GREATERLONDONAUTHORITY

GLA/4509/WR

Deadline 8B Submission 4 October 2019

Riverside Energy Park, Belvedere

In the London Borough of Bexley

Planning Inspectorate reference: EN010093

National Infrastructure Project Development Consent Order application – Deadline 8B Representations

Development Consent Order, Section 90 of Planning Act 2008

Proposed development

Cory Environmental Holdings (the Applicant) propose to develop 'an integrated multi-technology Riverside energy generation park including an Energy Recovery Facility (ERF incinerator), Anaerobic Digestion Facility, Solar Panels, Battery Storage and electrical connection route'.

As the Riverside Energy Park (REP) would have an electricity generating capacity over 50MWe, it is classified as a Nationally Significant Infrastructure Project under section 14(1)(a) and section 15(2) of the Planning Act 2008.

Purpose of this document

This document focuses primarily on summarising the GLA's final position with regards to its principle objections. The document also provides sets out the GLA's position on the draft Development Consent Order (DCO) submitted by the Applicant at Deadline 8A (Document reference 3.1), and includes a mark-up version of the DCO attached at Appendix A.

1. The GLA welcomes this final opportunity to comment on the REP application for development consent. The GLA intends this note to provide the Examining Authority with an overview and update of its principle objections to the proposed REP, and comments on the draft DCO taking account of matters that have been addressed to its satisfaction at previous deadlines.

2. It should be noted that references to the GLA include TfL unless otherwise stated. The GLA's in-principle objection position to the development is summarised in paras 3 – 11. References to previous submissions setting out the GLA's position in more detail are provided to assist the ExA. As in previous submissions, the GLA has sought to avoid unnecessary repetitions of previous comments.

3. **Primacy of the NPS:** Energy generation projects over a defined size should be determined in accordance with the National Policy Statements (NPSs) unless the statutory exemption set out in section 104(7) of the Planning Act 2008 applies. The GLA's submissions have demonstrated to the Examination that the proposed REP, in particular the Energy Recovery Facility (ERF), would result in adverse impacts from the development which outweigh the stated benefits, and therefore the

statutory exemption should be applied. Where the statutory exemption applies, the primacy of the NPSs no longer exists and the presumption in favour of granting consent does not apply. The NPS is relegated to an important and relevant consideration, rather than determinative. The GLA considers that development consent should not be granted for the reasons set out below. Note: the references provided below refer to the GLA's most recent applicable submission.

4. Combined Heat and Power (CHP)

a) There is insufficient commitment to heat offtake delivery from the ERF within a reasonable timescale, including a lack of focus on exploring market potential (Deadline 7, Appendix A, para. 32 - 35).

b) RRRF has not developed any heat offtake in eight years of operation and the two projects would be competing for the same heat users (GLA's Written Representations WR1).

c) The proposed arrangements for setting up district heating are poorly developed with regard to the essential involvement of stakeholders and partnership working (Deadline 5, Schedule 1, paras 34-42).

d) The Applicant's unsubstantiated position is that the ERF would in any case meet the Mayor's carbon intensity floor (CIF) level operating in power-only mode. Given the shortcomings of the CHP reviews, the GLA is concerned that the Applicant would have little or no intention of committing to CHP so would not achieve the stated carbon saving benefits. The Applicant providing a strong commitment towards implementing a heat off-take would displace the use of carbon intensive fuels to meet the heating demand of the connected customers. This would result in carbon emission reductions to the extent that the REP would become a carbon-reducer.

5. Renewable energy

a) The projected content of the feedstock would be less than 50 per cent biogenic and therefore the ERF would not principally be a renewable energy generator. This does not comply with EN-1 and EN -3 Renewable Energy policies in the Energy NPS, or support the UK's urgent need to move to a low carbon economy (Deadline 7, Appendix A, para. 36). The GLA does not accept the Applicant's case as stated at Deadline 7 and in its Maximum Carbon Throughput Note at Deadline 8 in which it attempts to demonstrate that the biogenic content of the waste has been understated. The GLA's own assessment set out in its Deadline 8A submission to the Applicant's document 8.02.67 'GLA response to Applicant's submissions at Deadline 7' shows that the Applicant's modelling has overstated the amount of degraded carbon, thereby overstating the benefits when a comparison between landfill and REP is made.

b) The GLA has consistently demonstrated to the Examination that less than 50 per cent of the feedstock for the ERF is likely to be biogenic. Moreover, it is important to note that the calorific value of biogenic materials (e.g. food waste) is typically lower than that of non-biogenic (fossil carbon) materials (e.g. plastic waste). As a result, even in the event that feedstock is 50 per cent biogenic, the proportion of energy output from the ERF generated by this biogenic material is significantly less than 50 per cent - undermining any claim that the ERF is a predominant source of renewable energy.

c) Burning biogas (from the AD facility) on site would have an adverse effect on air quality and be an inefficient use of a valuable fuel that should be used as a replacement for grid gas in existing heating appliances or as a vehicle fuel (Deadline 7, Appendix A, paras. 16 and 39).

6. Carbon

a) The Applicant has failed to demonstrate how the claimed electrical efficiencies meet the Mayor's CIF level in electricity-only mode would be achieved (Deadline 5, Schedule 1, para. 46).

b) The current CIF level is planned to be reduced progressively to reflect the ongoing carbon reduction of UK energy generation capacity. The ERF would not meet lower CIF values by the time it is commissioned and would be a 'carbon producer' (Deadline 7, Appendix A, para. 38).

c) Comparison with UK energy mix – the Applicant's assessment of carbon benefit is based on historical values that do not take account of the UK's accelerating transition to a low carbon mix with a high proportion of renewable energy generation stated in government policy. The Applicant continues to assume that the electricity generated at the ERF will offset electricity generated at a CCGT plant. The GLA has disputed this assumption in its previous submissions to the ExA. Current grid generation is already of a lower carbon intensity than CCGT, and the carbon intensity of electricity on the grid will decline further a result of stated Government policy on grid decarbonisation. As a result the ERF will continue to perform increasingly worse in carbon terms over its lifetime as the carbon intensity of grid electricity declines. (Deadline 5, Schedule 1, paras. 49-51; Deadline 8A paras 3-6).

d) Approving the ERF operating in power-only mode would slow the transition to a zero carbon economy. This would prejudice a key government objective stated in the NPS for Energy (Deadline 7, Appendix A, para. 38).

7. Waste

a) The Applicant has overestimated the demand for residual waste treatment capacity in London as a result of overestimating both the quantity of residual waste available after pre-treatment; and the amount that is physically suitable for incineration, i.e. combustible (Deadline 7, Appendix A, para. 47). The GLA has demonstrated that London is expected to have 300,00 tonnes per annum surplus ERF capacity by 2036 if the Mayor's reduction and recycling targets are met (Deadline 2 Local Impact Report para 7.30 and Table 3).

b) Even on the Applicant's own projections of London waste arisings, the ERF would have more than double the capacity required (GLA's WR4 Deadline 1, para 3.79)

c) The Applicant has overestimated the demand for residual waste treatment capacity in the South East region due to miscalculating the capacity demand statements made in local planning documents (Deadline 5, Schedule 1, paras. 13 – 15)

d) Waste hierarchy – unless the waste hierarchy is correctly applied the ERF would incinerate recyclable waste. This would not comply with NPs En-1 and undermine national and local recycling targets for moving towards a circular economy (Deadline 7, Appendix A, para. 8).

8. Waste transfer

a) Despite historical permissions at the riparian transfer stations there is real concern over the operational and environmental capacity at these locations in central London (Deadline 7, Appendix A, para. 38).

b) The environmental effects of using the existing river transport system including existing riparian transfer stations for waste transfer have not been assessed as part of the EIA (Deadline 5, Schedule 1, paras. 25 – 27).

c) The REP should seek to maximise the transportation of waste and materials in order to justify its location adjacent to the river and comply with national and London policies for maximising use of sustainable transport (Deadline 7, Appendix A, para. 2).

9. Traffic

a) The impacts on bus services arising from construction of the electrical connection have not been fully assessed and suitable mitigation on disruption to local bus services has not been proposed (Deadline 7, Appendix A, para. 27).

10. Air Quality

a) The Applicant has underestimated the levels of adverse effects including underestimating the number of receptors affected. The GLA believes that effects may be significant. Indeed, the Applicant has confirmed in Section 1.7 Applicant's response to air quality matters (Document Reference 8.02.70) submitted at Deadline 7) that emissions of Nickel would result in significant effects. The GLA notes the Applicant's calculation that 791 properties would be exposed to large increases in nickel concentrations, a "minor adverse" at each property and their concession that this should be considered a "significant" effect (paragraph 1.7.8). In previous submissions the Applicant has not acknowledged a significant effect. The Applicant seeks to downplay this effect by suggesting that the worst case scenario presented in the Environmental Statement would not occur in practice. Similar arguments have been made before by the Applicant in regard to the impacts of NOx and other pollutants. The GLA's position remains that the proper basis for assessing the impacts of the scheme remains the worst case represented in the Environmental Statement.

b) Arguing, as the Applicant has done, that the impacts described in the Environmental Statement (or supplementary documents) should be ignored *because* they are a worst-case scenario is not an acceptable approach and one which, ultimately, frustrates the purpose of undertaking an Environmental Impact Assessment in the first place. There is nothing in either the DCO (as drafted) or the Environmental Permit that would, or could, prevent the significant impacts described from occurring in practice.

c) The GLA has previously requested that a similar calculation of the number of homes affected by non-negligible NO_2 impacts is presented by the Applicant. This has not been done and therefore the Applicant has failed to demonstrate whether or not the NO_2 impacts are significant (GLA Deadline 5, Schedule 1, paras. 56 - 62).

d) Both the Mayor and the affected boroughs have a statutory duty to work to achieve compliance with legal air quality limits and more broadly to take steps to reduce ambient pollutant concentrations. If the DCO and permit are granted for the development, it would not be possible for the Mayor or affected Boroughs to secure further additional mitigation measures from the Applicant. It would fall to the Mayor and Boroughs to undertake compensatory measures from their own resources, which may include significant investment to reduce emissions from unrelated sources such as transport. For some of the relevant pollutants, such as Nickel, where there are few other local sources except for the existing RRRF it is likely to be the case that there are no compensatory measures available to the Mayor or Boroughs.

e) The Applicant has failed to take proper account of important changes in the future baseline including prevalence of high-rise buildings in nearby Opportunity Areas (GLA Deadline 5, Schedule 1, paras. 68 – 77). The maps showing receptor locations and expected tall buildings were provided separately from the narrative description of the results and were provided as

figures 1a to 5 of the Applicant's Deadline 7a submission "Applicant's response to Air Quality Matters (with track changes)." Assuming that the maps are correct none of the receptors (R1 to R6) relied upon to demonstrate "negligible" impacts are located within the Beam Park Opportunity Area, indeed only R4 and R6 are even on the same side of the river. Receptor R15 was relied on by the Applicant as representative of potential tall building locations within the Opportunity Area, and the map shows that this is indeed located close to a potential tall building site (TBR1). However, this location is well outside the expected centre line of the pollutant plume whereas TBR6 is almost in the centre of the plume. TBR6 has not been modelled or assessed.

f) In summary the Applicant's assessment, and supplementary documents, has shown significant impact from at least one air pollutant (Nickel) which may have consequences on human health. The Applicant has not provided sufficient information to understand whether they may be significant impacts from other pollutants on existing homes and workplaces (particularly from NO_2), nor have they shown that the impacts of the ERF will not have a constraining impact on the delivery of Opportunity Areas.

11. Biodiversity

a) The GLA maintains that the adverse effects on biodiversity have not been fully addressed and understood. The GLA supports LBB's response to the ExA concerning the adverse effects on biodiversity submitted at Deadline 7a. The GLA acknowledges that LBB has accepted the Applicant's concession to deliver a 10 per cent biodiversity net gain secured through the Development Consent Order. The GLA acknowledges that the Friends of Cross Ness Nature Reserve remain opposing the REP concerning the adverse effects on biodiversity stated in their submissions to the ExA.

Draft Development Consent Order (DCO) submitted by the Applicant at Deadline 8A

12. The GLA acknowledges the concessions made by the Applicant in response to certain concerns raised by both itself and LBB following the 2nd ISH and Deadline 8A. However, the proposed amendments to the draft DCO do not go far enough to satisfy the GLA that the stated benefits of the REP could be achieved. The GLA has set out its amendments and comments on Schedules 1 and 2 in a marked up version of the draft DCO at Appendix A. To assist the ExA, the GLA has set out below its position and supporting evidence regarding the key outstanding Requirements that it considers necessary and effective for the DCO to fulfil its purpose that the GLA could support.

Requirement 32: Cap on waste (formerly in Schedule 1 of the DCO)

13. The GLA maintains that limiting the tonnage cap on the ERF to 655,000 tonnes per annum is necessary and effective to ensure that the facility does not exceed the basis of Carbon Assessment. The GLA in paras 3-6 in its Deadline 8A submission responds to the Applicant's Maximum Throughput Carbon Assessment Note submitted at Deadline 8, concluding that the Applicant's assessment is flawed in justifying the cap be set at the upper limit of 802,905 tonnes per annum. The GLA does not accept that increasing the throughput of the ERF increases the carbon benefits.

14. The GLA maintains that a requirement setting a cap on waste imported to the REP from outside of London is necessary and effective to secure London's strategic waste management needs. The GLA has set at 32 (3) in the DCO a cap on waste delivered from the Port of Tilbury as has been previously accepted by the Secretary of State (SOS) in granting a tonnage extension to the RRRF. Paras 55-62 in the GLA's Deadline 8A submissions sets out more detail why this Requirement is necessary along with supporting evidence linked to the RRRF planning permission.

Requirement 13: Construction Traffic Management Plans (CTMP)

15. Mitigating adverse effects on local bus networks:

The GLA acknowledges that the updated CTMP submitted by the Applicant at Deadline 8A recognises the likely adverse effect on bus routes requiring mitigation measures. The GLA maintains that the Applicant should provide a commitment that such mitigation measures include financial contributions. The aim should be to minimise delay and only seek compensation where delay is unavoidable. Providing extra bus capacity is a benefit to bus users.

16. Such a requirement should be secured either through the DCO or stipulated in the CTMP. This would match the requirement placed on the Brent Cross and Partners development Section 106 Agreement attached at Appendix B. Schedule 3 para. 3.1.1 (b) of the S106 obligates the developer to pay for bus mitigation during construction: '3.3.1 …*the Brent Cross Partners or CRL (as the case may be) shall: b) pay (prior to Commencement of the relevant Phase or Sub-Phase of the Northern Development or Southern Development (as the case may be) in which the need for such relocation or re-routeing arises) to the LPA for payment to TfL the reasonable and proper costs anticipated to be incurred by TfL (notified in writing to the Brent Cross Partners or CRL (as applicable)) in moving or relocating the bus stops/shelters and re-routeing buses during and as a result solely and directly of the construction of the Northern Development or Southern Development (as the case may be) as certified by TfL (acting reasonably).*

17. The GLA has repeatedly set out in its Deadline 7A and Deadline 8 submissions and at the 2nd ISH its position that financial contributions from the Applicant are necessary and appropriate to mitigate the adverse effects of REP's construction. TFL's 'Bus Mitigation Process' (attached at Appendix C) is the mechanism to measure reasonable and proper costs to mitigate bus impacts and is linked to the temporary traffic management notification process applied in the Brent Cross development. The methodology to assess delay aims to incentivise the contractor to minimise delay to buses in keeping with their statutory duties. This is also in keeping with the *Traffic Management Act,* which regulates utility companies through permits and lane rental charges. The DCO could override the permit scheme. The GLA suggests inclusion of the Bus Mitigation Process into the CTMP.

18. *Supporting sustainable transport of materials and waste by river:*

The GLA acknowledges the Applicant's amends to para 10.1.3 of the updated CTMP supporting river based transport but does not consider that they go far enough. The GLA maintains the amendments to para 10.1.3 as set out in para 9 of its Deadline 8A Submission are necessary and effective to maximise river based transport of both waste and materials during the construction phase.

Requirement 14: Heavy commercial vehicle movements delivering waste

19. Mitigating adverse effects of transport on air quality and climate change:

GLA maintains that a requirement for Heavy Commercial Vehicles (HCVs) servicing the REP meet EURO VI emission standards as a minimum. The Mayor has statutory duties to reduce carbon emissions and air pollution. This requirement is necessary and effective to help fulfil those duties and to secure maximum air quality and CO2 mitigation benefits. This requirement would enable the REP to effectively comply with the London Low Emission Zone (LEZ) and London Environment Strategy (LES) Policy 7.3.1,and help work towards the Mayor's overall ambition for all heavy vehicles to be fossil fuel free by 2030. Since the LES was published, eight London boroughs have stipulated requirements in their waste service contract specifications for contractors to use vehicles that comply with ULEZ/LEZ standards as a minimum.

20. The Low Emission Zone and Ultra-Low Emission Zone are incorporated in the statutory national plan to achieve compliance with European legal limits for NO_2 in the shortest time possible. In the recent *Client Earth* judgement Mr Justice Garnham ruled that compliance should be achieved as soon as possible, by a route that would reduce exposure as quickly as possible and which is likely to work. In order to meet these tests all sectors will need to achieve high levels of compliance with the ULEZ standards. Securing a minimum Euro VI standard via a Requirement will assist with this by preventing the operators' additional HCVs serving the new development choosing to "pay-and-stay" with non-compliant vehicles. The costs of "pay-and-stay" although high for an individual operator could potentially be passed on to customers, negating the incentive effect of the ULEZ.

21. European emission limits for HCVs are expressed in g/kWh for both NOx and Particulate Matter. The Euro VI limits for NOx are 0.4 g/kWh, Euro V limits for NOx are 2 g/kWh. For Particulate Matter the Euro VI limits are 0.02 g/kWh and Euro V limits are 0.01 g/kWh. A Euro VI HCV therefore emits 80 per cent less NOx and 50 per cent less PM than the equivalent Euro V vehicle. Emissions reductions compared to earlier emissions limits are even greater. A requirement to use only Euro VI HCVs would therefore not only contribute to achieving overall compliance but would also significantly reduce exposure along affected road corridors, as required by the second of Justice Garnham's tests.

22. Such a Requirement would be similar to that applied in the Silvertown Tunnel development DCO (attached at Appendix D). Schedule 2 Requirement 14 (3): Cross River bus services states: *"(3)TfL must ensure that any bus ordinarily using the Silvertown Tunnel as part of a London local service must comply with the Euro VI emissions limits or with equivalent emissions standards."*

23. In the Silvertown case, TfL does not itself run the bus services, so the requirement has to be met through contracts and licensing. The Applicant argued at the 2nd ISH that it would not be practical to stipulate such a condition on suppliers to the REP. The Silvertown DCO demonstrates that a Euro VI condition could be secured through contracts and licensing arrangements agreed by the Applicant with its suppliers to the REP. To provide flexibility and supporting a phased approach, contractual obligations could be placed on those suppliers who are not yet using Euro VI to use these vehicles as a minimum for their next commissioning/contracting round.

24. The GLA notes in Schedule 1 paras 7.4.1 – 7.4.3 of the Applicant's Deadline 7 Submission (Ref doc 8.02.67) regarding commitment to Euro VI standards *"The Applicant has committed to meet the prevailing emissions standards for its own vehicles and will encourage other companies to do the same, where appropriate*. However such a commitment is not set out in the DCO or the CTMP and should be to ensure that it is delivered.

Requirement 15 Emission limits on Work No 1A (the ERF)

25. The GLA maintains Requirement Emission limits – Work no 1A be re-instated with amendments as GLA submitted in its Deadline 7A Submission. This Requirement is necessary and effective to ensure that the development as built does not exceed the impacts on air quality described in the Environmental Statement annual mass emission limits and should be imposed for all assessed pollutants. GLA Deadline 8A Submission para 14 sets out more explanation for why this Requirement is necessary.

Requirement 16: Waste Hierarchy Scheme

26. The GLA supports the principle of the Waste Hierarchy Scheme. The GLA has set out amendments at 2 (b), (c) and (e) that are considered necessary and effective for the Waste Hierarchy Scheme to fulfil its purpose.

Requirement 21: Community Benefits

27. The GLA maintains amendments that the Applicant should commit to paying the London Living Wage to comply with the Mayor's Good Work Standard.

Requirement 24: Combined Heat and Power

28. The GLA has suggested amendments at 24 (1) (4), (5) and (6) in the DCO it considers necessary and effective to ensure CHP delivery.

Requirement 25: Use of compost material and gas from Work No. 1B

29. The GLA has suggested amendments at 25 (c) (4), (5) and (6) in the DCO it considers necessary and effective to ensure that the benefits of the anaerobic digestion facility are delivered.

Statement of Common Ground (SOCG)

30. The GLA continues to engage with the Applicant but has not yet agreed a SOCG. The GLA will continue engaging with the Applicant and intends to agree a SOCG that could be submitted by the close of the Examination.

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