PAPER NO. WRWA 25-18 (A)

WESTERN RIVERSIDE WASTE AUTHORITY

MEETING	12th June 2025
REPORT AUTHOR/DATE	Interim General Manager *(Contact Rachel Espinosa - Tel. 020 8871 2788)* 29th May 2025
SUBJECT	Various contractual matters associated with the Authority's Waste Management Services Agreement (WMSA) with Cory Environmental Limited (trading as Cory Riverside Energy).
CONTENTS	Page 1 Executive Summary Page 1 Recommendations Pages 1-2 Items to be Discussed Pages 3 to 5 Appendix 1 – WRWA Joint Position Statement Pages 6 to 12 Appendix 2 – WRWA Comments on the Draft Development Consent Order Revision G Pages 13 to 14 Appendix 3 – WRWA Position Statement
STATUS	OPEN
BACKGROUND PAPERS	None

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EXECUTIVE SUMMARY

1. This report gives an update on:

    a. Cory's Decarbonisation Project for Carbon Capture.

RECOMMENDATIONS

2. The Authority is recommended to:

    a. Receive this report for information.

CORY DECARBONISATION PROJECT ("DCP")

3. At previous meetings of this Authority, Officers reported that Cory had submitted an application for a Development Consent Order (DCO) to build a Carbon Capture and Storage (CCS) facility at Belvedere to capture carbon emitted from the Energy from Waste plant at Riverside Resource Recovery Limited (RRRL). The DCO application was the subject of a Public Examination process that began on 5th November 2024 and closed on 5th May 2025.

WRWA Engagement with Examination Process

4. The Authority submitted an objection to the Planning Inspectorate in June 2024, to register the Authority as an 'interested party' and allow it to take part in the Examination process. The Authority attended the first Compulsory Acquisition Hearing (CAH1) in person on 7th November 2024 and subsequently submitted Written Representations detailing its substantive objections, by 26th November 2024.

5. Cory submitted a formal response to WRWA's written representations by the deadline of 13th December 2024. WRWA submitted a further response to the Examining Authority by the deadline of 17th January 2025.

6. A Compulsory Acquisition hearing (CAH2) took place on 11th February 2025, which WRWA did not attend. Instead, the Authority submitted a 'Joint Position Statement' to the Examining Authority, set out in Appendix 1.

7. The Authority submitted a request for changes to the draft DCO Statutory Instrument on 27th March 2025, to provide enhanced protections for the Authority's interests, set out in Appendix 2.

8. A second 'Joint Position Statement' (Appendix 3) was submitted on 2nd May 2025 and at the close of the examination process, the Authority's objection remained in place.

Next Steps

9. The Planning Inspector has 3 months to write his report and submit to the Secretary of State, who then has a further 3 months to consider it and make a decision on approval. There follows a six-week period in which a Judicial Review can be sought.

10. If Cory's DCO application is successful, the Authority's leasehold interests could be subject to compulsory acquisition and/or the granting of new and additional rights, easements and servitudes.

TREASURERS COMMENTS

11. The expenditure that has been incurred by WRWA with regard to the DCO has been substantial and in excess of £100,000 (both external technical advice and WRWA officer time). The Authority has needed specialist planning legal advice and a sum of £31,700 plus VAT was incurred (Landmark Chambers).

12. WRWA is pursuing the recovery of its costs from Cory.

S Kalsi
TREASURER

R. Espinosa
INTERIM GENERAL MANAGER

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

29th May 2025

From: Rachel Espinosa
Sent: 10 February 2025 17:12
To: Cassells, David <David.Cassells@wsp.com>; CoryDP <CoryDP@planninginspectorate.gov.uk>
Cc: Tess Bridgman <Tess.Bridgman@corygroup.co.uk>; Fran.Comerford-Cole@corygroup.co.uk; Richard Wilkinson <Richard.Wilkinson@corygroup.co.uk>; Matthew Fox <Matthew.Fox@pinsentmasons.com>
Subject: RE: EN101028 (Cory Decarbonisation): Joint Statement from the Applicant and Western Riverside Waste Authority

Dear Cory DP,

With reference to the email below, WRWA agrees with the statement made by WSP on behalf of the Applicant. For the sake of completeness please note a typographical error, namely there are 'issues' raised by WRWA rather than a single issue.

Kind regards

Rachel Espinosa
Interim General Manager

Email: rachel@wrwa.gov.uk

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From: Cassells, David <David.Cassells@wsp.com>
Sent: 10 February 2025 16:58
To: CoryDP <CoryDP@planninginspectorate.gov.uk>
Cc: Tess Bridgman <Tess.Bridgman@corygroup.co.uk>; Fran.Comerford-Cole@corygroup.co.uk; Rachel Espinosa <rachel@wrwa.gov.uk>; Richard Wilkinson <Richard.Wilkinson@corygroup.co.uk>; Matthew Fox <Matthew.Fox@pinsentmasons.com>
Subject: EN101028 (Cory Decarbonisation): Joint Statement from the Applicant and Western Riverside Waste Authority
Importance: High

Hi Sarah,

Please find below an agreed joint statement from the Applicant and the Western Riverside Waste Authority ("WRWA") by way of an update to the ExA:

The Applicant and WRWA are continuing discussions with the aim of reaching a voluntary agreement, with meetings having occurred in January and February 2025. The aim is for this voluntary agreement to provide a structure for dealing with the issue raised by WRWA. Heads of Terms for that voluntary agreement have been shared and are under review.

Additional to the voluntary agreement, the parties are discussing amendments to the DCO.

Please confirm that the ExA has received this joint statement prior to CAH2.

Regards,

David Cassells
Regional Director UK South, Infrastructure Planning
BA (Hons) Dip TP MRTPI

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Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

Planning Inspectorate ref: EN010128 Cory Decarbonisation Project

DEADLINE 5

COMMENTS ON THE DRAFT DEVELOPMENT CONSENT ORDER REVISION G

WRITTEN REPRESENTATION

On behalf of

Western Riverside Waste Authority

25th March 2025

Introduction

1. Further to WRWA's oral submissions at the hearings, WRWA and the Applicant are making progress in addressing the issues between the parties.

2. WRWA is grateful to the Applicant for adopting updated drafting following certain of those discussions in the latest version of the draft DCO Revision G [REP4-005]. Discussions between the parties continue in relation to the DCO and other issues. However, in light of the stage of the Examination, WRWA seeks to draw its further suggested changes to the DCO to the Examining Authority's attention. The changes are shown in red.

3. WRWA has one further minor clarification in respect of the Land Rights Tracker [REP-026] provided by the Applicant at Deadline 4. In the entry for WRWA, it is stated that Protective Provisions are not required. WRWA disagrees with this statement but agrees that bespoke individual DCO protection may not be necessary to protect its interests so long as the current revisions to the draft DCO and WRWA's suggested further amendments are included within the final DCO.

WRWA's Comments on the Draft DCO Revision G

Article 2 - Interpretation

4. Reason: Please see the explanation set out in paragraphs 10 - 16 below in relation to Schedule 12 Part 9 - Protective Provisions for the Protection of each RRRL Entity - Substantive Issues.

5. Proposed amendment:

> "RRRL Entity" means (on a several basis) each of ~~the~~ RRRL, and—
> (a) prior to the earlier to occur of a Pre-2032 WRWA Underlease Determination Event and 5 October 2032, WRWA (for the purposes of paragraphs 109(a) and 117 of Part 9 of Schedule 12 only);
> (b) where a Pre-2032 WRWA Underlease Determination Event has occurred, WRWA (for any period in which WRWA (or WRWA's nominee) is not a successor in title to RRRL in respect of the freehold of all the RRRL land which is held by RRRL immediately prior to the Pre-2032 WRWA Underlease Determination Event); ~~or~~
> (c) where a Pre-2032 WRWA Underlease Termination Event has occurred, WRWA (or its nominee) (for any period in which WRWA (or WRWA's nominee) has ownership of RRRL or is a successor in title to RRRL in respect of the freehold of RRRL land); and

(d~~c~~) where a Post-2032 WRWA Underlease Determination Event has occurred, WRWA (for the duration of the WRWA Lease);

Article 32 – Private Rights

6. Reason: The Applicant's changes to Article 32 are welcome. The explicit inclusion of WRWA in the wording of Article 32(6)(b) addresses WRWA's concern that on one interpretation, Article 32 could be used to outflank WRWA's pre-existing contractual arrangements with Cory. It is clear that both parties now agree that WRWA's contractual rights are deserving of protection and it is not the Applicant's intention to use the DCO to renegotiate the contractual relationship between it and WRWA.

7. However, in Revision G, the disapplication of Article 32 by Article 32(6)(b) is restricted to rights held over compulsorily acquired land (i.e. Article 32(1)). As the ExA and the Applicant are aware, WRWA is particularly concerned about the extinguishment of WRWA's rights not only over the land which is being compulsorily acquired but also over that land over which new rights or new restrictive covenants are being compulsorily acquired (i.e. Article 32(2)), which covers the entirety of the site covered by the WRWA Lease not being compulsorily purchased. It follows that Revision G will not provide the necessary reassurance to WRWA.

8. The protection for the Applicant in respect of Article 32(2) is therefore the same as the Applicant considers is sufficient for Article 32(1): an agreement between the parties on a reasonable basis and acting in good faith.

9. Proposed amendment:

> 32…(6) Regardless of any other provision in this Order or anything shown on the land plans or contained in the book of reference—
>
> (a) this article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 39 (statutory undertakers) applies; and
>
> (b) paragraphs (1) and (2) of this article ~~does~~ do not apply to any contractual rights, private rights and restrictive covenants owned or held by the undertaker, REPL, RRRL or WRWA unless otherwise agreed by those parties, such agreement not to be unreasonably withheld or delayed by those parties, acting in good faith and having regard to the ability of the undertaker to construct the authorised development in a timely and cost-effective manner.

Schedule 12 Part 9 - Protective Provisions for the Protection of each RRRL Entity - Substantive Issues

10. Reason: WRWA is again grateful to the Applicant for the clarification which the amendments to Revision G provide.

11. In paragraph 1.2.5 of the Applicant's Response to Western Riverside Waste Authority Deadline 1 Submission [REP02-020], the Applicant asserted that "it is highly unlikely that WRWA would ever be in possession of the Riverside 1 Site (and if it was, would benefit from the RRRL Protective Provisions)". At that stage, WRWA could not agree - Deadline 3 Response [REP03-049].

12. Revision G of the DCO has made significant progress in addressing WRWA's concerns in this regard by broadening out the Protective Provisions to include "RRRL Entities" (as defined) which offers nominal protection to WRWA where WRWA takes possession as leaseholder.

13. However, currently Revision G still does not necessarily give effective protection to WRWA:

    a. where WRWA takes possession as *leaseholder*, as currently drafted the Protective Provisions apply "unless otherwise agreed in writing between the undertaker and RRRL" (Sch.12 Part 9 paragraph 106). What this means is that RRRL could agree with the undertaker to amend or indeed remove the protections afforded to WRWA as leaseholder without WRWA consent;
    b. if WRWA were to take possession as *freeholder*, the Protective Provisions may have been amended or removed by agreement between the undertaker and RRRL prior to WRWA becoming a "successor in title to the freehold"; and
    c. if WRWA were to take ownership not of the RRRL land but of the *shares in RRRL*, again the Protective Provisions may have been amended or removed by agreement between the undertaker and RRRL prior to WRWA taking ownership of the shares.

14. As explained in Appendices 1 and 3 of WRWA's Written Representation [REP01-043], under the contractual arrangements currently in place, upon an early termination of its (quasi-PFI) contract WRWA is compelled to buy either the shares or assets of RRRL and (depending upon the underlying reason for the termination) the compensation payable may not be calculated by reference to the value of the underlying assets and therefore the impact of the absence (or amendment) of Protective Provisions may not be taken into account. It is

therefore inappropriate for alterations to the Protective Provisions to survive a forced acquisition of RRRL/RRRL's assets by WRWA unless WRWA has consented to the alterations.

15. The reason why this is important is that WRWA is a public body, funded by local ratepayers. It is obviously important that (a) WRWA seeks to protect local taxpayers from unquantifiable liabilities; and (b) the public purse does not, in time, end up subsidising private commercial interests.

16. WRWA therefore proposes two changes:

    a. in paragraph 106, the ability to vary the protections afforded to a RRRL Entity should only be capable of variation with the agreement in writing between the undertaker and the applicable RRRL Entity, rather than just RRRL; and
    b. WRWA should not be denied the benefit of the Protective Provisions afforded to RRRL in the DCO as owner of the freehold of the RRRL land which prior to acquisition by WRWA may have been varied or waived by agreement between the undertaker and RRRL without WRWA's consent. An additional limb (c) to the definition of "RRRL Entity" (see paragraph 5 above) is therefore proposed to ensure that the Protective Provisions will continue to benefit RRRL (which as defined includes successors in title to the freehold of RRRL land) should WRWA be required to buy RRRL/RRRL's assets unless WRWA has agreed to the changes. The effect of this is that RRRL can agree whatever changes to the Protective Provisions it wishes with the undertaker, but if it does not get the agreement of WRWA the undertaker runs the risk that the original Protective Provisions will re-apply should WRWA take ownership of RRRL or RRRL land upon an early termination of the (quasi-PFI) contract. The undertaker and RRRL can take a view on the likelihood of this happening rather than seek WRWA consent if they so wish.

17. Proposed amendment:

    106. For the protection of each RRRL Entity as referred to in this Part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and the applicable RRRL Entity.

18. Please also see the introduction of a new paragraph (c) into the definition of "RRRL Entity" in Article 2 (see paragraph 5 above).

Schedule 12 Part 9 - Protective Provisions for the Protection of each RRRL Entity - Mechanical Issues

19. Reason: In circumstances where the WRWA Underlease terminates but the WRWA Lease continues, under the terms of the WRWA Lease WRWA becomes responsible for the maintenance of Riverside 1 assets i.e. for the maintenance of assets which it does not own. The Protective Provisions need to provide for this, rather than just granting the owner of an asset access/rights to the assets it owns.

20. The Applicant has sought to do this in Revision G but WRWA has identified instances where this may not work as intended. WRWA proposes changes which are mechanical in nature and hopefully not controversial.

21. Proposed amendment:

107 …… "apparatus" means any electric cables, electrical plant, drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by any ~~each~~ RRRL Entity and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity and/or heat generated at the RRRL facility and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

…….

109 The undertaker must ensure that each RRRL E~~e~~ntity ……

…….

110. (1) If, in the exercise of the powers conferred by this Order, the undertaker -

(a) acquires any interest in the RRRL land in which any apparatus is placed or over which access to any apparatus is enjoyed; or

(b) requires that any RRRL Entity's apparatus within the RRRL land is relocated, diverted or removed,

any right of a ~~such~~ RRRL Entity to any part of the RRRL land and/or to maintain that apparatus in that land and to gain access to it must not be extinguished **[Note: WRWA will need its rights of maintenance and access not to be extinguished even if the asset is owned by RRRL due to its obligations under the WRWA Lease]**, and that apparatus must not be relocated, diverted or removed, until equivalent rights **[Note: "rights" includes maintenance and access]** have been granted to each ~~such~~ RRRL Entity for alternative apparatus and equivalent alternative apparatus has vested in the applicable ~~such~~ RRRL Entity and (in relation to apparatus) has been constructed and is in operation, and access to it has been provided to each RRRL Entity. The location of equivalent alternative apparatus and rights for the equivalent alternative apparatus must in each case be agreed between the undertaker and each ~~such~~ RRRL Entity before any step is taken to extinguish, relocate, divert or remove as aforesaid.

Final Comment

22. WRWA is grateful for the ExA and Applicant's consideration of these proposed amendments. In due course, WRWA hopes to be able to report further progress to the Examination in respect of further agreement between the parties.

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

Planning Inspectorate ref: EN010128 Cory Decarbonisation Project

DEADLINE 7

CLOSING SUBMISSION

On behalf of

Western Riverside Waste Authority

02 May 2025

Introduction

1. Further to WRWA's previous submissions, WRWA and the Applicant have engaged in discussions throughout the Examination seeking to reach agreement on the matters outstanding between the parties.

2. However, it has become clear that an agreement will not be reached prior to the end of the Examination Period. The parties intend to continue their discussions but, in the meantime, WRWA's objection to the DCO is maintained on the basis previously set out in its Written Representations at Deadline 1 (REP1-043) and in its Deadline 3 Response to the Applicant's Comments (REP3-049).

Proposed amendments to draft DCO

3. WRWA maintains that the changes requested to the draft DCO, as set out in our Deadline 5 submission (REP5-049) dated 25 March 2025 are still required for the reasons set out in that submission.

Maintenance of objection

4. Whilst WRWA continues to seek to reach agreement with the Applicant, those discussions are restricted by the stage of the project and its design development. WRWA has not received sufficient assurances that the Proposed Scheme safeguards the secure and uninterrupted disposal of its waste.

5. Accordingly, WRWA maintains its objection to the Proposed Scheme.

Final Comment

6. WRWA is grateful for the ExA's consideration of this submission. In due course, during the Recommendation and/or Decision Period, WRWA hopes to be able to report further progress in respect of negotiations between the parties.