purpose of the REP Required Land, but this was never the original intention of RRRL acquiring additional land when the RRRF was first mooted.

3.5.5 However, irrespective of the differing views as to the intention of the original leases, in recognition that the sale of the REP Required Land from RRRL to REP will impact paragraph 6.1A of schedule 15 of the WMSA, the Applicant has made a number of proposals to protect the Authority's change in law position. The details of these proposals are commercially sensitive and confidential, however in summary:

- The Applicant has offered an indemnity in relation to any incremental costs incurred by the Authority as a result of the REP Required Land not being available to address certain changes of law as anticipated by the WMSA. It has also offered that this indemnity be backed by a parent company guarantee. This is the primary financial protection for the Authority.

- The Applicant has offered the Authority terms for an option in respect of AD capacity at the REP facility.

3.5.6 In terms of RRRL being able to respond to future changes of law that may occur up to the end of the residual value period (to 2046), the Applicant notes that CEL/RRRL's contracts with the Authority will still respond to changes of law adequately. For example, paragraph 38 of the Written Summary states that the REP Required Land may be used for additional infrastructure to address changing emission standards or the need to pre-treat waste prior to it going into the RRRF. In the Applicant's view, such additional plant can adequately be housed on the remaining RRRL site or elsewhere, without requiring the REP Required Land to be used for this purpose.

3.5.7 To reiterate, the substantive (and very detailed) provisions in the WMSA relating to change of law, which are based on PFI/PPP deals, are not affected by the development of REP. CEL/RRRL (as applicable) must still work with the Authority to modify the services to address any change in law. The likelihood that a change in law affecting EfW facilities generally would necessitate the existence of a piece of land next to every EfW is extremely low. To the best of the Applicant's knowledge, none of the other 40+ operational EFW facilities across the UK retain additional land in order to manage change in law risk. The Applicant believes that reserving additional land for this purpose on an adjacent site is unnecessary and excessively risk averse. For the government to introduce such a piece of legislation would be absurd as it would potentially

result in the shutting down of multiple working facilities, resulting in the widespread landfilling of municipal waste across the UK.

3.5.8 To conclude, the Applicant does not consider it is reasonable for the REP Required Land to remain unused for a period of potentially 27 years, in the very unlikely event that a change of law may require a different type of facility to be developed or for the existing RRRF to be modified in such a way that would utilise this surplus land. As far as the Applicant is aware, none of the existing 40+ operational energy from waste facilities across the UK have reserved separate parcels of land adjacent to their site in order to address any future changes in law and we believe that any such provision would be excessive and unreasonable.

3.6 Protective provisions for the benefit of RRRL

3.6.1 The Applicant is pleased that the Authority has reviewed the draft protective provisions that have been in the draft DCO since submission. The Applicant will review the mark up and update the provisions at the required deadline for the next revision of the draft DCO, being Deadline 5.

4 COMMERCIAL ISSUES

4.1 General approach to negotiating

4.1.1 The Authority has suggested in its Written Representation and in its oral submissions (refer to paragraphs 72, 75 and 77 of the Written Summary) that it is not willing to negotiate any deal which is subject to funders' approval. The Applicant considers that the Authority has unfortunately misunderstood the proposals put to it in this regard at various times earlier this year. The Applicant welcomed and indeed continues to welcome the chance to discuss this with the Authority. The Applicant always intended for the deal with the Authority to be binding.

4.1.2 As noted at the CAH, the deal to be made with the Authority during the examination is not contingent on RRRL or REP funder approval. The REP project itself is contingent upon RRRL and its own funder approval. The Applicant will only be able to develop REP if it successfully reaches "financial close", following which funds are released. The Applicant and other applicable Cory Group entities are prepared to enter into a deal with the Authority that is legally binding. The Applicant has drafted a legally binding Deed of Understanding, which it has been negotiating with the Authority and which will give binding legal effect to this deal. The deal reached will become part of the package presented to relevant funders and will include commitment that the Applicant will not compulsorily acquire the REP Required Land if the funders do not consent to the deal reached with the Authority. There is a caveat, which remains a risk to the Applicant and not the Authority, which is that if the funders ask for amendments to the deal then the Applicant can go back to seek to amend the terms agreed with the Authority – and the Authority must negotiate in good faith to reach an agreement that would allow relevant funds to proceed. If no such agreement could be reached, the Applicant could not compulsorily acquire the REP Required Land unless determined by an arbitrator that the Authority had not acted in good faith.

4.1.3 The Authority is well aware that the RRRL funder's consent is required to <u>any</u> final changes to the WMSA. In fact, clause 5.4 of the Authority Direct Agreement (between the Authority, Cory Group entities and the RRRL funders' security trustee amongst others) contains a commitment by the Authority to itself seek the consent of the Security Trustees before making any amendment or modification to any provisions of the WMSA. Therefore, the Authority has itself agreed to seek RRRL funder consent before any final agreements are settled and this is a necessary consequence of having project financing in place for the existing RRRF. However, a legally binding agreement can be entered into between the Applicant and the Authority, which would then be presented to funders as part of the package for the REP project.

4.2 Response to documents subject to augmentation at the CAH.

4.2.1 The Applicant has prepared a tabulated response to Annex 2 (**REP2-96**) and Annex 3 (**REP2-097**) of the Authority's Written Representation, which is included at **Appendix B**.

4.3 Revenue share mechanism, including electricity and heat offtake

4.3.1 In paragraph 55 of the Written Summary, the Authority contends that "*Operationally, REP's existence also causes problems. The WMSA contains a provision to WRWA of energy payments and revenue shares which depend upon the success of RRRL and which will be adversely affected in the event of competition for REP*…". The Authority also notes at paragraph 23 of the Written Summary that "*an insufficient supply of waste will inevitably lead to competition … which will be detrimental to WRWA's contractual risk profile*".

4.3.2 The Applicant confirms that these are commercial matters, which are wholly inappropriate for and irrelevant to compulsory acquisition. The provision in the WMSA relating to the revenue share mechanism (including regarding energy/heat payments) bears no relationship to the Applicant's interest in the REP Required Land that is sought to be acquired and has no relationship to the security of the Authority's ability to dispose of waste in the future. Irrespective of this point, the Applicant has made an offer to the Authority to mitigate its perceived risk, the details of which are confidential. It should be noted that the WMSA does not require RRRL to build out a heat offtake. Instead the revenue sharing mechanism includes (a) sharing of revenues relating to sale of electricity (of which heat is included in the calculation) and (b) sharing if gate fees for commercial customers goes above a certain level (they are currently well below). These issues are purely commercial and have no bearing on the Authority's interest in the REP Required Land.

4.4 Value of the lease

4.4.1 The Authority contends in paragraph 22 of the Authority's **Written Representations** (**REP2-093**) made on 20 May 2019 and paragraph 4 of Annex 3 to the Authority's Written Representation, (**REP2-097**) and augmented in the CAH (refer to paragraphs 37 and 52 of the Written Summary), that the importance placed on the land can be demonstrated by the extent of the lease granted to the Authority. However, this is incorrect. The Authority was granted a lease over RRRL's freehold interest due to the need for the Authority to take security over the RRRF and to ensure the transfer of the assets to the Authority on a termination of the WMSA and RVA. For example, in the event of RRRL's insolvency, a contractual obligation to transfer these assets to the Authority is likely to have been ineffective. Therefore, the lease and sub-lease arrangements were instituted to ensure that the Authority could automatically take a transfer of the RRRF on termination of the WMSA, by terminating the sublease to RRRL, thereby leaving the Authority as the lessee in sole possession of the REP Required Land and RRRF facility. The lease covered all of the site on which the RRRF stands (as necessary for the Authority's purposes) but happened to be

dictated by the size/title of the freehold interests held by RRRL. There was never an *intention* to expand the footprint of the site beyond the existing RRRF facility for any particular purpose. The use of the site to manage change in law risk was an afterthought, once the extent of the land required for the RRRF was properly understood. Contrary to the statement in paragraph 52 of the Written Summary, the grant of the lease was not intended to prevent disposals of the main site, but to secure the Authority's interests in the event of a termination.

4.4.2 The Applicant is seeking to purchase from RRRL the freehold of the REP Required Land, over which the Authority has a leasehold interest. The REP Required Land comprises wasteland habitat, floodbank, and a parcel of undeveloped industrial land, and is surplus to RRRL's operational needs in running the existing RRRF. The Applicant has had the REP Required Land valued by an independent valuer.

4.4.3 The Authority's leasehold interests in the REP Required Land are difficult to value due to their nature. The lease is a contingent asset. It should be clarified that the only circumstances under the WMSA which enable the Authority to enforce its security and be involved in the RRRF at Belvedere are in a termination of the EfW Contract within the WMSA, following which the Authority may take ownership of the RRRF in return for paying compensation. Unlike, as suggested by paragraph 24 of the Written Representation (which suggests mere non-performance is enough to permit step in), prior to a *termination* of the WMSA or RVA, the Authority has no right to become the lessee on the site, step-in to the contract or be involved in the RRRF's operation at the RRRF (as applicable). These termination scenarios are extremely unlikely to occur. They occur either as a result of termination of the EfW Contract within the WMSA (which can only occur upon a small number of unlikely events and require RRRL lenders to have given up their step in rights to remedy a breach) or, in the residual value period (2032-2046) as a result of RRRL's breach of contract and non-payment of monies owed (in this scenario, the Authority does not actually step in to the contract, or obtain ownership of the RRRF or RRRL's assets, but is merely the lessee of the site to enforce payment).

4.4.4 Because of the contingent nature of the leasehold interests, the Applicant has offered to obtain a bond for the value of the freehold (indexed) of the REP Required Land, which would be in place to the end of the WMSA and payable upon a termination of the EfW Contract, keeping the Authority whole. That is, in a termination scenario under the WMSA, the bond could be called upon, providing a lump sum cash payment to the Authority equivalent to the freehold value of the REP Required Land.

4.4.5 The valuation for the freehold of the REP Required Land obtained by the Applicant has been shared with the Authority. The Applicant continues to discuss the valuation and the concept of a bond.

4.4.6 The Applicant considers it is not necessary to offer a bond during the residual value period as the lease arrangements have a different purpose during this

period – the Authority does not have the ability to obtain the freehold of RRRL's land during the residual value period, and further, the remaining leasehold interest over the RRRL site (including RRRF) provides the security required by the Authority to ensure that it receives its residual rights during the residual value period, addressing the concern raised by the Authority in paragraphs 40 and 56 of the Written Summary **(REP2-093**).

4.4.7 The Applicant notes that in paragraphs 11 and 15 of Annex 2 **(REP2-96)** to its Written Representation, as augmented at the CAH (ref. paragraph 53 of the Written Summary), the Authority has argued that in a force majeure scenario, the Authority may be left in a position whereby the RRRF is left unusable, and as such the existence of the REP Required Land would potentially allow the Authority to take mitigating action to offset its losses ("*potentially even building a REP as Cory is now seeking to do*"). The Applicant considers this argument to be fundamentally flawed for two reasons. Firstly, force majeure scenarios in the EfW Contract in the WMSA are extremely limited and extreme events. Not only are they unlikely to occur, but if they were to occur, it is highly unlikely that the event would impact the land underneath the RRRF in such a way that the small portion of land directly adjacent to the RRRF that is at issue here, remained unaffected. Secondly, even if the REP Required Land was left untouched and developable under such a scenario, it is important to recognise the nature and size of the land which only exists by virtue of the land Title boundary; c.17% is undevelopable land lying within the Flood Risk Action Permit (FRAP) Zone; c.30% is designated a wasteland habitat that would have to be relocated via bio-diversity off-setting; c.30% is made up of a combination of existing internal roads, walkways, landscaped verges and fencing with no independent access and the remaining c.25% is potentially developable but arguably too small for a facility large enough to treat all of the Authority's waste. The contingent, remote opportunity lost to the Authority is insignificant compared to the important public service that would be gained by developing REP on this land, nearly doubling the waste treatment and energy recovery capacity available to London in this vicinity.

4.5 Shared assets

4.5.1 The Authority notes at paragraph 59 of the Written Summary that REP's use of RRRF's assets will "*accelerate the need for repair and maintenance at the existing plant*." The Authority has offered no justification for its assertion regarding supposed additional costs and risks. In fact, any additional costs and risks would be managed through the Master Interface Agreement, a draft copy of which has already been provided to the Authority. Furthermore, any additional costs of maintenance relating to the shared assets would be partially borne by REP through payment of a fee under the Master Interface Agreement.

4.5.2 RRRL's maintenance of the RRRF is not a concern for the Authority and it has no right to dictate the manner in which RRRL elects to use its assets. The Authority does not own the RRRF and neither does it maintain the facility. The Authority has a contract with CEL for CEL to dispose of waste via RRRL at the RRRF. This contract (WMSA) will remain following the development of REP

with the same serious consequences on RRRL if RRRL fails to comply with its obligations. RRRL will not imperil the WMSA or other contracts with third parties for the sake of REP – it would be commercially absurd for it to do so.

4.6 Disruption to RRRL Facility during construction and operation of REP.

4.6.1 The Authority has raised concerns that the construction and operation of REP may impact the RRRF / disrupt the services provided by RRRL / CEL to the Authority (paragraph 59 of the Written Summary), as augmented by the Wood Technical Note (**REP2-102**) annexed to the Authority's preliminary submissions on the Protective Provisions (**AS-017**) tabled at the CAH, and further augmented in oral submissions (refer to paragraphs 57 to 67 of the Written Summary).

4.6.2 The majority of the contentions made by the Authority are addressed by the Applicant at section 3.3 above. However, the Applicant would like to make several further points, demonstrating (for example) that the Authority has strayed into either purely commercial issues or issues that are not the concern of the Authority, and are therefore inappropriate considerations in the context of the considerations that the Examining Authority has under Section 122 of the PA 2008.

4.6.3 The Authority has argued at paragraph 60 of the Written Summary that in the event it has to exercise its step-in rights, REP's usage of RRRL's assets will "*represent an increase in costs from that which otherwise would apply*." This contention ignores the fact that REP will be entering into an agreement with RRRL – an agreement which the Authority has the right to continue if it steps in – whereby REP will be paying a fee for its use of the assets. Therefore, the usage will actually be a beneficial revenue stream for the Authority rather than an increased cost.

4.6.4 The Authority argues that "*It does not appear from the Applicant's assessment that there will be capacity for both the proposed development and the RRRF to support a local Combined Heat and Power ('CHP') scheme. This in turn impede[s] WRWA's ability to have its waste managed in a more sustainable manner*." The Applicant has demonstrated in its **Combined Heat and Power Supplementary Report** (**REP2-012**) that there is capacity for both REP and RRRF CHP.

4.6.5 The Applicant notes the Authority's contention at paragraph 54 of the Written Summary that "*allowing REP to be constructed so close to the RRRF increases the likelihood of a force majeure event occurring*". There is simply no evidence to support such a statement.

4.6.6 Furthermore, the Applicant disagrees with the Authority's claim at paragraph 55 of the Written Summary that, "*in the event that WRWA has to step-in and take over the RRRF, it can be envisaged that any harmonious co-existence that may exist … will no longer be present*". The Applicant wholly disagrees with this assertion. The Applicant intends to put in place a Master Interface Agreement between REP and RRRL in order to ensure the ongoing

cooperation over use of shared assets between the two companies. This is exactly the way in which two unrelated companies would operate in the same circumstances. There is no reason to suggest that harmonious co-existence would cease to continue if the Authority were to step-in following termination of the EfW Contract. Also, paragraph 58 of the Written Summary refers to buried services which are outside the development boundary. This risk is no different to the risk faced by any other project relying on underground services which is being operated in the vicinity of a construction site. Construction contractors are very familiar with the management of this risk and we see no reason why the position of REP is any different to any other contractor carrying out works in the vicinity of the transmission line leading from the RRRF.

4.6.7 The Applicant notes that each facility's potential to impact the other's operations and relevant remedies/solutions will be contractually addressed in the Master Interface Agreement (a draft of which has been provided to the Authority) and the most appropriate mechanism agreed at a later date, with input from legal and insurance advisers. In addition, this Interface Agreement will operate alongside the protective provisions contained in the DCO - as is usual practice with, for example, National Grid.

5 APPLICANT'S RESPONSE TO AUTHORITY'S WRITTEN SUMMARY OF ORAL SUBMISSIONS MADE AT THE CAH HEARINGS

5.1.1 The Applicant's response to the Written Summary is largely dealt with in sections 3 and 4 above:

Paragraph reference and summary of topic	Location of Applicant response
Authority's status as a statutory undertaker Paragraphs 6 – 16	See section 3.1
Important background Paragraphs 18 – 41	Please refer to Appendix B
WMSA & RVA Paragraphs 42 -56	Please refer to Section 4 above and Appendix B
Construction and operational impacts Paragraphs 57-67	Construction and operational impacts are considered in section 3.3 above.
Need Paragraph 68	Need is considered at section 3.4 above.
Negotiations Paragraphs 69-81	The criticisms of the negotiation process are considered in section 2 above.
Overall conclusions Paragraphs 82 – 84	See section 6

6 COMPELLING CASE IN THE PUBLIC INTEREST

6.1.1 The Secretary of State may only grant development consent which includes provision authorising the compulsory acquisition of land if the Secretary of State is satisfied that the conditions in sections 122(2) and (3) are met.

6.1.2 The condition in sub section 2 is that the land—

- is required for the development to which the development consent relates,
- is required to facilitate or is incidental to that development, or
- is replacement land which is to be given in exchange for the order land under section 131 or 132.

6.1.3 The condition in subsection 3 is that there is a compelling case in the public interest for the land to be acquired compulsorily.

Section 122(2) – The Land is required for the development to which development consent relates

6.1.4 The REP Required Land, being the land in which the Applicant is seeking to compulsorily acquire the Authority's leasehold interest, is sought for both the NSIP itself (i.e. REP) and associated development to the NSIP:

a. Work Number 1 – being the integrated energy park;

b. Work Number 2 – being the cooling system for the energy park and, if not constructed as part of Work Number 1, a steam turbine and electrical generator and building;

c. Work Number 3 – CHP equipment;

d. Work Number 4 - electrical substation;

e. Work Number 5 – supporting buildings and facilities; and

f. Work Number 6 – pipework, cables, drainage, access etc required.

6.1.5 The **Statement of Reasons** at **Appendix B** (**REP2-008**) sets out the purpose for which compulsory acquisition powers are sought. Without the REP Required Land, there would be no NSIP. Accordingly, the test in section 122(2) is met.

Section 122(3) – A 'compelling case' in support of compulsory acquisition

6.1.6 The Applicant is seeking that in making the requisite Development Consent Order ('DCO'), the Secretary of State authorises powers to compulsory

acquire rights and interests in land, including in respect of interests held by the Authority.

6.1.7 The Applicant recognises that by virtue of Sections 122(1) and (3) of the PA 2008, the Secretary of State may only authorise such powers to acquire those interests if he is satisfied that there is a compelling case in the public interest to do so.

6.1.8 It is the Applicant's position that such compelling case exists; indeed it contends that the case for authorising compulsory acquisition is overwhelming.

Relevant Considerations

Energy Generation

6.1.9 The Proposed Development comprises energy generation infrastructure; that is, REP will generate energy and so contribute towards the country's ability to achieve energy security.

6.1.10 As the Examination is well aware, national policy directs that there is an urgent need for such infrastructure provision (paragraphs 3.1.1 – 3.1.4 of EN-1). Further, that same policy also directs that decision makers should accord substantial weight to the contribution which projects make towards meeting that urgent need, when considering applications for development consent.

6.1.11 However, the policy backing for the Proposed Development goes beyond the support for energy generation in general, in that the Proposed Development will provide a source of renewable energy. Firstly in this regard, the Energy Recovery Facility at REP will reduce the volume of waste which would otherwise go to landfill, consistent with the waste hierarchy. Accordingly the Proposed Development is in accordance with both EN-1 (paragraph 3.4.3) and EN-3 (paragraphs 2.5.2 - 2.5.3). Indeed, EN-1 expressly identifies the need for such renewable energy generation as *particularly* urgent (paragraph 3.3.15 of EN-1).

6.1.12 Further in this regard however, the Examination will also be aware that REP would provide additional sources of renewable energy in that:

a. The proposed Anaerobic Digestion Facility will process green and food waste to generate biogas and digestate; and

b. The Solar Photovoltaic Installation on the facility's buildings will itself potentially have the capacity to generate as much as 1.0 MW.

6.1.13 It is on this basis, namely its contribution towards energy generation and its status as a source of renewable energy, that EN-1 directs expressly that there should be a presumption in favour of granting consent for REP (paragraph 4.1.2 of EN-1).

6.1.14 This extensive and unequivocal policy support for the Proposed Development bears directly on the question of whether compulsory acquisition should be authorised to ensure its delivery. It contributes materially towards demonstrating a 'compelling case'.

Waste Disposal

6.1.15 The Proposed Development will also comprise infrastructure for the disposal of waste. As noted above, REP will provide for such disposal in a manner that is consistent with the waste hierarchy; REP draws on waste streams that would otherwise be directed to landfill. Indeed, as regards the disposal of London's waste in EfW facilities, as the Authority itself confirmed to the GLA: "*Increased capacity of EfW in London is a direct result of reduced use of landfill*" (See the Authority's letter of 1 March 2018 to the GLA regarding its Environment Committee's report entitled "Waste: Energy from Waste" ('the March 2018 Letter' – **Appendix C**)).

6.1.16 However, there are a number of specific matters which fall to be considered in this context.

a. First, as demonstrated by the Applicant in detail in the course of the Issue Specific Hearing ('ISH') regarding 'Need' (held on 5 June 2019), there is a clear need for waste disposal infrastructure of this type. In this regard it is important to note that whilst the issue of 'Need' is contested by the GLA, that issue is not contested by the Authority (it being the party seeking to oppose the grant of compulsory acquisition powers). This much was clarified at the Compulsory Acquisition ISH (6 June 2019), when the Authority expressly disavowed the stance taken by the GLA, and confirmed that it did not agree with the GLA's position on this issue. Indeed, the Examination can note that the Authority's March 2018 Letter to the GLA observed that:

   "For sound environmental reasons landfill capacity is disappearing…if London fails to meet the Mayor's 65% recycling target, which recent research suggests is unlikely to be met, or if Brexit prevents export to Europe of residual waste, London will probably experience a significant shortfall in treatment capacity";

   "…it is the strategic significance of EfW which is so important to London".

b. Second, it is also important for the Examination to note that REP is a facility designed to meet future, evolving waste disposal requirements, not merely those currently existing. In this regard, whilst there is currently no obligation on waste authorities to provide for the separate disposal of green/food waste streams, it is anticipated that such obligation will be imposed in the future. REP would provide an Anaerobic Digestion Facility capable of processing c. 40,000 tonnes of such waste per annum, and so supplement the infrastructure currently available. The inclusion of a battery storage component in REP is further respect in which the facility represents modern, evolving technology.

c. Thirdly, the Examination must also note the fact that REP's location would give it direct access to the River Thames, so as to enable delivery of waste by barge. Such consideration, in the context of traffic congestion issues of facing London (and Requirement 14 of Schedule 2 to the draft DCO (**3.1, REP3-003**) restricts the Applicant in respect of traffic movements), identify REP as a scheme with particular environmental credentials.

d. Fourthly, it is relevant that REP would deliver its objectives – in terms of both energy generation and waste treatment – at a location which would have minimal impact on sensitive receptors. As the Examination is aware, REP would be located adjacent to an existing waste treatment/energy generation facility, on a site where the nearest residential receptor is 750m away.

6.1.17 These matters also provide support for the Applicant's contention that powers of compulsory acquisition should be authorised. They too contribute towards the 'compelling case' required by the statute.

Authority's Objection

6.1.18 The matters raised by the Authority in objection to compulsory acquisition have been addressed earlier in this document. For present purposes it is sufficient to note that:-

a. Much of the argument deployed by the Authority goes to matters which are commercial in nature, and which would not provide a sound basis on which to reject the Applicant's request for powers of compulsory acquisition.

b. Insofar as the Authority is concerned for the security of its route of waste disposal, compulsory acquisition of the interests sought would not damage that security; in particular the Authority would retain its long-leasehold over the land on which the RRRF is located.

c. The REP Required Land is not currently in any active use. Insofar as the Authority suggest it should be left 'fallow' pending a potential requirement for some unspecified future use at some unspecified future date, such course of action simply does not represent efficient use of the land as a resource.

6.1.19 The matters which the Authority points to as weighing against the grant of compulsory acquisition powers, simply do not have any material traction. They do not negate the powerful considerations which weigh in favour.

The compelling case

6.1.20 Without the grant of compulsory acquisition powers, there can be no certainty of delivery for REP; the interests of the Authority which Applicant seeks powers to compulsorily acquire, are required if the project is to come forward.

6.1.21 The Applicant is aware that as a matter of statute, the Examining Authority and the Secretary of State can only authorise the compulsory acquisition of the Authority's interests in circumstances where it/they are satisfied there is a compelling case in favour of authorising such powers.

6.1.22 The position of the Applicant is that on the basis of the analysis set out above, the matters relied upon by the Applicant not only meet that requirement, but go beyond it.

6.1.23 Individually, they weigh strongly in favour of the Proposed Development, but when taken together, they very definitely represent the 'compelling case' in support of compulsory acquisition required by the Statute. Indeed, they provide not only a compelling case but an unanswerable one.

Appendix A Schedule of Negotiations between the Applicant and the Authority

Schedule of Negotiations – Between the Applicant and the Authority

1.	21.08.17	Background information and supporting materials provided to the Authority from the Applicant regarding REP proposal, including: (i) London Market Waste Review (July 2017) (Tolvik Consulting) (ii) Executive Summary, London Market Waste Review by Cory Riverside Energy (Tolvik Consulting)
2.	21.11.17	Various email exchanges between the Applicant and the Authority – discussions regarding REP proposal.
	22.11.17	CEO of the Applicant presented to the Authority's Board concerning REP proposals.
3.	22.11.17	Emails between the Authority and the Applicant – ongoing commercial discussions concerning REP.
4.	05.02.18	Letter from the Applicant to the Authority opening up the consultation process & furthering previous commercial discussions concerning REP.
5.	28.02.18	Meeting between the Applicant and the Authority – commercial discussions.
6.	01.03.18	Email from the Authority to the Applicant – enclosing a copy of the Authority's response to the London Assembly's 'Energy from Waste' Report.
7.	22.03.18	Various emails between the Applicant to the Authority – re agenda for meeting being held on 26.03.18.
8.	26.03.18	Meeting between the Applicant and the Authority – ongoing commercial discussions.
9.	30.04.18	RFI letters & supporting documents issued by the Applicant's agent (Ardent Management Ltd) to the Authority
10.	21.05.18	The Applicant's agent (Ardent) email following up on RFI. Ardent called the Authority and were informed RFI had not been received. RFI and documents were then forwarded via email to shirley@wrwa.gov.uk.
11.	30.05.18	Chaser RFI issued from the Applicant's agent (Ardent Management Ltd) to the Authority.
12.	01.06.18	RFI was returned by the Authority (Mark Broxup), confirming their interests within the Proposed Development.
13.	12.06.18	s42 documentation issued to the Authority.
14.	15.06.18	Email correspondence from Mark Broxup for amendment to address for future consultation documents.
15.	04.07.18	Email from the Applicant to the Authority – suggesting a further meeting to discuss the the Authority's thoughts on REP & further commercial discussions.
16.	12.07.18	Various emails between the Authority to Cory – ongoing commercial discussions.

17.	17.07.18	s42 Response from the Authority, noted that the Authority commented the Applicant should not be awarded compulsory powers over RRRL's land.
18.	02.11.18	Telephone call between the Authority and the Applicant.
19.	22.11.18	Correspondence from the Authority to the Applicant regarding REP and informing the Applicant that it had convened a special meeting to be held in April 2019 for REP associated matters to be discussed.
20..	04.01.19	Meeting/catch-up between the Authority and the Applicant.
21.	01.02.19	Email from the Authority to the Applicant – notification that the Authority have formally registered as an Interested Party with the Planning Inspectorate. Providing the Applicant with a copy of their representation
22.	06.02.19	Various emails between the Applicant and the Authority re organising the next meeting for ongoing commercial discussions.
23.	25.02.19	Email from the Applicant to the Authority providing agenda for scheduled meeting on 28.02.19 and further ongoing commercial discussions
24.	28.02.19	Meeting between the Applicant and the Authority – commercial discussions and presentation slides.
25.	15.03.19	Email from the Applicant to the Authority – ongoing commercial proposals
26.	15.03.19	Telephone call between the Applicant and the Authority – ongoing commercial discussions
27.	25.03.19	Letter from the Applicant to the the Authority – ongoing commercial proposals.
28.	05.04.19	Letter from the Authority to the Applicant – comment on commercial proposals.
29.	11.04.19	Email from the Applicant to the Authority attaching draft letter re further commercial discussions and proposals.
30.	11.04.19	Meeting between the Applicant and the Authority – discussing ongoing commercial proposals.
31.	12.04.19	Email from the Applicant to the Authority providing supporting evidence in relation to ongoing commercial discussions and proposals.
32.	24.04.19	Telephone call between the Applicant and the Authority – discussing ongoing commercial proposals.
33.	24.04.19	Letter from the Applicant to the Authority – ongoing commercial proposals.
34.	25.04.19	Email exchanges between the Applicant and the Authority re ongoing commercial proposals and sharing commercial models.
35.	26.04.19	Email from the Applicant to the Authority sharing of draft documents – part of ongoing commercial discussions.
36.	03.05.19	Email from the Applicant to the Authority – providing supportive draft documents to support the ongoing commercial discussions.
37.	03.05.19	Email exchanges generally over early May between the Applicant and the Authority arranging the next meeting (scheduled for 21.05.19).

38.	17.05.19	Email from the Authority to the Applicant – notified the engagement of Carter Jonas as the Authority's land agent and arranging a time for the land agent site visit the REP site at Belvedere.
39.	19.05.19	Email from the Applicant to the Authority – ongoing commercial proposals and further draft documents for the Authority's comment including draft deed of understanding.
40.	21.05.19	Meeting between the Applicant and the Authority – discussing ongoing commercial proposals.
41.	24.05.19	Email correspondence from the Applicant to the Authority – setting out actions agreed at the meeting on 21.05.19 and a file note of the meeting
42.	28.05.19	Email from the Authority to the Applicant – response to actions agreed at the meeting held on 21.05.19.
43.	29.05.19	Various emails between the Applicant and the Authority – arranging the next meeting and ongoing commercial discussions.
44.	04.06.19	Letter from the Authority to the Applicant – response to various commercial points of discussion.
45.	12.06.19	Email from the Authority to the Applicant with copy letter re useful comprehensive response to the Applicant's offers in March/ April 2019. Email from the Applicant acknowledging receipt of letter from the Authority.
46.	17.06.19	Email from the Applicant to the Authority's financial advisor enclosing recalculated model ahead of meeting on 17.06.19 to discuss commercial negotiations further. Meeting between the Applicant and the Authority – further commercial discussions.
47.	18.06.19	Email from the Applicant to the Authority re attending the next CA Hearing and providing a joint statement to the ExA. Tel call between the Applicant and the Authority's financial advisor.
48.	19.06.19	Email from the Authority to the Applicant re the attending the next CA Hearing Email from the Applicant to the Authority – re actions agreed at the meeting on 17.06.19. Email from the Applicant to the Authority providing an update on tel call with the Authority's financial advisor on 18.06.19
49.	21.06.19	Email from the Authority to the Applicant re commercial negotiations (advisor fees & lease valuation)
50.	26.06.19	Email from the Applicant to the Authority providing an updated draft of the deed of understanding (including commercial terms) and agenda for the meeting the following day (27.06.19).
51.	27.06.19	Meeting between the Applicant and the Authority – further commercial negotiations

52.	03.07.19	Telephone call from the Authority to the Applicant following up timescales for the revised commercial offer following previous face-to-face meeting. Actions and next steps agreed between the parties.
		Email from the Applicant to the Authority re timing of revised deed of understanding.
53.	04.07.19	Email from the Applicant to the Authority attaching a revised version of the deed of understanding and commercial offer letter.
		Telephone call between the Applicant and the Authority re offer letter and revised deed of understanding.
54.	08.07.19	Email from the Authority to the Applicant re joint wording for submission to the ExA at the next deadline.
55.	19.07.04	Email from the Applicant to the Authority providing an amended deed of understanding and cover note summarising the commercial offer.
		Telephone call between the Applicant and the Authority discussing the draft deed of understanding.
56.	16.07.19	Email correspondence from the Applicant to the Authority regarding timings for ongoing commercial discussions and telephone conversation where the Authority updated the Applicant on discussions held at the Authority's board meeting.
		Various emails between the Applicant and the Authority on the joint statement to the ExA.
57.	17.07.19	Various emails between the Applicant and the Authority on the joint statement to the ExA.

Appendix B Response to Annex 2 and Annex 3 of the Authority's Written Representation

Response to Annex 2 of the Authority's Written Representation (REP2-096)

Paragraph	Subject	Responses
2	Services provided under the WMSA	This summary suggests that the WMSA always contained an obligation to construct and operate the EfW Facility. The original WMSA, however, did not contain an absolute obligation on Cory to construct and operate the EfW Facility – the obligation to do so was dependent upon the ability of RRRL to obtain planning permission and financing for this facility but there were no adverse commercial consequences for Cory if the facility was never constructed.
3	Structure of the WMSA	The project financing of the EfW Facility did not necessarily *require* the introduction of PFI standard terms, but this was considered to be one of the more bankable ways in which the project could be structured in order to enable it to raise finance. The terms are not PFI standard terms, but in many respects loosely follow the principles of a PFI/PPP project agreement with a large number of notable exceptions. The splitting of the contract into the two severable parts (the ASS Contract and the EfW Contract) was decided upon by the Authority. Cory's preference at the time was to have two separate and distinct contracts: one with Cory for the ASS services and the other with RRRL for the EfW services. However, the Authority determined that this would give rise to procurement issues. Therefore the ultimate structure, which was acceptable to Cory and the RRRL's funders, was driven largely by concerns over the EU procurement regulations and the need to demonstrate that the only changes being made to the WMSA were those strictly necessary in order to document the EfW development. There were other possible ways to structure the contract, but the route taken was the approach favoured by the Authority and its advisors.
4	Term	The Residual Value Agreement will enable the EfW services to be provided on terms which will differ quite significantly from the WMSA. We are not sure it is strictly correct to say that

		the services will continue to be provided "on similar terms", but these are still being discussed between Cory and the Authority nonetheless.
8	Change in Law mitigation for the Authority	It is not strictly correct to say that paragraph 6.1A of Schedule 15 "*affords rights to WRWA over the unused section of the site*". This clause does not give the Authority any rights over the site. It merely indicates that RRRL should make available such land for the purposes of addressing an EfW Authority Change in certain circumstances. However, any such use of the land will still be subject to: • all other considerations affecting the use of this surplus land; • planning and permitting requirements which may be imposed by the London Borough of Bexley and the Environment Agency respectively; • the ability of the Authority and/or CEL/RRRL to obtain finance for such a development. Furthermore, any use of this land to deal with an EfW Qualifying Change in Law would be undertaken by RRRL as the tenant of the site. Therefore, the site would <u>not</u> be available for the Authority's own use, as suggested by paragraph 8 of Annex 2. As discussed with the Authority and during negotiations recently, we do not believe that there was any importance placed by the Authority on "*maintaining a spare footprint capacity at the site to mitigate its future needs*". This area of land in question was surplus land initially forming part of the RRRL development and there was never an <u>obligation</u> on RRRL or Cory to provide this land for the stated purposes. Once the designs of the plant were settled and it became known that there was additional land at the Belvedere site, however, the Authority, in return for indirectly funding the costs of the RRRL development, required that such land should be made available to cope with any future change in law. Therefore, use of the surplus land for this purpose was an afterthought, as illustrated by the numbering

		of paragraph 6.1A of Schedule 15. We believe that the Authority has subsequently come to the conclusion that this is an important purpose of the surplus land, but this was never the original intention of RRRL acquiring additional land when the EfW Facility was first mooted.
9	Belvedere surplus land	A distinction is being drawn between the additional land in question (which may have to be made available to address an EfW Qualifying Change in Law) and the Belvedere Surplus Land (of which RRRL is at liberty to dispose) We believe that the reason for this distinction is that the Belvedere Surplus land is not adjacent to the EfW Facility and therefore is of far less relevance for any future purposes. Furthermore, given the nature of this site, its location and planning considerations, this Belvedere Surplus Land was far more marketable. Furthermore, it was never intended that RRRL would have any future use for this site once the construction had been completed.
16	Sublease restrictions	It should be noted that whilst, in the sub-lease, the Authority is defined as the "landlord" and RRRL is defined at the "tenant", in fact the freehold of the site is owned by RRRL and leased to the Authority. The Authority then sub-leases the site back to RRRL under the sub-lease. Therefore the Authority is merely the holder of an intermediate leasehold interest.

Response to Annex 3 of the Authority's Written Representation (REP2-097)

Paragraph	Subject	Responses
1	Purposed of WMSA	The original WMSA did not contain an unconditional obligation to treat the Authority's residual waste at Riverside. The original WMSA contained an obligation to handle the waste at the transfer stations and to subsequently landfill all of the residual waste at Mucking Landfill Site. The WMSA also included provisions stating that if RRRL developed an EfW Facility, Cory would instead dispose of all residual waste at the EfW Facility at Belvedere. However, given that the development of the Belvedere EfW Facility was subject

		to planning and funding conditionality, the WMSA did not originally contain an "obligation" to dispose of waste using the Belvedere EfW Facility.
3	Amendments to WMSA	We have the following comments in relation to the statements in paragraph 3: • contrary to the statements in paragraph (b), the Authority has undertaken only to buy "some or all of" RRRL assets or the shares in RRRL in the event that the EfW contract was terminated early for any reason; • for the purposes of paragraph (c), it should be made clear that the Authority did not make a "capital contribution" towards the development of the EfW Facility. The Authority agreed to pay a gate fee which reflects the volume of residual waste treated at the EfW Facility, in the same way as any fuel supplier pays a gate fee per tonne for a such a service. The Authority did not agree to make any capital contribution towards the construction of the Facility, nor was a capital contribution sought by CEL or RRRL. The only amounts payable by the Authority under the WMSA are in relation to the services being provided to it, in the same way as any fuel supplier pays for a waste disposal service; • for the purposes of paragraph (b), the Authority was granted residual rights for a period of time up until 2046. We are unable to comment on whether these residual value rights are for the remainder of the EfW Facility's design life, although we can confirm that significant elements of the facility have a design life beyond 2046.
4	Purpose of the Lease	The description of the Lease and the purpose for which the lease was granted in the first place has been misconstrued in the Authority's note. The Authority has described the purpose of the lease in such a way as to justify its contention that the site should not be subdivided for the purposes of the REP development. However, there was one purpose for which the lease was established, and that is to act as

		security for CEL/RRRL's obligations to transfer some or all of the RRRL assets (or the shares in RRRL) to the Authority on a termination of the EfW Contract or following a breach by Cory of the RVA. The original proposal was for RRRL to be obliged to transfer some or all of its assets to the Authority in the event that the EfW contract or RVA were terminated. As this would be a contractual right only, the Authority justifiably contented that such an obligation would be of limited enforceability (particularly in the event of Cory and/or RRRL becoming insolvent) unless it was secured in some manner. The way in which this obligation was "secured" was by granting the Authority a leasehold interest in the site which would survive any potential insolvency of CEL and/or RRRL. In the event that the EfW Contract were terminated, the Authority would have a right to terminate the sub-lease to RRRL, thereby resulting in possession of the site reverting to the Authority as the lessee under the head lease. In this manner, reversion of the asset to the Authority would happen without delay and would survive any potential insolvency of RRRL. (Incidentally, the Riverside EfW Project was developed and financed at the same time as another large project financed EfW facility at Runcorn as part of the Manchester Waste PFI project. A very similar head lease and sub-lease structure was adopted for that project for exactly the same reasons). The head lease/sub-lease structure was designed solely for this purpose and it has not previously been suggested that the structure was designed to serve any broader purposes. We therefore state that: • the lease was not "*part of the balance of commercial interests within the WMSA*", but was simply designed to ensure that the Authority would be able to take over the facility in the event of a termination of the EfW Contract or RVA ensuring that it would continue to meet its statutory obligations to process residual waste; • the lease of the land was not intended to grant security "*in relation to the risks accepted*

		by WRWA" under the WMSA, but merely to operate in the event of termination of the EfW Contract or the RVA; • for the reasons outlined above, the "integrity of the site" was of no importance. The critical requirement was that the lease to the Authority should cover all of the site and assets needed to operate the EfW Facility – there was no reason why the lease needed to cover any additional but unused areas of the site, as they would be superfluous to the original intention of the lease; • the lease/sub-lease arrangement was never intended to prevent RRRL from selling off parts of the site – this was an incidental consequence of the leases covering superfluous land associated with the site; • the sub-lease contains a prohibition on partial assignments of the site to avoid any assignment of part of the site on which the EfW Facility stands – it was not originally intended to prevent assignment of any of the site which was superfluous to the EfW plant's operations. Furthermore, it should be noted that many UK waste disposal authorities have awarded waste disposal contracts to third party contractors without the benefit of step-in rights or property interests. These contracts are typically secured only by parent company guarantees and/or letters of credit, without imperilling the ability of such Authorities to meet their statutory duties to dispose of municipal waste.
5	Belvedere Surplus Land	It was intended that the Belvedere Surplus Land could be sold off, at any point in the future, as it was superfluous to the needs of the EfW facility. In addition, this parcel of land was consider to be more marketable, due to its physical location and ease of use for development. This Belvedere surplus land was only intended for use as a laydown area during construction and therefore was always considered to be used for a limited duration.

		However, the surplus land at the Belvedere site was not treated in the same way as it was considered to have limited value as a separate site and therefore, at the time of the original deal, it was not contemplated that it may be severed and sold off for other purposes. However, if the parties had considered the issue at the time, there is no reason in our view why a similar approach would not have been taken. However, due to the planning restrictions and proximity to the Riverside Facility, it was not originally intended to be sold off and therefore was not given separate treatment under the contract.
6	Frustration of the lease/sub-lease arrangements	In our view, the carefully negotiated and agreed risk allocation under the WMSA will be in no way affected by the transfer of the surplus land in any material sense. Furthermore, as illustrated above, the purpose of the lease/sub-lease arrangement was to enable immediate access by the Authority to the RRRL Facility in the extremely remote scenario of the EfW Contract or RVA being terminated. This purpose will in no way be frustrated by the sale of the surplus land at the Belvedere site. Furthermore, the only effect on the "agreed risk allocation" under the WMSA relates to the treatment of one potential EfW Qualifying Change in Law. Cory and the Authority have discussed this in commercial negotiations and Cory has made an offer to the Authority to address this perceived concern.
7	Change in law exposure	In paragraph 7(a)(i), the alleged purpose of paragraph 6.1A of Schedule 15 has been described by the Authority. We would disagree that the purpose of this paragraph is due to the "*lack of alternative sites within the control of WRWA's constituent councils*". If the particular EfW Qualifying Change in Law to which paragraph 6.1A applies were ever to occur, the constituent councils would have the usual compulsory acquisition powers to acquire whatever land is required in order to address this regulatory change. In addition, we do not agree that the combined constituent councils would lack available sites in which to build an anaerobic digestion or other waste treatment facility. Alternatively, a site could be

		obtained commercially anywhere within London for a similar purpose. In respect of paragraph 7(a)(ii), we strongly disagree that RRRL's ability to adapt to mitigate the effects of change in circumstances overtime will be restricted by the lack of land on which to expand either temporarily or permanently. There is no reason to suggest that a change in law would in any way increase the likelihood of an RRRL default requiring the Authority to step in and take over the facility. Please note that CEL has held the contract since 2002 with no Default Points and only a small number of very minor defaults which have occurred over this 17 year period. The ability of RRRL to meet its ongoing obligations to the Authority is no different to the ability of any other EfW operator in the UK to manage a change in law, none of which acquire additional land in order to meet their contractual obligations to third parties. For the purposes of paragraph 7 (b)(i) it should be noted that the Authority does not have an obligation to buy RRRL's shares or RRRL's assets on termination. The Authority does have an obligation to make certain payments to CEL/RRRL and, in return, may acquire all or some of RRRL assets or the shares in RRRL, at its option. In relation to the compensation payable, we agree that there is no relationship to the value of the assets transferred. Therefore, Cory has made a substantial offer the Authority in order to make up any shortfall in the value of the assets being transferred on termination, in order to leave the Authority in the same position following the transfer of the surplus land. For the purposes of paragraph 7(b)(iii), it should be stated that the Authority is not a "funder" or "owner" of last resort of RRRL. The Authority provides no funding for RRRL and is under no obligation to do so at any point in the future. Furthermore, the Authority does not have an equity interest in RRRL nor does it bear any ownership risks in relation to RRRL's assets. Therefore, in our view the description of the Authority as a "*funder and owner of last resort*" is wholly incorrect.

8(a)(i)	Operational adverse consequences	We do not believe the comments raised by the Authority that the proposed transaction give rise to any material risks or have an adverse effect on the Authority's contractual rights under the WMSA. In particular: • while the opportunities for both the REP facility and the RRRL facility may be limited in terms of local electricity and heat offtake, nonetheless nothing in the WMSA requires Cory to exploit any private wire heat or battery opportunities. It should be noted that if REP decides to develop battery storage facilities, this should not have any adverse effect or impact on RRRL's ability to develop similar battery storage capability, if it so wishes; • whilst we acknowledge that the Mayor of London may take the view that there is not an abundance of waste produced within London which would need the requirements of both facilities, this view is not shared by either Cory (as one of UK's leading waste management companies) or by other waste consultants. REP would not be attempting to develop a large energy from waste facility and the banks would not be prepared to lend money for the development of such a facility if there were any material doubts as to the volume of waste available for this facility; • even in the event that competition between the two facilities might conceivably reduce the likelihood of the Authority receiving the same level of revenue that it might otherwise anticipate, the Authority has no contractual right to this revenue until and if RRRL earns the revenue. There is no obligation on RRRL to maximise its revenues for this purpose or to maximise the revenues to be earned by the Authority. Taking the Authority argument to its logical conclusion, the Authority would have the ability to object to planning applications from any energy from waste facility in the vicinity of London, which does not appear either reasonable or proportionate; • the significant technical due diligence carried out by Cory and its technical advisors

		suggests that there is no material additional risk involved in increasing the tonnage passing over the jetty to the facilities. Cory has secured 24/7 working hours at the facility and all assessments show ample capacity to treat additional volumes of waste. This information has been shared with the Authority and the position adopted by the Authority is not backed up by any technical analysis; • we also disagree that there is any increased risk of an EfW force majeure event in the manner suggested by the Authority. As discussed with the Authority, the acts and omissions of REP will be treated as those of a sub-contractor of RRRL and therefore there should be no increased risk of force majeure disruption to the RRRL facility.
8(b)	Operational disruption upon early termination	The Authority has stated that the constraints of the site of such are only related companies could be expected to operate in such close proximity. Cory strongly disagrees with this statement as there are many industries in which competing companies operate in close proximity, sharing assets which are required for the operation of their respective businesses. We also believe that RRRL and REP could continue to operate harmoniously and in close proximity to each other at all times, regardless of ownership of the companies. For this reason, an interface arrangement has already been devised and discussed with each party's insurers to ensure that the two companies will continue to operate successfully notwithstanding their ownership structures. Furthermore, those parts of the Master Interface Agreement which have been discussed between RRRL and REP will be incorporated within the protective provisions of the DCO and will therefore continue to operate for the protection of the RRRL. For this reason, we are comfortable that the positions of both companies will be fully and adequately protected in a way which goes well beyond the usual protections which apply for companies in close proximity to competing facilities.

APPENDIX C - Authority's letter of 1 March 2018 to the GLA regarding its Environment Committee's report entitled "Waste: Energy from Waste"

Western Riverside Waste Authority

Chairman: Councillor Paul Warrick
General Manager: Mark Broxup

Western Riverside Transfer Station,
Smugglers Way, Wandsworth, LONDON SW18 1JS

Telephone: 020 8871 2788 E-Mail: info@wrwa.gov.uk
Web: www.wrwa.gov.uk

Contact: Mark Broxup

Direct Dial: 020 8875 8888

Date: 1st March 2018

Environment Committee,
London Assembly,
City Hall,
The Queen's Walk,
London
SE1 2AA

Dear Ms. Cooper,

RE: THE ENVIRONMENT COMMITTEE'S REPORT "WASTE: ENERGY FROM WASTE"

I write because Western Riverside Waste Authority considers that the above report does not fully and clearly explain the strategic importance of EfW within London.

The report suggests that the increase in EfW over the last decade has discouraged waste minimisation and constrained recycling. This is not the case. Increased capacity of EfW in London is a direct result of reduced use of landfill. That more than half of London's waste no longer goes to landfill but is instead used to make electricity and heat, provide recycled metals and reduce the use of virgin aggregates, should be celebrated.

Ten years ago this Authority sent to landfill annually about 420,000 tonnes of residual waste. Today the figure is below 2,000 tonnes. Now we send 305,000 tonnes of residual waste to EfW: that is a 27% decrease in total residual waste handled each year.

There are no minimum tonnage or minimum payment provisions in this Authority's waste contracts, and thus no restraints or perverse incentives affecting its ability to reduce and recycle its waste. EfW is not a cheap option, it costs £150 per tonne. Dry recycling costs £25 per tonne, and a tonne minimised to zero costs us nothing. Believe me, this Authority is fully incentivised, financially and environmentally, to follow the waste hierarchy and prioritise recycling. It may be difficult and complex to increase recycling performance, but a per tonne saving of £125 is always in our minds.

Artificially limiting the use of EfW, or introducing an incineration tax, needs to be very carefully thought through. If waste authorities have to pay tax to HM Treasury there will be less to spend on recycling – and at a time when authorities are urged to meet a higher target which will cost more per tonne to reach.

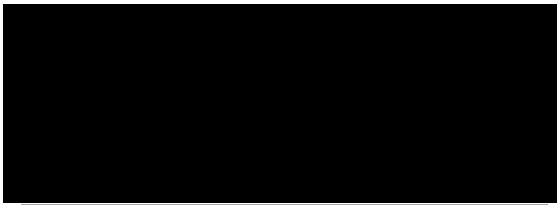
The report suggests that residual waste could be recycled before incineration. Because of that £150 number this option has been tried many times, but the so-called "dirty MRFs" have consistently failed to produce a marketable recycled product. Looking ahead and noting China's recent import restrictions, my Authority doubts that this proposal will ever be viable.

Your report refers to anaerobic digestion, which we regard as another form of energy recovery. We have modelled and are right now trialling collection and transport of separated foods. These are early days and we have not yet identified environmental benefits, but we do expect increased cost. We have noted the possible increase in AD capacity in London and we keep an open mind.

For sound environmental reasons landfill capacity is disappearing. It is clear from your report that if London fails to meet the Mayor's 65% recycling target, which recent industry research suggests is unlikely to be met, or if Brexit prevents export to Europe of residual waste, London will probably experience a significant shortfall in treatment capacity.

I hope your Committee will take on board and highlight the points made in this letter, and I return to my first sentence – it is the strategic significance of EfW which is so important to London. We absolutely need not to run out of residual waste treatment capacity.

Yours sincerely,



CLLR PAUL WARRICK
CHAIRMAN

c.c All Members of the Environment Committee, London Assembly
Ian Williamson, Scrutiny Committee Manager
Clare Bryant, Committee Officer