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**THE SOUTH TEES DEVELOPMENT
CORPORATION (LAND AT THE FORMER
REDCAR STEELWORKS, REDCAR)
COMPULSORY PURCHASE ORDER 2019**

**EXPERT EVIDENCE OF
PETER ROBERTS FRICS CENV
20 JANUARY 2020**

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1.0 GLOSSARY

1.1 I set out below a Glossary of defined terms as referred to in this evidence.

"Avison Young"	the Development Corporation's CPO valuation advisers, formerly GVA
"Ben Houchen"	Ben Houchen, Tees Valley Mayor
"British Steel"	British Steel plc
"BSC"	British Steel Corporation
"BSL OR"	New British Steel's Official Receiver, Mr. David Chapman
"Combined Authority"	Tees Valley Combined Authority
"Corus"	Corus UK Limited
"Delivery Vehicle"	South Tees Developments Limited, a wholly owned subsidiary of the Development Corporation, incorporated in January 2019
"Development Corporation"	South Tees Development Corporation
"Jingye"	Jingye Steel Group
"New British Steel"	British Steel Limited (In Liquidation)
"Order"	The South Tees Development Corporation (Land at the Former Redcar Steelworks, Redcar) Compulsory Purchase Order 2019
"Order Land"	the land subject to the Order
"OR"	SSI UK's Official Receiver, Ken Beasley
"Receivers"	Cork Gully LLP
"RBT"	the Redcar Bulk Terminal operation (as distinct from its operating entity, RBT Ltd)
"RBT Ltd"	Redcar Bulk Terminal Limited
"Site Company"	South Tees Site Company Limited, a Government owned corporation with responsibilities for the day to day management of the SSI Land pursuant to an agreement with the Official Receiver.
"SSI Land"	the interests in land now held by the Official Receiver, being the former sites of SSI UK's steelworks operation
"SSI UK"	Sahaviriya Steel Industries UK Limited (in Liquidation)
"Thai Banks"	KTB, Tisco and SCB

2.0 QUALIFICATIONS AND EXPERIENCE

- 2.1 I am Peter Roberts. I am a Fellow of the Royal Institution of Chartered Surveyors (RICS), a Chartered Environmentalist and a RICS Registered Valuer. I am instructed in this matter by Mishcon de Reya on behalf of TISCO Bank Public Company Limited (“Tisco”), Krung Thai Bank Public Company Limited (“KTB”) and Siam Commercial Bank Public Company Limited (“SCB”), collectively known as the “Thai Banks”, and Sahaviriya Steel Industries PCL (SSI).
- 2.2 I joined the Valuation Office of the Inland Revenue in 1989 and qualified as a Chartered Surveyor in 1995 before joining Rapleys LLP in 2000 where I was appointed a partner in 2010. I joined Dalton Warner Davis LLP (“DWD”) as a partner in January 2018. I have in excess of 30 years' experience of the property industry with a particular emphasis on complex valuation and litigation matters.
- 2.3 I provide Expert evidence in connection with a wide range of contentious compulsory purchase and valuation related matters and my current responsibilities include:
- advice in respect of viability, valuation and compulsory purchase proceedings concerning site assembly and delivery of a wide variety of residential and mixed-use/commercial schemes;
 - provision of Expert evidence in respect of negligence and valuation dispute issues, compulsory purchase proceedings and viability matters to the High Court, County Courts, Parliamentary Select Committee, Planning and CPO Public Inquiries, Arbitrators, DCO examinations and Upper Tribunal (Lands Chamber);
 - strategy and valuation advice in respect of covenant restrictions, wayleaves and easements; and
 - negotiating and provision of Expert evidence in respect of overage and option agreements.
- 2.4 I advise a wide range of landowners and developers including Crest Nicholson Plc, Countryside Properties, SSE plc, Wales and West Utilities Limited, Laing O'Rourke, North Hertfordshire District Council, IJM Land Berhad, Network Rail, Wm Morrison Supermarkets Plc, Applegreen plc, Rontec Limited, Tradewinds Management (Gibraltar) Company Limited, Accor and Imperial Tobacco Limited.
- 2.5 I am appointed by the RICS on a continuing basis to act in the capacity of an Independent Expert valuer in respect of "non rent" development and valuation disputes.
- 2.6 I also provide expert evidence to the RICS in connection with Disciplinary Panel Hearings and investigations concerning RICS registered firms and members.

3.0 MY EVIDENCE

3.1 I have structured my evidence in the following manner:

- Factual background including the identification of the SSI Land;
- Guidance in respect of the tests to be met for a proposed Order to be confirmed;
- Details of discussions between the Development Corporation and the Thai Banks;
- An assessment of the Development Corporation's proposals in light of the Guidance;
- An explanation as to the Thai Banks' proposals;
- The threat the Order, if confirmed, would have on the private sector;
- Consideration as to why regeneration by the private sector should be preferred to the Development Corporation's proposals.

3.2 In providing this evidence I have reviewed the Statement of Reasons ("SoR") and Statement of Case ("SoC") provided by the Development Corporation in support of their proposed Order. I have also reviewed various Development Corporation board minutes as referred to within this evidence. I have attached relevant extracts within my appendices.

3.3 I was provided with accompanied access to the SSI Land by the Development Corporation and South Tees Site Company Limited ("Site Company") on 21, 22 and 23 January 2019. I also attended a meeting between the Thai Banks and the Development Corporation on 29 March 2018 and met with Mr McNicholas of the Development Corporation and Mr King of Avison Young for "without prejudice" discussions on 15 November 2019.

3.4 This report has been prepared in light of the information currently available to me. However, my evidence to the Inquiry will take account of any material changes in events and additional information provided to me in the interim, as appropriate.

3.5 I have provided this statement in the capacity of an Expert Witness and would draw attention to the statements in respect of my duties and responsibilities in this regard at Section 10.

3.6 In this context I am aware that Section 2 of the Notices of Objection as submitted by Mishcon de Reya on 9 May 2019 alleges procedural flaws in the making of the Order. As such matters do not fall within my personal expertise as an Expert Witness I do not comment further in this regard.

3.7 However, I have attached copies of the relevant correspondence relating to this matter, for the benefit of this Inquiry, at **Appendix 1**.

4.0 BACKGROUND AND TITLE MATTERS

4.1 I have set out below an overview of the history and current position in respect of the Thai Banks' interests together with a more detailed description of the SSI Land as included within the proposed Order.

Background

4.2 I have relied upon the Witness Statement of Mr Melhuish-Hancock in respect of the history of the land and interests controlled by the Thai Banks and current negotiations in respect of the disposal of the Thai Banks' interests. However, I have set out a summary below to assist in placing my evidence in context.

4.3 The Thai Banks' position in respect of their control over the SSI Land is set out within the Notice of Objection dated 9 May 2019 submitted on behalf of their behalf. In simple terms, the Thai Banks' interests comprise a charge over the SSI Land as identified within the Schedule to the Order. In addition, the Thai Banks also have a charge over SSI UK's 50% shareholding in Redcar Bulk Terminal Limited ("RBT Ltd") which is not included within the proposed Order. As set out below, the Thai Banks have the ability to secure 100% of RBT Ltd.

4.4 These interests were originally part of a wider site owned by the British Steel Corporation ("BSC") which was privatised to form British Steel plc ("British Steel"). British Steel entered into a lease on 18 July 1995 with Tees and Hartlepool Port Authority Limited in respect of the wharf at RBT in order to bring raw materials for use in the coke ovens and blast furnaces.

4.5 British Steel merged with Koninklijke Hoogovens to form the Corus Group plc ("Corus") which was then purchased by Tata Steel in 2007. Tata Steel UK Ltd (the same legal entity as the former British Steel) transferred their freehold interest in the RBT Land and the benefit of the lease with Tees and Hartlepool Port Authority Limited (which changed its name to PD Teesport Limited on 1st April 2003) to RBT Ltd on 24 March 2011.

4.6 The position as at March 2011 was therefore that:

- Tata and SSI UK jointly owned RBT Ltd¹;
- RBT Ltd owned the RBT Land;

¹ The land is owned by RBT Limited; the shares in RBT Limited are owed 50:50 by SSI UK and (now) New British Steel.

- SSI UK owned the SSI Land as identified in the Schedule to the Order; and
- Tata retained ownership of the surplus undeveloped land including the spine roads.

4.7 I have attached a copy of the plan detailed at page 36 of the Development Corporation Master Plan² (“Master Plan”) which details the SSI UK freehold assets in red, the RBT land in green and the wharf on the boundary of the green RBT Land and River Tees at **Appendix 3 (Page 2)**.

4.8 SSI UK also benefited from leasehold interests in respect of areas coloured light blue on the plan detailed at page 30 of the Master Plan and referred to as “Development Corporation leased land.” However, I have only had regard to SSI UK’s freehold interests.

4.9 I have attached a copy of the plan referred to at paragraph 4.8 at **Appendix 3 (Page 1)**.

4.10 Unfortunately, SSI UK was forced into liquidation on 2 October 2015. The circumstances leading up to this are described by Mr Melhuish-Hancock. Ten days later the Official Receiver (“OR”) announced that he considered that there was no realistic prospect of finding a buyer and SSI UK ceased production. However, whilst steel manufacturing was shut down, RBT Ltd continued trading.

4.11 Tata sold the Lackenby steelworks site³ and their 50% share in RBT Ltd to a company ultimately controlled by the partners and certain employees of Greybull Capital Ltd on 1 June 2016 (referred to as “New British Steel”) but retained the undeveloped land, which was then subsequently sold to the Development Corporation. I therefore understand that, whilst the Order Schedule lists a number of interests as being in the ownership of Tata, it is actually the case that terms have been completed for the transfer of ownership of this land to the Development Corporation.

4.12 With regard to RBT Ltd the current position is that two named partners of Cork Gully LLP (the “Receivers”) have been appointed in respect of the SSI UK shares in RBT Ltd with the effect that the Thai Banks now control 50% of the shares with the remaining 50% of the shares retained by New British Steel. However, New British Steel is in the process of being acquired by Jingye Steel Group (“Jingye”) which has triggered a pre-emption in respect of the New British Steel shares in RBT Ltd in favour of the Receivers. This offers the Receivers the opportunity to take 100% control of RBT Ltd.

² All references are to the Development Corporation Master Plan dated November 2019 as available at <https://www.southteesdc.com/wp-content/uploads/2019/12/South-Tees-Master-Plan-Nov-19.pdf>

³ Adjacent to Plot 81 of the Order land

4.13 I am also aware that terms are being negotiated in respect of the SSI Land such that the ownership position of the SSI Land may have materially altered by the time of the Inquiry.

4.14 My understanding of the current position can therefore be summarised as follows:

- the Tata land has been sold to the Development Corporation;
- RBT is subject to pre-emption proceedings whereby the Receivers are able to take 100% control;
- the Thai Banks and SSI PCL are in negotiations with a number of parties other than Development Corporation in respect of regeneration of the SSI UK freehold interests.

Title Matters

4.15 In order to assist the Inquiry, I have set out a table summarising the various parcels of SSI Land against the numbering adopted within the Schedule and Plans to the Order.

Development Corporation Order Plots	Thai Banks' Description	Page 36 Master Plan References ⁴
1,2,3	Ironmaking Site	1
20,33, 37, 44, 46, 47, 48, 48, 50, 51, 81, 95, 96, 100, 101, 104 and 105	Hot Metal Line	3
37	Steel House	2
45 and 78	Weighbridges	12 and 13
66,67 and 68	Iron Granulation	4
69	Loco Repair Shed	5
70 and 71	Medical Centre	6
81	Steelmaking	7
107 and 108	Torpedo Shop	8
145	SLEMS	11
157	High Tip	10

⁴ This is the plan referred to at paragraph 4.7 above and attached at Appendix 3 (Page 2).

166	South Bank Coke Ovens	9
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- 4.16 The RBT Ltd land is not included in the Order and is therefore not identified within the Schedule or Plans to the Order but is coloured green on the plan referred to at **Appendix 3 (Page 2)**.
- 4.17 Before setting out a description of each plot I provide a brief explanation, from the perspective of a layman, of my understanding of the processes undertaken at the SSI Land in order to set each plot within the overall steel manufacturing context.
- 4.18 I understand that limestone, iron ore and coal were brought by sea through RBT and stacked partly on the RBT land and partly on Plot 1. These areas are known as stock yards but, taken together with the conveyors and associated machinery required to transfer the stocks to the processing plants, are also referred to within the Master Plan as the Redcar Materials Handling site. I have attached a plan that was prepared by TerraConsult on behalf of SSI which details the location and extent of the stock yards together with the position of the Redcar Coke Ovens and Power Station at **Appendix 2**.
- 4.19 Iron ore and limestone was processed in the Sinter Plant (Plot 1) which is partially shown on the right-hand edge of the plan at **Appendix 2** to form small nodes of combined materials ready for the Blast Furnace (Plot 1) which is partially shown on the right-hand corner of the same plan. In parallel with this, coal was charged to the Redcar Coke Ovens (Plot 1) and South Bank Coke Ovens (Plot 166) to be heated at high temperature and converted to coke. This process produced waste products which were then fed back to the Power Plant (Plot 1) via a Gas Header Pipe to the Power Station (Plot 1) located next to the Blast Furnace to power two steam turbines that produced electricity which, in turn, was used to power the plant.
- 4.20 The sintered limestone and iron ore from the Sinter Plant were fed into the Blast Furnace (Plot 1) together with the coke and heated at high temperatures to produce, inter alia, molten iron and slag. This molten iron was then poured into torpedo carriages for transport along the Hot Metal Line (Plots 20,33, 37, 44, 46, 47, 48, 48, 50, 51, 81, 95, 96, 100, 101, 104 and 105) to the Basic Oxygen Steelmaking plant (Plot 81) for further processing before being treated in the Concast Plant (Plot 81) (continuous casting) to produce steel slabs. These steel slabs were transported off site and sold for further processing to form, inter alia, hot rolled coil. In the event of an emergency shut down the molten iron would be diverted, via the Hot Metal Line, to the Iron Granulation facility

(Plots 66, 67 and 68) to be solidified into pellets so that, once the Steelmaking Plant was restarted, the pellets could be treated and fed back into the Blast Furnace.

- 4.21 East Coast Slag Products Limited had a lease over two areas (Plots 2 and 3) next to the Blast Furnace for the processing of slag produced as by-products from the Blast Furnace and Steelmaking Plant respectively, which was then transported to other land controlled by East Coast Slag Products Limited for treatment and sale.
- 4.22 The remaining waste was transported to SLEMS (Plot 145) and High Tip (Plot 157). The trains were repaired and maintained at the Local Repair Shed (Plot 69) whilst the torpedo carriages were repaired and maintained at the Torpedo Shop (Plots 107 and 108). First aid facilities were shared with other site users including Tata (now New British Steel) and RBT Ltd at the Medical Centre (Plots 70 and 71). The SSI UK operations were run partly from the office premises at Steel House (Plot 37).
- 4.23 I have attached page 37 of the Master Plan which has photographs of the Redcar Blast Furnace, Redcar Coke Ovens, Redcar Sinter Plant, Steel House, Lackenby Steelmaking, Torpedo Shop, Pulverised Coal Injection Plant, South Bank Coke Ovens and Redcar Materials Handling site at **Appendix 3 (Page 3)**.
- 4.24 With regard to the individual sites a more detailed description excluding the RBT Land is set out as follows.

Ironmaking Site⁵

- 4.25 The ironmaking site area comprises Plots 1, 2 and 3 of the Order which, in total, extend to 532.43 acres and includes the Materials Handling Area, Blast Furnace, Redcar Coke Ovens, Pulverised Coal Injection, Power Station, Materials Handling and the Sinter Plant.
- 4.26 I have described above, the processes carried out on these plots .
- 4.27 Plots 2 and 3 relate to areas that were leased by SSI UK to East Coast Slag Products Limited for the processing and short terms storage of by-products from the Blast Furnace prior to further processing on other land within their control.

⁵ For clarity Plots 1, 2 and 3 of the Order are represented by Plot 1 on the Appendix 3 (Page 2) plan

Hot Metal Line⁶

- 4.28 This area comprises Plots 20, 33, 37 (part), 44, 46, 47, 48, 49, 50, 51, 81 (part), 95, 96, 100, 101, 104 and 105.
- 4.29 The Hot Metal Line comprises a railway of over 4 miles length primarily used for the transportation of molten iron by 18 torpedo carriages each with a 320-tonne capacity, from the Blast Furnace to the BOS and Concast facilities. In addition, the railway also provided access to the Loco Shed (repair and maintenance of the trains), Iron Granulation (emergency shut down recovery facility) and Torpedo Sheds (maintenance of the transportation carriages).

Steel House⁷

- 4.30 Plot 37 predominantly comprises the main office headquarters known as Steel House located near the main entrance to the SSI Land but also includes part of the Hot Metal Line. In total the site area is understood to extend to 25.83 acres.

Weighbridges⁸, Iron Granulation⁹ and Loco Repair Shed¹⁰

- 4.31 The weighbridges comprise Plots 45 and 78 and extend to 0.24 acres and 0.26 acres respectively.
- 4.32 The Iron Granulation facility comprises a steel framed open industrial building on Plots 66, 67 and 68 which collectively extend to 6.1 acres.
- 4.33 The locomotive repair shed comprises plot 69 which extends to 1.4 acres.
- 4.34 These parcels are all located in an area largely surrounded by land owned by New British Steel which is excluded from the Order. As such, in the event that these plots are acquired by the Development Corporation it will need to reach agreement with New British Steel should they wish to redevelop in conjunction with the surrounding land rather than simply reuse the existing buildings.

Medical Centre¹¹

- 4.35 The Medical Centre comprises Plots 70 and 71 which extend to 0.41 acres.

⁶ This is referred to as Plot 3 on the plan at Appendix 3 (Page 2)

⁷ This is referred to as Plot 2 on the plan at Appendix 3 (Page 2) but also includes part of the Hot Metal Line which is referred to as Plot 3.

⁸ These are referred to as Plots 12 and 13 on the plan attached at Appendix 3 (Page 2)

⁹ This is referred to as Plot 4 on the plan attached at Appendix 3 (Page 2)

¹⁰ This is referred to as Plot 5 on the plan attached at Appendix 3 (Page 2)

¹¹ This is referred to as Plot 6 on the plan attached at Appendix 3 (Page 2)

- 4.36 This comprises a “first aid” facility which, I understand, is subject to Resource Sharing Agreements dated 24 March 2011 with Tata and RBT Ltd whereby, the premises are used as a shared medical facility for, inter alia, occupational health, ambulance, first aid and trauma services. As such, closure of the facilities would result in a need for replacement facilities to be provided elsewhere for the benefit of RBT Ltd and New British Steel.

Steelmaking¹²

- 4.37 This comprises Plot 81 and extends to circa 87.89 acres.
- 4.38 The site was previously used to process molten iron produced from the Ironworks site and delivered via the Hot Metal Line to form steel slabs which would then be exported.

Torpedo Shop¹³- Plots 107 and 108

- 4.39 This comprises plots 107 and 108 and extends to circa 17.55 acres.
- 4.40 This shed was previously used to service and repair the torpedo carriages used to transport molten iron from the Ironworks site to the Steelworks plant.

SLEMS¹⁴ (South Lackenby Effluent Management System)

- 4.41 This comprises Plot 145 which extends to 58.10 acres.
- 4.42 I understand that this site comprises a landfill “¹⁵...historically used for the deposition of waste materials from the steelmaking process, particularly the disposal of basic oxygen steel oxide (BOS Oxide), also known as Basic Oxygen Furnace (BOF) dust which has a potential resale value in the manufacture of construction materials.”

High Tip¹⁶

- 4.43 High Tip comprises Plot 157 which extends to circa 56.82 acres.
- 4.44 I understand that the site has historically been used for the deposit of waste arising from the production processes including so called “contaminated” slag (i.e. slag mixed with wood, plastic,

¹² This is referred to as Plot 7 on the plan attached at Appendix 3 (Page 2)

¹³ This is referred to as Plot 8 on the plan attached at Appendix 3 (Page 2)

¹⁴ This is referred to as Plot 11 on the plan attached at Appendix 3 (Page 2)

¹⁵ As described by Arcadis within their Intrusive Investigation Report dated January 2019 as commissioned by the Development Corporation

¹⁶ This is referred to as Plot 10 on the plan attached at Appendix 3 (Page 2)

etc.) which, as such, then has no resale value as distinct from uncontaminated slag which has a value as aggregate for, inter alia, road construction.

South Bank Coke Ovens¹⁷ - Plot 166

- 4.45 The land accommodating the South Bank Coke Ovens is defined as Plot 166 which extends to 33.59 acres.
- 4.46 I understand that this site comprises a single coke oven battery with 88 ovens, albeit not all of them operational, together with a by-products plant.

¹⁷ This is referred to as Plot 9 on the plan attached at Appendix 3 (Page 2)

5.0 GUIDANCE ON COMPULSORY PURCHASE PROCESS AND CRICHEL DOWN RULES DATED 16 JULY 2019 (THE GUIDANCE)

- 5.1 The confirmation of the Order will have the effect of depriving the Thai Banks of their interest in the SSI Land, as included in the Order, and prevent use of that land for the benefit of the Thai Banks and SSI. As I have set out above at Section 4, that interest comprises a first fixed charge over the freehold ownership of the SSI Land.
- 5.2 In addition, since the Order was made, the Thai Banks have taken control of 50% of RBT Ltd and may take 100% control prior to the Inquiry. Whilst the RBT Ltd land is excluded from the Order, the Order will therefore directly impact upon RBT Ltd and the Thai Banks' ownership thereof.
- 5.3 In this context, bearing in mind the substantial harm that will be caused to the Thai Banks by implementation of the Order, it is important to stress that "*... a compulsory purchase order should only be made where there is a compelling case in the public interest.*"¹⁸
- 5.4 In this regard I have had regard to the following paragraphs of the Guidance.

Paragraphs 2, 3 and 17 - Reasonable Steps to acquire

- 5.5 The second subparagraph of paragraph 2 states "*The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily acquired, unless the land was already on offer on the open market.*"
- 5.6 In addition, the final subparagraph of paragraph 3 states "*In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.*"
- 5.7 In this context paragraph 17 also states that "*Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted...*"

¹⁸ Paragraph 2 of the Guidance

Paragraph 13 - Clear Idea of How the Land will be used

- 5.8 Paragraph 13 states that it will be difficult for a promoter to show conclusively that the compulsory acquisition of land is justified in the public interest if an acquiring authority does not *"Have a clear idea of how it intends to use the land which it is proposing to acquire..."*

Paragraphs 13 and 14 - Resources

- 5.9 Paragraph 13 also states that, in addition to demonstrating that it has a clear idea of how it intends to use the land, it would be difficult for a promoter to show conclusively that the compulsory acquisition of land is justified in the public interest if an acquiring authority *"...cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale."*
- 5.10 Paragraph 14 provides further detail in this regard posing the question *"What information about the resource implications does an acquiring authority need to provide?"* to which the answer is *"In preparing its justification, the acquiring authority should address:*

"[Sources of funding] -- the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- *the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and*
- *the basis on which the contributions or underwriting is to be made*

[timing of that funding] - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years."

Paragraph 15 - Impediments

- 5.11 Paragraph 15 comments that *"The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation."*

6.0 DISCUSSIONS BETWEEN THE DEVELOPMENT CORPORATION AND THE THAI BANKS

6.1 I have set out below:

- a summary of the extent of the discussions between the Development Corporation and the Thai Banks;
- clarification of the actual offers made by the Development Corporation to the Thai Banks;
- an explanation as to why those offers have not been accepted;
- my conclusion.

Summary of Discussions

6.2 The Development Corporation submitted an offer on 8 May 2018 to the Thai Banks for the SSI Land and shares in RBT Ltd. This was followed by a meeting with the Thai Banks in Thailand on 23 May 2018 at which the Thai Banks agreed to consider the offer subject to various factors including the obtaining of professional advice.

6.3 A further meeting with the Thai Banks took place on 7 January 2019 at which, I understand, the relationship between the Thai Banks and SSI was explained to the Development Corporation in detail. In addition, it was explained that the Thai Banks could not consider the offer terms without the provision of certain additional information that was in the control of the Development Corporation.

6.4 In this context the offer was based upon a valuation of the SSI Land carried out by Avison Young that placed nominal value on the land interests and a valuation of RBT Ltd by KPMG that significantly undervalued the shares in RBT.

6.5 I, together with RVA Group (advisors to the Thai Banks and SSI), inspected the site over a three-day period in January 2019 in order to gain a better understanding as to the site and its surroundings. As part of this visit, I also met with representatives of the Development Corporation and the Site Company¹⁹ to establish the extent of information held by the Development Corporation and the Site Company regarding site conditions, structures and contamination that would assist the

¹⁹ STSC deal with day to day site management of the SSI Land on behalf of the OR

valuation exercise, following which written requests were submitted identifying specific documents.

- 6.6 In view of the limited information made available by the Development Corporation and the Site Company, Mishcon de Reya wrote to Addleshaw Goddard LLP (solicitors for the Development Corporation) on 15 February 2019 formally requesting this information.
- 6.7 A copy of this letter is attached at **Appendix 7**.
- 6.8 Mishcon de Reya further wrote to Addleshaw Goddard LLP on 12 March 2019 setting out the Thai Banks' concerns in respect of the Avison Young valuation and suggesting matters for discussion at the meeting proposed for the 29 March 2019.
- 6.9 A copy of the letter dated 12 March 2019 is attached at **Appendix 8**.
- 6.10 However, as Mr Melhuish-Hancock explains within his evidence, whilst the meeting took place as arranged it was cut short by the Development Corporation's representatives and I was not able to explain my concerns. In addition, the Development Corporation advised in no uncertain terms that they were not prepared to negotiate further and would rely on securing the Order.
- 6.11 Mishcon de Reya then wrote to Addleshaw Goddard LLP on 9 April 2019 expressing the Thai Banks' disappointment at the outcome of the meeting and raising concerns at the conduct of the Development Corporation at that meeting and various Development Corporation press releases considered to be "...misleading and inaccurate."²⁰
- 6.12 A copy of this letter is attached at **Appendix 5**.
- 6.13 This letter concluded by confirming the Thai Banks' position in the following terms:

"My client remains willing, able and ready to negotiate as they always have been. However, please do not expect my client to blindly accept the offer put forward under the misguided pretence that any failure to do so somehow equates to "writing a blank cheque" or "taking [Teesside] for a ride... My client expects to receive fair CPO compensation for its interest and STDC should be prepared, willing and able to pay this if it intends to exercise its CPO powers. Indeed, your client will be called upon to demonstrate that it has adequate resources to implement any Order before it is confirmed."

²⁰ See section headed "Recent Press Publications."

- 6.14 I was clear in my mind that the Thai Banks and SSI were open to dealing with the Development Corporation. However, notwithstanding the lack of basic supporting information from the Development Corporation, it was also clear that the Development Corporation was not going to make any offer that was comparable with competing proposals in the market from private sector operations nor allowed them to develop a commercial business.
- 6.15 I also considered that the Development Corporation's offer would not be defensible in the Upper Tribunal based on the limited information released by the Development Corporation. In addition, the Development Corporation had made it very clear that they were not prepared to negotiate with me, such that there was no prospect of me being able to explore my concerns with Avison Young in order to find common ground and persuade the Development Corporation and its advisors to adopt more realistic stance.
- 6.16 The Order was made on 10 April 2019, but the Development Corporation had yet to submit any offer to the Thai Banks for the land identified as being required for the Order. Having had this pointed out to them by the Thai Banks, an offer was received on 16 August 2019 based on a revaluation by Avison Young. However, the provision of additional information considered by the Thai Banks to be necessary to test the basis of the offer, was still sporadic and limited and the valuation, whilst significantly higher than the 2018 Avison Young valuation, was still lower than the Development Corporation's 2018 offer on a like for like basis. This was interpreted as an attempt by the Development Corporation to panic the Thai Banks into accepting the offer rather than a genuine offer to try and reach agreement.
- 6.17 After a number of attempts to arrange a meeting to try and progress matters, I finally met with Mr King of Avison Young and Mr McNicholas of the Development Corporation on 15 November 2019 on a without prejudice basis. However, it was clear to me that the Development Corporation was not prepared to reconsider their position and I was unconvinced that the Development Corporation genuinely wished to reach agreement.
- 6.18 However, I requested a further meeting with Mr McNicholas at the Site Company offices at which RVA Group would also be attendance so that we could discuss all matters relevant to valuation including the costs of developing the site. Following a series of emails in which I attempted to arrange a meeting date Mr McNicholas responded on 22 November 2019 stating that *"...I will however get back to you on this matter once we have considered the constraints and context impacting any potential visit."* I am still waiting.

- 6.19 The Development Corporation has offered a “Lands Tribunal” contract but this has not been accepted by the Thai Banks. Whilst the Thai Banks are of the opinion that such a contract would ultimately generate a compensation payment significantly in excess of the offers made by the Development Corporation, there is little interest in becoming further embroiled in a costly, protracted and confrontational process with the Development Corporation particularly whilst the Banks and SSI are still discussing commercial opportunities to bring forward development on the SSI Land. These proposals would bring development forward in a shorter timeframe and without interference from the Development Corporation.
- 6.20 In this context I have set out below an overview of the valuations provided by Avison Young on behalf of the Development Corporation and compared these with the terms being discussed in the open market in order to illustrate why the Development Corporation’s offer is both unrealistic and unattractive to the Thai Banks.

The Offers

- 6.21 The Development Corporation offered the Thai Banks £23m for the SSI Land and the RBT Ltd shares in May 2018. This offer was supported by a February 2018 Valuation Report by Avison Young that purported to comprise a RICS “Red Book” compliant valuation of the SSI Land and the Thai Bank’s RBT Ltd share interest. Avison Young, within this report, placed a nominal value on the SSI Land. Bearing in mind that the proposed Order excludes RBT Ltd this would mean that, under a Lands Tribunal contract approach, Avison Young would, based on this report, be arguing for a nominal value for the entirety of the SSI Land.
- 6.22 Following the making of the Order it was pointed out to the Development Corporation that it hadn’t made the Thai Banks an offer for the land identified in the Order. This was an important point as, notwithstanding the requirements of paragraphs 2, 3 and 17 of the Guidance, the Thai Banks needed to understand whether the Development Corporation was still assessing the SSI Land included within the Order at a nominal value.
- 6.23 The Development Corporation responded by submitting a further offer in August 2019 of £14.6m that excluded the RBT Ltd shares. This was supported by an updated valuation by Avison Young in which they increased their February 2018 valuation of the Thai Banks’ land interests by a factor of 15.94 times.
- 6.24 Avison Young explained that they had relied upon the terms of the Development Corporation’s acquisition of the Tata land and valued the SSI Land at £8,510 per acre. I challenged Mr King and Mr McNicholas, at my meeting on the 15 November 2019, to provide details of the Tata sale terms

to enable a proper analysis of the terms but was subsequently advised that these were confidential and could not be released under any circumstances. I find that surprising as such terms would arguably be disclosed as part of Upper Tribunal proceedings but, more fundamentally, such headline information cannot be relied upon without a proper analysis being undertaken.

6.25 In any event, this valuation is still significantly below the values indicated in discussions with interested parties in the market as reported to me by Mr Melhuish-Hancock. In this context Mr Melhuish-Hancock sets out the current status of negotiations with interested parties within his evidence in respect of a potential “joint venture” arrangement in connection with the restart of steelmaking and, as an alternative, the sale of the entirety of the SSI Land and share interest in RBT Ltd to a private sector developer.

6.26 However, it is also notable from the various Development Corporation Board Meeting minutes that the Development Corporation has been in discussions with parties interested in acquiring an interest in the SSI Land as it currently exists and I note, by way of an example, from paragraph 7.1 of the minutes of 'Meeting 10' of the Development Corporation's Board held on 30 January 2019 relating to interest from Portnex, that Mr Allison:

“...reminded the Board that this is a South African Company who approach us to potentially re-start the Redcar Coke Ovens, use the bi-products and produce methanol. Portnex have now come back to us with a formal offer which is in line with our requirements. The offer states that they will pay us £10m for the assets and £4m immediately and the remaining £6m over a 36-month period. They agreed to a rental of £20K per acre and after 5 years that increases to £28k per acre. Thereafter every 5 years an RPI or market uplift will be reviewed. We have agreed a pie-crust contract, where essentially any historical environmental liabilities would remain with Development Corporation but any new liabilities will be the responsibility of Portnex.”

6.27 I have attached a copy of the minutes at **Appendix 6 (Minutes from page 281, quoted at 284)**.

6.28 I understand from paragraph 4.7 of Board Paper 9.4 presented to 'Meeting 9' of the Development Corporation's Board on 28 November 2018 that *“...the Portnex proposal to restart the coke ovens, using circa 300 acres of land, if delivered, resolves the cash flow problem...”*

6.29 I have attached this paper at **Appendix 6 (Paper from page 197, quoted at 199)**.

6.30 The Portnex offer, based on the Board papers, appears to effectively comprise £10m for the existing assets and between £6m to £8.4m annual rent for the land. In comparison, the Development Corporation has offered £14.6m to the Thai Banks for a permanent acquisition of 843 acres freehold

interest but would receive the same amount back from Portnex for a leasehold interest for 300 acres of the SSI Land within 22 months. I do not know why Portnex did not approach the Thai Banks direct nor whether they are contractually committed but this clearly demonstrates that the Development Corporation's offer to the Thai Banks is not in accordance with market expectations.

- 6.31 In all the circumstances, I consider that it is entirely right and proper that, based on the offers received by the Thai Banks and the Development Corporation, the Thai Banks should not accept the offers made to them by the Development Corporation. In addition, it is also entirely appropriate that the Thai Banks should not have to wait for the Upper Tribunal to confirm what is already clear to both parties just so that the Development Corporation can delay their liability to make proper payment to the Thai Banks when there is a real possibility of securing terms in the market.
- 6.32 Furthermore, it is apparent that there is interest in the market to bring the SSI Land back into use that is not dependent upon the exercising of compulsory purchase powers or the intervention of the Development Corporation. Whilst the amount of compensation is not a matter for the Inquiry, it is the case that this market interest means that there is no compelling reason to hand over the conduct of negotiations with the market from the Thai Banks and SSI to the Development Corporation when the Thai Banks and SSI are both willing and able to facilitate regeneration by the private sector as evidenced by their engagement with the market.

Conclusions

- 6.33 It is clear that the Development Corporation has not taken reasonable steps to acquire the Thai Banks' interests as required by the Guidance and have not entered into meaningful negotiations. In addition, their offer is not acceptable the Thai Banks as it is considerably lower than known offers and proposed deals for the same land in the market. As such, if the Thai Banks were to accept such an offer, they would potentially be acting in breach of their legal duties to secure proper value whether that be through a sale or business opportunities.
- 6.34 The offer of a Lands Tribunal contract is not attractive as, based on the discussions thus far, it is clear that this would simply lead to a protracted dispute and the Thai Banks would not receive any capital and/or income until such time that the matter was determined. By entering into such a contract, the Thai Banks would also be undermining their ability, in the meantime, to deal with the SSI Land in a manner that is most likely to generate development without reliance on the public purse.
- 6.35 It appears that the Development Corporation is unable and/or unwilling to offer the Thai Banks terms that are comparable to those obtainable in the market. In contrast, the Thai Banks have

market led opportunities to secure terms with the private sector that would define private sector funded development.

- 6.36 There is therefore no compelling case for the compulsory acquisition and interference in the Thai Banks' interests and to allow the Order to be confirmed would cause unjustifiable harm.

7.0 ASSESSMENT OF THE DEVELOPMENT CORPORATION'S PROPOSALS FOR THE SSI LAND

7.1 The Development Corporation's proposed development is set out within the South Tees Regeneration Master Plan (November 2019) and the South Tees Area Supplementary Planning Document (May 2018).

7.2 I have set out below a brief explanation as to:

- my understanding of the proposed Development Corporation scheme and its use of the SSI Land;
- the extent to which the scheme is funded; and
- end user demand.

7.3 I have then considered whether there is a compelling case for the compulsory acquisition of the SSI Land at this present point in time.

Description of Development Corporation's Scheme and its relationship to the SSI Land.

7.4 According to paragraph 1.5 of the SoC the Order relates to a total of 1,752 acres of land. However, by acquiring the Tata land, the Development Corporation has acquired 1,526 acres of land²¹ of which 911 acres are within the Order area.²² This leaves a balance of 841 acres of which the SSI Land comprises 832 acres²³.

7.5 I have attached a copy of page 30 of the Master Plan, which comprises a plan of the locality identifying the SSI Land coloured red and the land acquired by Development Corporation from Tata in blue, at **Appendix 3 (Page 1)**.

7.6 I have also attached a copy of page 87 of the Master Plan, which details the extent of land allocated within each phase of the intended development, at **Appendix 3 (Page 4)**.

7.7 This is accompanied, on page 86 of the Master Plan by a description of the intended development to be carried out within each phase as attached at **Appendix 3 (Page 5)**.

7.8 In this context Phase 1 is earmarked to come forward during the period 2019 – 2022 and is described as:

²¹ According to page 29 of the Masterplan

²² i.e. excluding South Gare, Coatham Sands and Coatham Marsh.

²³ According to the table on page 29 of the Masterplan.

“Phase 1 comprises of just over 120 acres of former Tata land within the Grangetown Prairie site that is now under Development Corporation ownership. UK Government has already allocated £14M of funding necessary to execute the various development enabling works, and initial site clearance works in advance of the infrastructure works have now commenced. There is already firm developer interest in this site, with three proposals being considered, affording the opportunity to establish a metals cluster. It is envisaged that development enabling works for Phase 1 will be realised across the period 2019 to 2022, with development commencing 2020.”

- 7.9 It is therefore apparent that the entirety of the land with Phase 1 is already owned and controlled by the Development Corporation and the Development Corporation has been awarded £14m of Central Government funding such that it are able to proceed regardless as to whether or not it has acquired the SSI Land.
- 7.10 The Development Corporation does not control that part (125 acres) of land in Phase 2 which is located on Plot 1 (i.e. the Ironworking site) but this phase is earmarked by the Development Corporation for the Clean Gas Project which according to the Master Plan was intended to commence construction in 2022²⁴. However, paragraph 5.2 of the minutes of 'Meeting 13' of the Development Corporation's Board held on 24 July 2019 comments that *“Clean Gas are flirting with a Teesside Net Zero Cluster Idea”* (see **Appendix 6, page 319**, ninth bullet from the bottom). Furthermore, paragraph 7.4 of the minutes of 'Meeting 11' states *“the feasibility stage continues on this nationally significant project. JM showed a slide of their DCO consent corridor which includes 125 acres of the Development Corporation site but harnesses the Teesside Collective. It was noted that the DCO process can take up to 3 years...”* (see **Appendix 6, page 303**).
- 7.11 I have been unable to find any more recent reference to Clean Gas since July 2019 within the Board Papers and, having reviewed the National Infrastructure Planning website, there is no indication that any application for a DCO has commenced. There is therefore no immediate apparent certainty that Clean Gas will take this site, such that there is no immediate need to acquire the land. Even if there was, as the project would proceed by way of a DCO, any necessary compulsory purchase should be promoted through that process to support the specific needs of any such project once those needs are known. There is therefore no need nor requirement for the Development Corporation to be involved.

²⁴ See page 86 of the Masterplan.

- 7.12 In this context I note that the Phasing Strategy of the Master Plan (as attached at **Appendix 3, page 5**) states, in respect of Phase 2 that, *“Included within the Master Plan area, but lying outside the envelope of CPO, is Redcar Bulk Terminal (RBT). STDL will seek to support RBT in bringing forward development on its land during Phase 2, aligned with the Master Plan.”*
- 7.13 As the Receivers now control 50% of RBT Ltd and may, by the time of the Inquiry, own 100% of RBT Ltd, the ability of the Development Corporation to influence development at RBT Ltd beyond the terms already agreed with Sirius Minerals, PMA Consultancy and DCS Industrial Limited as set out Section 8, will depend upon the extent to which the Development Corporation can agree terms with the Receivers. However, it may be the case that the development envisaged by the Development Corporation aligns with the agreements already entered into by RBT Ltd in which case the development will proceed regardless as to whether or not the Development Corporation secures a confirmed Order.
- 7.14 I note that Phase 2 includes a 30-acre area marked as “Lackenby Commercial Zone” which includes part of the Steelmaking site and Hot Metal Line. This site is required to be retained such that it will not be released for development by Development Corporation. However, this would not prevent the Development Corporation pressing on with Phases 3 and 4.
- 7.15 Phase 3 comprises 120 acres of Development Corporation owned wharf fronted land together with a further 298 acres of land, of which the Development Corporation already own 272 acres, that includes the Teardrop Site and Adjoining Land together with Steel House and Surrounding Land and the former metals recovery site located adjacent to SLEMS as detailed on the plan attached at **Appendix 3 (Page 4)**. I understand that the South Bank wharf land is intended to be developed by Able UK Limited subject to the agreement of terms.
- 7.16 As such, the Development Corporation already controls the entirety of the land required for Phases 1, 2 and 3 other than the land required for the Clean Gas project which, in any event is intended to be delivered by a separate DCO, and the Steel House plot which comprises circa 26 acres.
- 7.17 The remaining SSI Land, excluding SLEMS is not required until Phase 4 which, according to the Master Plan, has been allocated a timeframe running from 2022 to 2038 with SLEMS not being required until Phase 5 which is designated for 2023 to 2042.
- 7.18 It is therefore the case that, excluding RBT, the Development Corporation already has control of 240 acres of the 296 acres of land that it requires to deliver phases 1, 2 and 3 of its proposed scheme alongside Clean Gas which has the ability to deliver its scheme using its own powers should it be deemed appropriate following a DCO examination. The land that the Development Corporation

does not control comprises Steel House, the Hot Metal Line and the area occupied by the Steelmaking facility.

- 7.19 It is clear that the Development Corporation is delivering its scheme in a sequential manner and that the reason for delaying development of the SSI Land is in the hope that, as yet unsecured funding, will be released. In this context the Master plan states, *“The longer timeframe accords the opportunity to generate significant revenues from Phases 1 to 3 to support funding for the more costly areas of Phase 4.”*²⁵
- 7.20 Whilst the Development Corporation’s scheme has the overall intention of delivering development of the Order lands there are parts of the SSI Land where development falls within Phase 5 with no clearly defined use or timescales. These interests comprise the Medical Centre, Loco Repair Shed, Iron Granulation, weighbridges, SLEMS and High Tip.
- 7.21 It is unclear as to how the Development Corporation intends to develop the Medical Centre²⁶ given that is used by other occupiers unaffected by the Order including New British Steel and RBT Ltd pursuant to the Resource Sharing Agreements. As such the Development Corporation would need to replace this facility should it wish to redevelop the premises. However, the site is surrounded by the New British Steel Land such that any redevelopment proposals would probably require additional land from New British Steel that is not within the Order. In the absence of a clear proposal for this land it appears that the Development Corporation will be unable to bring development forward within the lifetime of the Order.
- 7.22 The same uncertainty applies in respect of the Loco Repair Shed,²⁷ Iron Granulation²⁸ and weighbridges²⁹ in that they are all surrounded by land owned by New British Steel such that they can only realistically be used as they currently exist. As such, it is no more likely that redevelopment will take place with the Order than in its absence, as the Order will not change the fundamental issue.
- 7.23 In this context I note that it is stated at paragraph 7.1 of the minutes of the Development Corporation's Audit and Risk Committee meeting held on 19 June 2019 that *“Another potential*

²⁵ See page 86 of the Master Plan

²⁶ Plots 70 and 71

²⁷ Plot 69

²⁸ Plots 66,67 and 68

²⁹ Plots 45 and 78

issue related to this situation is that STDC will lose the Hydrogen Rail project which is predicated on use of the former SSI Loco Shed and some adjacent British Steel land at Lackenby.” I have assumed that this comment relates to the Hydrail project referred to at paragraph 7.8 of the minutes of 'Meeting 10' of the Development Corporation's Board held on 30 January 2019 (which can be found at **Appendix 6, page 281**).

7.24 I have attached a copy of the Development Corporation's 19 June 2019 Audit and Risk Committee meeting papers at **Appendix 9**.

7.25 On the basis that the New British Steel land is not included within the Order this is a scheme that plainly will not be assisted by the Order but, in any event, this does not propose redevelopment of the building for another scheme but merely a re-use. I am unaware of any further mention of the Hydrogen Rail project within the Board papers from which it appears that the Development Corporation has no end user and no clear idea of what to do with the site.

7.26 With regard to SLEMS and High Tip it is clear from page 86 of the Masterplan that they will be continued to be operated by the Development Corporation for its current use until the end of Phase 4 at which point they will be capped.

7.27 As such none of these assets are intended to be redeveloped within a reasonable timescale and there is no indication that the Development Corporation intends to use them for anything other than their current use for at least the short to medium term. However, the purpose of the Order is to bring forward development that would not otherwise come forward such that a mere change of ownership simply to maintain the existing use is not an appropriate use of statutory powers.

7.28 Overall, it is clear that the Master Plan does not envisage development of the SSI Land until the latter phases and, in the identified cases, there is no clear idea or obvious ability by the Development Corporation to bring development forward at all.

Funding

7.29 The Development Corporation states at paragraph 5.12 of their SoC that *“As part of the detailed, extensive baseline technical and other study work that informed the Master Plan, a comprehensive cost estimating exercise was undertaken, by independent consultants, on the financial commitment required to deliver all of the necessary demolition, ground remediation, site preparation, infrastructure, and other enabling works expected of STDC in order to realise the delivery of the development in line with the Master Plan. The estimate arrived at is circa £504m. In addition to this, is the cost of acquiring the necessary land, which stands at circa £60m.”*

- 7.30 In order to fund these costs paragraph 5.14 advises that the Development Corporation has secured £49m in respect of South Bank Coke Ovens and Redcar Coke Ovens and comments that “... *the project commenced in March 2019.*” However, the Thai Banks still control these assets and the Development Corporation does not have permission to carry out such works on land it does not own. In addition, these assets are required by the Thai Banks as part of terms being negotiated in the market.
- 7.31 Paragraph 5.15 refers to a further award of £14m to fund “...*infrastructure and other development enabling works for some 145 acres of land identified as the “Phase 1 area” (the former Tata land on the Cleveland Prairie site.*”
- 7.32 I understand that, the Development Corporation, according to its website secured “...*a £71m commitment to the redevelopment of the site*” on 10 January 2019. The press release also states: “*the funding announced today will support work to remediate and prepare the site for redevelopment to attract new businesses and investment. It will also help the Development Corporation secure some of the land to ensure the whole area can then be regenerated.*”
- 7.33 I have been unable to establish the precise terms of the funding or what it is intended to relate to. But, in broad terms the addition of this funding, assuming this is an announcement of new committed funding and is confirmed by the Treasury, means that £134m of the £504m cost is now funded. This means that circa 75% of the identified funding need has yet to be secured, the majority of which will be required to deliver development of the SSI Land.
- 7.34 In addition, as I have already commented, the compensation budget of £60m is a gross underestimate as to the true cost of compensation that is likely to arise even if regard is had only to the deals being negotiated by Development Corporation.
- 7.35 In this regard, Paragraph 5.13 states that “*The money required to acquire the land (circa £60m) was agreed as a local government matter, and this funding was approved by TVCA Cabinet at a meeting on 24 January 2019.*” In this context paragraph 3.10 of Board Paper 9.4 presented to 'Meeting 9' of the Development Corporation's Board on 28 November 2018 states “*An indicative valuation of the CPO land, the “Property Cost Estimate” (PCE), has been determined by consultant GVA. A detailed schedule of costs has been prepared (See Appendix B). Setting aside Tata and SSI land, the remaining land areas realise a potential PCE of around £10M -£12M excluding the businesses of Hanson and Tarmac, where we would look to honour existing lease arrangements for several years into the future.*”

- 7.36 I have attached a copy of those Board Meeting minutes at **Appendix 6 (Board paper from page 197, quoted at 198).**
- 7.37 On the understanding that the Tata deal was concluded on 27 February 2019³⁰ at an overall cost of £12.06m³¹ and the “PCE” for the remaining areas is £10m to £12m the net amount left for acquiring the Thai Banks’ interests would be in the region of £35m to £36m. However, I assume that this calculation must be incorrect and that there are other costs to be accounted for as the Development Corporation has offered significantly less to the Thai Banks.
- 7.38 Notwithstanding this point, it is clear that, if the Development Corporation is to match the market, it is underfunded. Bearing in mind that the Upper Tribunal would assess compensation on the basis of market value³² it therefore follows that the Development Corporation will still be underfunded if the Thai Banks were to agree to a Lands Tribunal contract.
- 7.39 Paragraph 5.18 SoC refers to the retention of business rates and rental income but this revenue, even if secured, would not be received until buildings had been constructed and occupation taken. This would therefore likely only assist in the repayment of loans and would not itself fund the significant upfront costs of site acquisition, demolition, remediation, site preparations, infrastructure and remediation. In any event, whilst various Development Corporation Board Meeting minutes refer to business rates strategies there is no confirmation, as far as I am aware, that the Development Corporation has been advised that such an approach is a reliable and realistic source of funding.
- 7.40 Paragraph 5.19 SoC also refers to dialogue with major private and public sector investment funds and claims that there is a strong appetite for investing in the Development Corporation and the Development Corporation area. I have seen nothing within the Development Corporation Board Meeting minutes disclosed to me to suggest to me that any sum of money can be confidently relied on.
- 7.41 It appears that the Development Corporation is itself concerned about the extent of funding as I note from paragraph 7.3 of the Key Points and Actions noted in the minutes of the Development

³⁰ See paragraph 6.1 of Board Paper 11.3 "Priority Projects and Issues" presented to 'Meeting 11' of the Development Corporation's Board on 27 March 2019 (Appendix 6, page 293)

³¹ See paragraph 4.1 of the minutes of the 'Extraordinary Meeting' of the Development Corporation's Board held on 15 January 2019 (Appendix 6, page 274)

³² Section 5, Rule 2 Land Compensation Act 1961

Corporation's Audit and Risk Committee meeting held on 19 June 2019 that Mr McNicholas focussed on the "current red risks" in respect of the CPO and stated:

"Lack of evidence of project viability and documentation- this item is pivotal to the Statement of Case. The QC feels that we need work on the Market Demand Study and the economic viability case, developed through Deloitte, is weak and is pivotal in the CSR business case. The key challenge is on having a funding strategy demonstrating that we have the ability to acquire the funds."

7.42 I have attached a copy of the minutes at **Appendix 9**.

7.43 Taken as a whole, it is apparent that, unless or until the additional pledge of £71m is confirmed by the Treasury, the Development Corporation only has secured funding for the delivery costs of £63m of which £49m relates to the coke ovens and £14m relates to initial infrastructure works within 145 acres of the Phase 1.

7.44 On the assumption that the £71m pledge is confirmed there is still a funding shortfall of £370m in respect of development costs even before account is taken of the distinct possibility that the cost estimate may be too low. In addition, it appears, based on my understanding of the current state of discussions with the market, that the Development Corporation does not have sufficient funding to compensate the Thai Banks for the loss of the SSI Land.

7.45 As at the date of this evidence it is therefore clear that the Development Corporation does not have sufficient funding to complete the development of the land it already owns within phases 1, 2 and 3 even before it turns to the later phases involving the SSI Land. It is therefore unlikely that the Development Corporation will be able to bring any development forward on the SSI Land for the foreseeable future.

7.46 This assessment assumes that Central Government will continue to fund the site company in holding the SSI Land until such time that phase 4 is ready to start. However, it will obviously be the case that the longer it takes for the later phases to start the greater the cost to the public purse if it is left to the Development Corporation to deliver development.

End Users

7.47 The Development Corporation states at paragraph 5.58 SoC that there have been over 100 separate expressions of interest. In addition, they claim at paragraph 4.27 that *"STDC is already in advanced talks with a number of developers and occupiers about bringing forward development on parts of the Order lane."* However, the SoC only refers to committed end users at paragraph 5.44 where it

identifies MGT Power and Sirius Minerals, neither of whom is located on the Order lands. As such, the SoC does not identify a single end user for the Order land.

7.48 The MGT Power development was granted consent in July 2009 with construction commencing in 2016. The site is located immediately adjacent to PD Ports land on land that is not included within the Order such that there is limited, if any, connection between the delivery of this development, the Master Plan and any need for the Order. This does not demonstrate any demand for the Order land.

7.49 Similarly, Sirius Minerals Plc is located on the Wilton site located immediately to the south of the Order land and benefits from the York Potash Harbour Facilities Development Consent which was confirmed on 20 July 2016, York Potash Limited being a subsidiary of Sirius minerals Plc. York Potash Limited and Sirius Minerals Plc have already completed a Materials Handling Agreement dated 6 July 2018 and a lease dated 10 June 2019 with RBT Ltd. As such, these agreements relate to land which is outside of the Order and for which the proposed compulsory purchase powers are not relevant.

7.50 I am aware from reviewing the Development Corporation's Board Meeting minutes that there have been extensive negotiations with Able UK Limited in respect of the South Bank area and I note from item 8 of the minutes of the 'Extraordinary Meeting' of the Development Corporation's Board held on 15 January 2019 that Able UK Limited offered £55,162 per acre in respect of 246 acres comprising Phase 1, £55,225 per acre in respect of an option for 111 acres and £55,555 per acre for an option of an additional 135 acres. However, the Development Corporation advised Able UK Limited that “...there is a considerable gap between Able’s offer (which they confirmed is all they can give) and the commercial proposal from Development Corporation” (see paragraph 8.5 of the minutes).

7.51 It appears from paragraph 7.2 of the minutes of 'Meeting 14' of the Development Corporation's Board held on 25 September 2019 that:

“There had been a further meeting yesterday and the Development Agreement and Lease are now finalised (but not signed off pending the caveats introduced by Development Corporation) but Able has not yet finalised their position with PD Ports... ...BH [Ben Houchen] advised that he will speak to PD Ports as there are restrictions on the land for offshore wind activity but none on the quay (so any products can be brought across it). PD Ports are proposing to put restrictions on both the quay and the land. This is the first material example of PD not benefitting or giving consideration to the wider benefits of activity on this site...”

- 7.52 I am unaware of any further information to suggest whether or not terms have been finalised and completed nor whether PD Ports are still placing restrictions on the use of the quay, bearing in mind that, as the quay is outside of the Order, PD Ports cannot be forced to give consent. There is also no announcement on the Development Corporation website or social media. In any event this interest relates to the South Bank land and does not require any of the SSI Land.
- 7.53 I have attached a copy of the Extraordinary Meeting minutes at **Appendix 6 (Minutes from page 273, quoted at 278)** and the Meeting 14 minutes at **Appendix 6 (Minutes from page 333, quoted at 336)**.
- 7.54 The various Development Corporation minutes refer to discussions with other parties including, inter alia, PD Ports, Ineos, Liberty Steel, Petcol, Portnex, Tees Aluminium, Metalysis, Clean Gas, Phoenix Services, Hydrail and Atlantic Superconnection Corporation. However, it appears from the Development Corporation Board Minutes that discussions have only progressed in respect of Portnex which I have referred to above at paragraph 6.30 and the other interest appears to have not gone much beyond initial discussions.
- 7.55 With regard to Portnex, as I have previously set out, this interest is to take the SSI Land as it exists such that this end user demand would exist regardless as to whether the Order is confirmed and it is only because the Development Corporation has sought to act as the “middle man” rather than referring Portnex to the Thai Banks that no discussions with the Thai Banks have taken place.
- 7.56 Similarly, the Petcol and Phoenix Services interest appears to be in respect of repurposing the Sinter Plant on Plot 1. Again, there is no reason for the Development Corporation to lead discussions on the reuse of plant and machinery on the SSI Land.
- 7.57 It is therefore apparent that, whilst the Development Corporation has been discussing development with a number of parties, it has had limited success in respect of the Order land, other than in respect of the Able UK Limited scheme which, whilst located on land within the Order does not require the SSI Land. As I have already set out, the Portnex, Petcol and Phoenix Services could all come forward without the intervention of the Development Corporation as it simply re-uses the existing structures.
- 7.58 Outside of these discussions I am unaware of any terms being secured in respect of additional users requiring redevelopment to be delivered by the Development Corporation. It is therefore the case that, whilst the Development Corporation has reported “significant interest” from end users, there is no evidence that this interest has progressed sufficiently to justify the compulsory acquisition of the SSI Land.

- 7.59 It is also concerning that the Development Corporation is seeking compulsory powers to acquire the SSI Land from the Thai Banks and deprive them of the opportunity to deal with the SSI Land to deliver development, merely because the Development Corporation wants to own the land rather than because it has a specific development in mind.
- 7.60 Overall it is apparent that the Development Corporation is forming its ideas as to the future use of the land in parallel with rather than in advance of making the Order. Whilst it is understandable that ideas evolve over time it is not appropriate for the Development Corporation to seek compulsory purchase powers when it has no clear idea as to what it intends to deliver and is not bringing forward redevelopment opportunities that are fully funded and are attractive to clearly identified end users.

Summary

- 7.61 It is my opinion, based on the evidence made available by the Development Corporation, that:
- the Development Corporation intends to deliver regeneration in a sequential manner;
 - the inclusion of the SSI Land is not critical to delivery of development until the later phases;
 - the proposed Order will impair regeneration of the SSI Land in parallel with the Development Corporation's development on the former Tata land;
 - the Development Corporation does not have any funding to deliver development on the SSI Land;
 - the Development Corporation only has limited funding to deliver development on the land it already owns;
 - the Development Corporation does not have sufficient funding to meet its compensation liabilities;
 - the Medical centre is required to be maintained as it is for the benefit of New British Steel and RBT Ltd;
 - the Development Corporation's proposals for the Locomotive shed are to keep it as existing;
 - High Tip and SLEMS will also be maintained as is until the last phase of development;
 - other than the Able UK Limited development, which is on land outside of the SSI Land, the Development Corporation does not have a clear idea as to what it intends to do with the land it already owns;

- the purpose of the Order should be to deliver regeneration NOT to deliver an opportunity for the Development Corporation to acquire and re-use existing assets for substantially the same use which, in any event, the private sector can achieve without public sector interference.

7.62 Overall there is no compelling case in the public interest³³, the Development Corporation has not taken reasonable steps to negotiate and make reasonable offers³⁴, nor has it made meaningful attempts at negotiation.³⁵ The Development Corporation also has no clear idea of how the land will be used³⁶ nor is there adequate evidence that it have sufficient resources to pay compensation to the Thai Banks and deliver development on the SSI Land within a reasonable timescale³⁷.

7.63 Compulsory purchase is, therefore, not justified. Indeed, it would be counterproductive to deprive the Thai Banks of the SSI Land and their ability to deliver regeneration by handing ownership of the land to the Development Corporation.

³³ Paragraph 2 of the Guidance

³⁴ Paragraph 2 of the Guidance

³⁵ Paragraph 17 of the Guidance

³⁶ Paragraph 13 of the Guidance

³⁷ Paragraph 13 and 14 of the Guidance

8.0 ASSESSMENT OF THE THAI BANKS' PROPOSALS

8.1 I am advised by Mr Melhuish-Hancock that there are currently three proposals which have reached advanced stages of negotiation. These proposals all bring regeneration of the SSI Land forward without any requirement for public sector funding or the exercise of compulsory purchase powers.

8.2 I understand that these proposals, in brief are:

- the expansion of RBT;
- restart of steelmaking; or
- the sale of the SSI Land to the private sector.

8.3 I have provided further details of each of these proposals as follows.

Expansion of RBT

8.4 As set out at paragraph 4.12 above, the Thai Banks now directly control 50% of RBT Ltd. In addition, the acquisition of New British Steel by Jingye has triggered a pre-emption right for the remaining shares and the Thai Banks have the ability to become 100% owners of RBT should they so wish.

8.5 Prior to the Thai Banks taking control of the 50% SSI UK shareholding, Mr O'Malley of RBT Ltd agreed terms with the Development Corporation in respect of a Strategic Commercial Agreement dated 12 August 2019 in which he agreed, on behalf of RBT Ltd to work with the Development Corporation in enabling development of RBT. The Thai Banks have, following the change in ownership, obtained a copy of this agreement from which I note that paragraph D of the Background states:

"This agreement is not intended to be legally binding nor to represent a commitment between the parties although the intention is for the parties to cooperate and work together in good faith in order to fulfil their common goal of attracting new industrial investment and well paid jobs to the Teesside area. This agreement set out a non-exhaustive list of areas that have been identified in which such co-operation can occur."

8.6 I have attached a copy of the Agreement at **Appendix 10**.

8.7 The land owned by RBT Ltd is excluded from the Order but is located immediately contiguous to the northern boundary of Plot 1 and comprises circa 313.72 acres of open storage land with associated port related buildings and equipment together with a quay which is leased from PD Teesport Limited (previously called Tees and Hartlepool Authority Limited). This lease expires on

17 June 2033, but benefits from renewal rights pursuant to the Landlord and Tenant Act 1954 (“LTA”).

8.8 This quay, which is also referred to as a wharf, benefits from a depth of 17m and is one of only two³⁸ facilities on the east coast offering such berthing facilities. However, since the demise of SSI UK, RBT Ltd has not reached its true potential and the Thai Banks are advised that there is significant, as yet, untapped potential.

8.9 In this context, prior to the Thai Banks gaining control of the SSI UK shares in RBT Ltd, Mr O’Malley of RBT Ltd entered into a series of Option and Lease agreements that have significantly reduced the land available to RBT Ltd for port use as follows:

- RBT Ltd entered into a LTA protected lease with York Potash Limited and Sirius Minerals Plc on 10 June 2019 together with, inter alia, rights of access for a term expiring 9 June 2049 at an initial rent of £381,300 per annum increasing to £571,950 per annum in the fifth anniversary and a minimum increase to £1,143,000 per annum from the tenth anniversary with further 5 yearly upwards only index linked rent reviews.
- an Option Agreement was completed on 7 November 2019 between RBT Ltd and PMA Consultancy for a period expiring 29 July 2022 at an initial fee of £93,750 per annum to 29 July 2021 and then £140,625 per annum thereafter. In the event that the option is exercised PMA Consultancy will take a 35-year LTA protected lease at an initial rent of £32,000 per acre plus £50,000 per acre subject to review on an indexation basis.

8.10 RBT Ltd also entered into an Option Agreement with DCS Industrial Limited on 29 November 2019 for a term of 3 years at a premium of £489,041 for an LTA excluded lease.

8.11 These agreements have reduced the land that is available to RBT Ltd. There is therefore a shortage of available land even before any account is taken as to the resumption of steelmaking on the remainder of the SSI Land which would increase, still further, demand for storage on the RBT Land.

8.12 In this context, I am advised that the Thai Banks are considering making land available on Plot 1 (i.e. the Ironmaking site) for incorporation within the RBT Ltd ownership to enable RBT Ltd to expand its operations for the benefit of, not only RBT Ltd itself, but prospective occupiers of the former Tata land.

³⁸ I am informed that Felixstowe is the other facility.

- 8.13 The Thai Banks' intention in this regard is underlined by the fact that the Thai Banks have taken control of the SSI UK Ltd shares in RBT Ltd and the pre-emption of the New British Steel shares is likely to be exercised by the Receivers.
- 8.14 This proposal will deliver regeneration of Plot 1 in parallel with the Development Corporation's implementation of phases 1, 2 and 3 of their Master Plan rather than sequentially as proposed by the Development Corporation, and without the need for public funding.
- 8.15 In this context Mr Melhuish-Hancock advises me that, as a result of their acquisition of New British Steel, Jingye would look to use the RBT facilities to service Scunthorpe. I am advised that this would result in savings to Jingye such thereby improving the viability of the New British Steel business.
- 8.16 However, the extent to which Jingye would be able to use RBT would depend upon the available land such that the loss of Plot 1 in the event of compulsory acquisition by the Development Corporation would reduce the capacity of RBT thereby impacting on the viability of New British Steel. In other words, the Development Corporation's acquisition of Plot 1 would have an adverse impact on the Thai Banks, RBT Ltd and Jingye.
- 8.17 Mr Parr has provided further detail as to these proposals within his evidence.
- 8.18 The Thai Banks are aware of a potential requirement for Net Zero Teesside (formerly known as OGCI) to be located on part of Plot 1. This scheme comprises a power station and carbon capture facility and would be delivered by way of a DCO. The project is known as Teesside Cluster Carbon Capture and Usage Project and a pre-application submission can be viewed on the National Infrastructure Planning website.
- 8.19 The Thai Banks have not been approached by Net Zero Teesside to discuss matters and no attempt has yet been made to demonstrate that this development is justified nor that it should be located on Plot 1. However, the Thai Banks would not be opposed to such development depending on it not interfering or adversely impacting on the port expansion. Either way, this scheme is not dependent on the Development Corporation's Order and would be an entirely separate matter.

Restart of Steelmaking

- 8.20 In addition to the development of RBT, SSI is also in negotiations with Jingye in respect of a JV requiring the entirety of the SSI Land and shares in RBT Ltd to enable the new entity to restart steel making using the existing facilities.

- 8.21 The value of the SSI Land and RBT Ltd shares assumed for the purposes of the JV, as discussed with Jingye, is considerably in excess of the Development Corporation's equivalent offer and underlines the value and potential that remains in the site for steelmaking.
- 8.22 I am not a party to these negotiations hence have relied upon the evidence of Mr Melhuish-Hancock who sets out the current status of negotiations and the detail of the terms under discussion.
- 8.23 I understand that it is an aspiration of the Development Corporation to restart steelmaking and I note, from the Development Corporation's Board Meeting minutes, that discussions have taken place with JSW, Albion Steel and Liberty Steel.
- 8.24 In this context paragraph 7.5 of the minutes of 'Meeting 11' of the Development Corporation's Board held on 27 March 2019 states *"DA advised that we had a positive meeting on 15th March and this project is seen as a partnership with TVCA. Albion are exploring how they can work with us and persuade NUCOR (their US partner) to come to Tees Valley. Albion are Brexit agnostic but NUCOR CEO wants further clarity on Brexit before making a decision. There is a UK market for their product on they require a site of around 90 acres"* (see **Appendix 6, page 303**). There is no more recent mention of Albion Steel hence I am unclear as to what decision ultimately was made.
- 8.25 Similarly, with regard to Liberty Steel, paragraph 7.1.1 of the minutes of 'Meeting 8' of the Development Corporation's Board held on 26 September 2018 states *"...discussions are ongoing and Liberty may release their business case/model to us..."* (see **Appendix 6, page 191**). However, I have been unable to find any more recent substantive reference to Liberty Steel which suggests that discussions are no longer continuing.
- 8.26 Indeed, I have been unable to find any further references within the Board minutes provided to me to detailed discussions with steelmakers such that it appears that the Development Corporation has been unsuccessful in this regard. As such I would expect the Development Corporation to form the view that Jingye represent the best prospect for bringing steelmaking back to the SSI Land such that it would be surprising for the Development Corporation to continue to pursue compulsory purchase powers that will threaten this.
- 8.27 In this context, I understand from Mr Parr that a re-start would be entirely lawful in planning terms. In addition, these proposals would remove a significant burden from the public purse in respect of both maintenance and unfunded development costs.

Redevelopment

- 8.28 The Thai Banks are considering an offer from a private sector developer who wishes to acquire the entirety of the SSI Land and RBT Ltd in order to bring development in connection with offshore wind farm development. The offer is significantly in excess of anything offered by the Development Corporation.
- 8.29 These negotiations illustrate that the Thai Banks and the private sector are well-placed to bring forward development of the Land that complements the Development Corporation's development of its own land without burdening the public purse and at a rate that is likely to be faster than that proposed by the Development Corporation's Master Plan.

Conclusions

- 8.30 It is clear that there are private sector led schemes that are in accordance with the Master Plan and will deliver regeneration. However, these schemes are threatened by the Order.
- 8.31 Overall, it my opinion that, based on the evidence available to me:
- there is significant private sector interest which is likely to deliver substantial re-use and regeneration without reliance on public sector funding;
 - this interest is likely to come forward as long as the Order is not confirmed;
 - the interference by the Development Corporation and/or the wider public sector directly threatens these private sector initiatives;
 - there is no justification for such public sector interference; and
 - the Order should be refused.

9.0 CONCLUSIONS

- 9.1 The Order would, if confirmed, deprive the Thai Banks of their interests in the SSI Land. That deprivation is not to be permitted unless there is a compelling case in the public interest for it.
- 9.2 I have concluded at Section 7 that the Development Corporation's proposals do not comprise a compelling case in the public interest and fail the tests set out within the Guidance even before any regard is had to the Thai Banks' proposals. On that basis alone it is clear that the Order is not justified and should be refused.
- 9.3 However, it is even more apparent that there is no compelling case in the public interest whatsoever for the Development Corporation to prevent the Thai Banks from proceeding with their current course of action. There is also good reason to be confident that their course of action will lead to imminent regeneration and in a way which is not reliant upon the public purse.
- 9.4 It is therefore my opinion that the Order should not be confirmed in respect of the SSI Land even if it is determined that the Order has been validly made.

10.0 DECLARATIONS

10.1 In accordance with the requirements set out at PS5.4 (i) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

10.2 In accordance with the requirements set out at PS5.4 (ii) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" I confirm as follows:

1. I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
2. I confirm that I understand and have complied with my duty to the Inquiry as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
3. I confirm that I am not instructed under any conditional or other success-based fee arrangement.
4. I confirm that I have no conflicts of interest.
5. I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Inquiry.
6. I confirm that my report complies with the requirements of RICS - Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.



SIGNED _____

DATE: 20 January 2019

PETER ROBERTS FRICS CENV