

**Localism Act 2011**

**Acquisition of Land Act 1981**

**Inquiry into:**

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

**Rebuttal Proof of Evidence**

**of**

**Michael King**

**On behalf of the South Tees Development Corporation**

**In response to the Proofs of evidence submitted on behalf of:**

**TISCO Bank Public Company Limited, Krung Thai Bank Public Company Limited and Siam  
Commercial Bank Public Company Limited (collectively known as the “Thai Banks”), and Sahaviriya  
Steel Industries (SSI)**

**Tarmac Trading Limited and East Coast Slag Products Limited**

**Highfield Environmental Ltd**

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## 1. INTRODUCTION

- 1.1 I am Michael King. I am a Principal at Avison Young. I head up Avison Young's Compulsory Purchase & Compensation team in the North. Further details of my qualifications and experience are set out in my main Proof of evidence (STDC8/2).
- 1.2 This Rebuttal Proof of evidence ("Rebuttal") has been prepared to respond to the evidence submitted by the following parties:
  - 1.2.1 Peter Roberts on behalf of TISCO Bank Public Company Limited, Krung Thai Bank Public Company Limited and Siam Commercial Bank Public Company Limited (collectively known as "Thai Banks"), and Sahaviriya Steel Industries (SSI). Where necessary, my Rebuttal also makes reference to the evidence of Mr Melhuish-Hancock submitted on behalf of the Thai Banks/SSI.
  - 1.2.2 Ross Halley on behalf of Tarmac Trading Limited and East Coast Slag Products Limited.
  - 1.2.3 Muckle LLP on behalf of Highfield Environmental Limited
- 1.3 This Rebuttal is not intended to be an exhaustive rebuttal of the contentions made in the evidence listed at paragraph 1.2 above. This document only deals with certain points where it is considered appropriate and helpful to respond in writing. Where specific points have not been dealt with, this does not mean that those points are accepted and they may be dealt with further at the Inquiry and/or in writing.
- 1.4 Where defined terms are used in this Rebuttal, I have adopted the same meaning for those defined terms as used in my Proof of evidence (STDC8/2).

## 2. Thai Banks/SSI

### Proof of evidence of Peter Roberts

- 2.1 For ease of reference I will refer to the Order affected party as the “Thai Banks/SSI”.
- 2.2 The Proof of Peter Roberts relates to compulsory purchase and valuation-related matters, including negotiations and the CPO Guidance. My Rebuttal considers the following assertions within Peter Roberts’ Proof.
- 2.2.1 The assertion that limited information has been made available by STDC to the Thai Banks/SSI.
- 2.2.2 The assertion that there has been no meaningful engagement with the Thai Banks/SSI in respect of their Order interests and that STDC were not prepared to negotiate.
- 2.3 I respond to each of these points in turn under the headings below.
- 2.4 I also note in paragraph 6.17 and 6.24 of Mr Roberts’ Proof that he references his interpretation of matters raised in a without prejudice meeting held with myself and John McNicholas representing STDC on the 15<sup>th</sup> November 2019. I thus necessarily make reference to that meeting in my Rebuttal in connection with a number of related matters raised, and in order to correct inaccuracies in this regard in Mr Roberts’ Proof.

### Assertion: Limited information provided by STDC to the Thai Banks/SSI

- 2.5 In paragraph 6.6 of Mr Roberts’ Proof, he refers to “*limited information made available by the Development Corporation and Site Company*”. He also refers to “*the lack of basic supporting information*” at 6.14. My Proof of Evidence demonstrates that this is incorrect. All information in the possession of STDC, and which is not of a confidential nature, was provided to the Thai Banks/SSI, much of which more than once, and indeed prior to Mr Roberts’ own appointment by the Thai Banks/SSI, going as far back as 2018. This is referenced in Section 8 of my Proof, in particular paragraphs 8.8 and 8.11. I am unable to explain Mr Roberts’ assertion in this regard, and can only assume that he has not been made aware of, or provided with, the very extensive information provided by STDC to the Thai Banks/SSI prior to his engagement, and again subsequent to it.
- 2.6 Support for my assumption in this regard was made apparent to me in conversation with Mr Roberts. Indeed, Mr Roberts apologised to Mr McNicholas and myself at our meeting on the 15<sup>th</sup> November 2019 for requesting further information for his own purposes, and which he accepted and conceded had likely already been provided by STDC to the Thai Banks/SSI previously.

### Assertion: Questioning the extent of engagement/negotiation by STDC

- 2.7 In paragraph 6.15 of his Proof, Mr Roberts says ‘*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.* I again dispute Mr Roberts' comments. It suggests the opposite of the reality of STDC's strenuous efforts to engage with the Thai Banks/SSI on all matters, evident in my Proof in Section 8, and in Appendix 1 (STDC8/3 – Pages 5 to 13 inclusive). STDC or their advisors made extensive efforts to engage on all pertinent matters, in particular to engage on the matter of value, with many requests of, and encouragement to, the Thai Banks/SSI advisors to provide their own opinion of value, and in turn agree to a meeting of valuers in order to engage in meaningful negotiations.

- 2.8 I was personally engaged in efforts to encourage the Thai Banks/SSI and their advisors to source their own valuation opinion, and enter valuer discussions. These efforts pre-dated Mr Roberts' appointment, including my communication with advisors Duff & Phelps dating back to August 2018. Despite my being instructed as long ago as August 2018 to engage with Duff & Phelps to discuss value, and evidence of STDC encouraging and assisting the Thai Banks/SSI with information to provide their own valuation opinion, to date, the Thai Banks/SSI have presented no alternate valuation opinion or supporting rationale to form the basis of a negotiation between valuers on the matter.
- 2.9 The meeting with Mr Roberts on the 15<sup>th</sup> November 2019 was the most recent effort instigated on the part of STDC to seek engagement on the matter of value. Indeed, this was intended to be the principal purpose of the meeting. On behalf of STDC, Gowling WLG ("Gowling") wrote to the Thai Banks/SSI's solicitors, Mischon de Reya ("Mischon") on the 16 October 2019 (summarised at Appendix 1 to my Proof STDC8/3), agreeing to meet Mischon's client's reasonable and proportionate professional costs incurred from the date of the letter, *"solely in connection with the evaluation of my client's offer"*, on the specific proviso that *"a meeting between our respective clients' valuers takes place within 4 weeks of the date of this letter, with the firm intention of the valuers to enter into a progressive engagement and exchange/discussion on valuation and "code" opinion and related considerations, with a view to reaching agreement if at all possible"*.
- 2.10 The meeting on 15 November 2019 was arranged in this specific respect, following Gowling's letter to Mischon on the 16<sup>th</sup> October 2019. It was therefore surprising and perplexing that, at that meeting, Mr Roberts advised that he was unable to provide a valuation opinion and supporting rationale on behalf of the Thai Banks/SSI in order to enable an exchange between valuers. Indeed, at that meeting, Mr Roberts advised John McNicholas and I that he was unable to engage in any exchange on the matter of value, as he was not personally involved in this work, and which he advised was being dealt with by a valuation colleague.
- 2.11 The fact that Mr Roberts was unable to engage in any capacity on any matter of value, even in terms of a discussion on an in principle valuation approach, is surprising mindful of his experience referenced in his Proof (refer paragraph 2.1). This advises that Mr Roberts is an experienced valuer. To date, as I have stated, the Thai Banks/SSI have not provided their own valuation opinion and supporting rationale. And subsequent to the meeting on the 15<sup>th</sup> November 2019 with Mr Roberts, and following my follow up communication with him, I was subsequently advised by Mr

Roberts that his client instructions were for him to desist from engagement with me on the matter, and indeed on any matter pertaining to STDC.

- 2.12 I therefore consider Mr Roberts' general observations on the efforts by STDC to engage and negotiate to be inaccurate. They serve to create a false impression, which is inconsistent with the facts which, on the contrary, show that it was the objector that was failing, if not refusing, to engage. Moreover, I consider my Proof fully demonstrates the extensive efforts made by STDC to engage with the Thai Banks/SSI on all matters dating back to March 2017.
- 2.13 In paragraph 6.16 of his proof, Mr Roberts states that in April 2019, when the Order was made, *"the Development Corporation had yet to submit any offer to the Thai Banks for the land identified as being required for the Order."* This is not correct, as an offer was made to the Thai Banks/SSI for their interest in May 2018, as shown within the schedule of correspondence at STDC8/3 of my Proof. At that time, this offer included the Redcar Bulk Terminal (RBT) shares, which were unable to be included in the Order as STDC had no power to include shares. This offer is referenced within paragraph 6.21 of Mr Roberts' own Proof – *"The Development Corporation offered the Thai Banks £23m for the SSI Land and the RBT Ltd shares in May 2018."*
- 2.14 As noted in my Proof of Evidence at paragraph 8.10 (STDC8/2), this offer is considered to be at a level in excess of compensation entitlement for the Thai Banks/SSI interests assessed under the "compensation code". Although a second, lower offer assessed under the "compensation code" of £14.6m was submitted in August 2019 (referred to in 6.23 of Mr Roberts' Proof), STDC confirmed in that offer letter that it was still prepared to conclude an agreement with the Thai Banks/SSI based on the higher offer made in May 2018. The second offer excluded the RBT shares which were not included in the Order, and was able to reflect upon the terms of STDC's acquisition of the Tata Steel land interests as relevant comparable evidence.
- 2.15 Following the meeting with Mr Roberts on the 15<sup>th</sup> November, and at Mr Roberts' request at that meeting, STDC contacted Tata Steel to seek their authority to release full details of STDC's terms for acquiring their land interests. Regrettably, Tata Steel was not prepared to authorise release of this information. I understand that they consider it commercially sensitive at this point. STDC will continue to seek authorisation mindful of Mr Roberts' request, but also at my own request as STDC's CPO consultant, mindful that it in part informs consideration of value and compensation, and I will wish to more fully reference it in negotiations. For the avoidance of doubt, I do have knowledge of the Tata Steel acquisition terms, and have been able to fully consider them, and hence the transaction as relevant comparable evidence.
- 2.16 In paragraphs 6.20 and 6.21 of Mr Roberts' Proof, and despite no alternate valuation opinion with supporting rationale having ever been provided by the Thai Banks/SSI or their advisors to date, and despite Mr Roberts asserting at our meeting on the 15<sup>th</sup> November 2019 that he was unable to discuss valuation matters, his evidence appears to assert that he considers my firms' valuation opinions to be inaccurate. In the normal due process concerning compulsory acquisition, and at this stage of the CPO process, I would have expected an already healthy exchange between acquiring authority and affected party valuers, both having presented their respective valuation

opinions for negotiation, in an attempt to narrow differences and reach agreement. To date, I restate that no valuation opinion or rationale has been provided by the Thai Banks/SSI or their advisors, despite STDC's continual requests for this and for valuer engagement, and since my personal efforts in this regard dating back to August 2018.

- 2.17 In paragraph 6.25 of Mr Roberts' proof, he appears to challenge Avison Young's valuation input, and the level of offers made by STDC for the Thai Banks/SSI interests, by reference to "offers" being made by third parties to SSI for their land/assets, which he states are *"reported to me by Mr Melhuish-Hancock"*. He also states that *"Mr Meluish-Hancock sets out the current status of negotiations with interested parties in his evidence"*. Mr Roberts provides no information concerning these "offers" in his proof, his analysis of them or how they inform his opinion, and he has not previously sought to bring my or STDC's attention to them. I assume Mr Roberts is referring to the "offers" in 7.7.1 and 7.7.7 in Mr Melhuish-Hancock's proof. However, I note that other than reference to *"St Modwen offered to purchase all of the SSI Land for between £15-£20 million on an "as is" basis"*, no other offers are stated to have been submitted from any of the other alleged interested parties. Indeed, in his proof, Mr Mulhuish-Hancock states that *"none of these transactions has reached a positive conclusion"*.
- 2.18 With regard to the St Modwen £15m-£20m "offer", Mr Melhuish-Hancock goes on to say that this is *"considerably more than both the Avison Young valuation or any of the Development Corporation's offers to the Thai Banks"*. However, the STDC offer to the Thai Banks/SSI in August 2019 was £14.6m, and in May 2018 it was £23m, as referenced in paragraphs 6.23 and 6.21 respectively in Mr Roberts' proof. These STDC offers are thus entirely consistent with the St Modwen range of "offer", albeit accepting that we have no information concerning the basis of St Modwen "offer" referenced by Mr Melhuish-Hancock, as he does not provide any background information in his proof. The reference to a wide range of "offer" between £15m to £20m does not constitute a definitive price to purchase the Thai Banks/SSI interests. The wide value range would appear to suggest this likely reflects an indicative expression of interest and potential offer range, but ultimately subject to change following formal and detailed site due diligence by a prudent developer purchaser.
- 2.19 In my experience, developers will often provide very indicative value opinions to a vendor to endeavour to secure a helpful "foot in the door" and prime negotiating position, but the price ultimately paid will naturally reflect the development cost liabilities informed by thorough site due diligence on all material considerations, and which can support a substantially lower value/price. Ultimately, any prudent developer will only transact having undertaken full site due diligence to inform a robust valuation appraisal and opinion. There is no evidence that St Modwen's "offer" is based on full due diligence and valuation appraisal. Certainly, St Modwen have not attended on site to undertake any site investigations, or liaised with STDC to request any information from them from their extensive due diligence. Mindful that the Thai Banks/SSI have provided no alternate valuation opinion, Mr Melhuish-Hancocks information on "offers" is highly questionable, particularly in the absence of valuation input to test them.
- 2.20 Mr Roberts also appears to challenge Avison Young's valuation of, and the STDC offers for, the Thai Banks/SSI interests, by reference to indicative terms from discussions between STDC and Portnex, concerning Portnex's interest expressed in

the Redcar Coke Ovens and land. I refer to Paragraphs 6.26 to 6.31 in this regard in Mr Roberts' proof. This is again the first time I have been made aware that this is considered relevant to Mr Roberts' considerations. Mr Roberts does not endeavour to analyse or explain the relevance of this information in terms of how it informs his own opinion of value or that of his firm on behalf of the Thai Banks/SSI. As advised, to date no valuation opinion and rationale has been provided by the Thai Banks/SSI. Within this context, Mr Roberts also fails to explain why this information suggests that the Avison Young valuation and STDC offers are understated.

- 2.21 In order to try and assist the Inquiry, it should be noted that the discussions between STDC and Portnex have not been concluded and are ongoing. In any event, and in relying upon the terms of any transaction if concluded as comparable evidence, it must be appreciated that any transaction would effectively be predicated on STDC's regeneration and hence Order "Scheme" proposals. As Mr Roberts himself notes in paragraph 6.26, and in his reference to STDC Board minutes, any agreement would be based on the fact that *"any historical environmental liabilities would remain with the Development Corporation"*. These liabilities are substantial, and include STDC also upgrading infrastructure, including power supplies. Any analysis of a transaction if concluded with Portnex would need to reflect these and other "Scheme" liabilities and related costs in order to assess a "no Scheme world" and hence "compensation code" informed value. The Portnex/TCC Coke Ltd discussions are also conditional upon TCC Coke Ltd undertaking approximately 4 months of their own on-site due diligence to determine the full costs of re-instatement of the coke making facilities. Furthermore, and to further demonstrate the Order Scheme dynamic underpinning these discussions, I am advised that these discussions form part of the circular economy described in the Masterplan where the by-products from Coke manufacturing will be feedstock for other potential site occupants, for example methanol going into aviation fuel creation. I understand that the considerable CO<sub>2</sub> produced can be captured and be beneficial to proposals for the OGCI / clean gas (now Net Carbon Teesside) project.
- 2.22 It is not in any event a matter for this Inquiry to consider valuation evidence in support of compensation entitlement matters. However, and in order to try and assist the Inquiry on the matter, it might be noted that the initial offer to the Thai Banks/SSI made in May 2018 was informed by my firm, Avison Young's formal Royal Institution of Chartered Surveyors (RICS) Valuation Standards ("Red Book") compliant valuation report, supported by input from Hilco Global in connection with specialist "Plant & Machinery" and related considerations, and KPMG in connection with the value of the Thai Bank's Redcar Bulk Terminal (RBT) share interest (excluded from the Order). Indeed this report and addendums to it have been provided to the Thai Banks/SSI. I have also made myself available to speak through these valuations with any Thai Banks/SSI advisors, as far as I am able mindful of the necessarily collective input from Avison Young specialist surveyors to inform the opinions. This dates back to my efforts to engage with Duff & Phelps when acting for the Thai Banks/SSI in August 2018. Avison Young's opinions in this regard are themselves informed by experienced Chartered Surveyors and Directors/Principals in our Valuation, Industrial Agency, and Planning Development and Regeneration teams in Newcastle, and our specialist Energy and Waste team.



- 2.23 In paragraph 6.22, Mr Roberts asserts that *“Following the making of the Order it was pointed out to the Development Corporation that it hadn’t made the Thai Banks/SSI an offer for the land identified in the Order”*. Mr Roberts contradicts his own evidence in the previous paragraph, where he references the offer made in May 2018. I suspect Mr Roberts is endeavouring to suggest that because the Order Land differed from that upon which the earlier offer was based, because it excluded the RBT share interest, therefore STDC is deemed to have not made an offer. This is, with respect, a somewhat pedantic assertion, mindful of the considerable efforts made by STDC to acquire the Order Land interests.
- 2.24 It is clear from both offers submitted that despite a “compensation code” informed assessment of entitlement for the Thai Banks/SSI Order lands being lower than the initial STDC offer, STDC’s offer in this regard made it clear that they would still be prepared to reach agreement at the higher level. For ease of reference, it might be noted that the initial offer at £23m which included RBT share interest, would equate to £16.5m if excluding the RBT shares, and hence reflecting the equivalent Thai Banks/SSI Order Lands interests, and based upon KPMG’s valuation of the RBT shares prepared for STDC. I consider the attempt to portray STDC’s efforts as inadequate, simply misrepresents the facts. The evidence shows that STDC made two formal offers, and although a lower “compensation code” informed offer was made, STDC confirmed they would transact at the higher offer level. The evidence shows that STDC made every attempt to seek engagement to try and reach an agreement and it was the objector that did not wish to engage in any reasonable sense.
- 2.25 In paragraph 6.23, Mr Roberts makes reference to the STDC’s offer in August 2019, concluding that this offer reflected an increase on Avison Young’s earlier valuation by a factor of 15.94 times. It is again not a matter for this Inquiry to consider valuation evidence in support of compensation entitlement. However, Mr Roberts’ assessment of this offer in contrast to the Avison Young valuation is inaccurate. The basis of assessment of the “compensation code” informed second offer does vary, and there is an increase in contrast to Avison Young’s earlier valuation input, but not by a factor of 15.94 times as referred to in Mr Roberts’s proof. The fundamental reason for the increase is as a consequence of the transactional evidence relating to STDC’s acquisition of the Tata Steel land interests, which occurred subsequent to Avison Young’s valuation advice. It was entirely appropriate to reflect this evidence in a “code” informed offer.
- 2.26 For information, Avison Young’s addendum valuation report prepared in February 2018, provided a valuation opinion on an equivalent Thai Banks/SSI Order Lands basis, and excluding the RBT shares interest, at £8,450,000. This contrasted with the “code” informed offer at £14,600,000, although on an equivalent basis, and when excluding a £75,000 Statutory Loss payment “code” entitlement not included in a Market Value opinion, this adjusts to £14,525,000. This equates to a 1.72 times uplift. I am unsure what point Mr Roberts is endeavouring to make in any event. It remains the case that STDC confirmed that it was prepared to transact based on its higher offer level, which exceeded both Avison Young’s valuation opinions, and compensation assessed in accordance with the “compensation code”.
- 2.27 It is again relevant to note that Mr Roberts is asserting to have an opinion on matters of value, despite no alternate valuation opinion or rationale being provided to date by

the Thai Banks/SSI or their advisors. Despite this second offer assessed under the “compensation code” being lower than STDC’s first offer, STDC confirmed that it would effectively reach agreement based on the higher offer level.

- 2.28 For the reasons already presented in this Rebuttal, I consider Mr Roberts’ opinions on STDC’s engagement with the Thai Banks/SSI and their advisors referenced in paragraph 6.33 and 7.63 of Mr Roberts Proof to be inaccurate and without foundation.
- 2.29 As my evidence demonstrates, STDC have been in discussions with the Thai Banks/SSI since March 2017, initially concerning STDC’s proposals and their intention to seek compulsory purchase powers with a view to the parties working together to try and reach agreement. These early discussions also encompassed the possibility of an effective joint venture approach. However such proposals were concluded unviable.
- 2.30 Since then STDC have made two offers to the Thai Banks/SSI and have provided the Thai Banks/SSI with all due diligence information accrued over many years to assist in their own consideration of value. To date, the Thai Banks/SSI have not provided their own opinion of value, or instructed their advisors to engage in discussions/negotiations in this regard. STDC’s advisors have made themselves continuously available for a negotiation on value, and have encouraged the Thai Banks/SSI to obtain their own valuation and to enter into negotiations.

### 3. **Tarmac Trading Limited and East Coast Slag Products Limited (Tarmac)**

#### **Proof of Evidence of Ross Halley**

- 3.1 Ross Halley is the Head of Asset Management at Tarmac. His Proof elaborates on the Tarmac objection. My Rebuttal considers the following assertions within Ross Halley’s Proof, namely that:
- 3.1.1 they use the entire land required for the principal purposes of an asphalt and two concrete plants, each processing minerals.
- 3.1.2 STDC has failed to address the relocation of the business.
- 3.1.3 STDC has failed to engage for the acquisition of their interest.
- 3.2 I respond to each of these points in turn below.

#### **Assertion: Tarmac use the entire land required for the principal purposes of an asphalt and two concrete plants, each processing minerals**

- 3.3 At paragraph 2 within Mr Halley’s Proof he states that Tarmac hold a lease over ‘7.42 acres (28.9 ha)’. This is incorrect and I understand should state 71.42 acres (28.9 ha) based on the number of hectares within Mr Halley’s Proof.
- 3.4 Mr Halley states at paragraph 4 that Tarmac use this land for ‘an asphalt and two concrete plants’. From our discussions with Tarmac, they have advised that the majority of the site is underutilised and therefore not all currently used for the principal purpose of processing minerals. Tarmac has also indicated in discussions with STDC that they only require a 10 acre site for relocation purposes. STDC has put forward

possible relocation sites to accommodate Tarmac's requirement for a 10 acre size, including land within STDC's control.

**Assertion: STDC failed to address the relocation of Tarmac**

- 3.5 At paragraph 11, Mr Halley says *'I should also point out that the acquiring authority has failed to address the relocation of the business of the Objectors, which relocation is likely to top costs in excess of £10 million.'* As explained within my Proof at Appendix 2 in STDC8/3 page 53, STDC has obtained an assessment of the potential compensation that may be payable for all interests included in the Order, including to Tarmac, and this was prepared having knowledge of Tarmac's estimate as advised. This information is naturally commercially sensitive and confidential. However, STDC has had full regard to the same in connection with the Order process. It will also be noted in paragraph 3.6 below, and as referenced in my Proof (STDC8/2 paragraph 8.18 and 8.19), that STDC are endeavouring to assist in resourcing a relocation site for Tarmac, and is in ongoing discussions with Tarmac in this respect. This would serve to protect Tarmac's functioning business operations and employment. I comment further in this regard in paragraph 3.6 below.

**Assertion: Questioning the extent of engagement/negotiation by STDC**

- 3.6 At paragraph 25 in Mr Halley's Proof he states that *"I should also confirm that the acquiring authority has failed to engage in any substantive way for the acquisition of the interest of the Objectors"*. STDC has and will continue to engage with Tarmac with a view to acquiring their interest as demonstrated by the schedule of correspondence with Tarmac and STDC at Appendix 1 to my Proof (STDC8/3 pages 16-19). A number of relocation sites have been put to Tarmac by STDC for consideration, and this has recently included STDC advising Tarmac of two sites within STDC's ownership and control as possible relocation opportunities, and which are deemed by STDC sufficient to meet Tarmac's operational needs as advised by them. STDC also communicated indicative proposals for an agreement for Tarmac's phased withdrawal from their existing location, intended to reduce the impact on Tarmac's operations. At the time of this Rebuttal, these STDC controlled possible relocation sites, and phased withdrawal proposals, were being considered by Tarmac. Arrangements were also in hand for STDC to organise Tarmac's inspection of these sites during a planned visit of Tarmac representatives to site on the 7<sup>th</sup> February 2020.

**4. Highfield Environmental Ltd**

**Proof of evidence of Muckle LLP**

- 4.1 Muckle LLP ("Muckle") prepared the Proof of Evidence on behalf of Highfield Environmental Ltd ("Highfield") though there is no named author. The Proof elaborates on the Highfield objection. My Rebuttal addresses the following assertions and issues raised within Muckle's Proof, namely:
- 5.1.1 Muckle assert that part of the Objector's interest in land falls within the Order lands as identified on Order plans to be acquired, but is not referenced in the Order land interests.

5.1.2 Clarification is sought by Muckle on the treatment of existing environmental waste, and which is acknowledged as already having been the subject of a discussion between STDC and the Objector.

5.1.3 The assertion that the Objector has certain access routes to the public highway that require protecting.

4.2 I respond to each of these points under the headings below. I note that these issues are presented within the context of Muckle confirming in their Proof that *“Highfield do not fundamentally object to the principle or objectives of the scheme rather they seek variation of the Order to preserve the balance between the intentions of STDC and the interests of those with interests in land including Highfield”*. Muckle also state that *“Highfield do not object to the CPO as a whole, rather Highfield are seeking clarity and alteration of the Order so that their business will not be landlocked and that operational land will not be adversely affected by the CPO”*. Muckle confirm that *“Whilst progress was made during without prejudice negotiations, a settlement was not reached between the parties before the deadline for submission of evidence”*.

**Assertion: STDC intend to acquire Highfield land interest shown shaded pink in the Order land plan but not included in the Order land Schedule of interests**

4.3 At point 1 of their Proof, Muckle state that part of the Objector’s property *‘will be within the CPO’* in the area shaded pink. This is incorrect, the Objector’s property is registered under leasehold title number CE222458 (Appendix 1 to Muckle Proof) which encompasses the entirety of the freehold title number CE153526 (Appendix 10 to Muckle Proof). Neither of these titles form part of the Order lands. The interests of the Objector within the Order are access rights within Table 2 relating to land lying to the south of the River Tees.

4.4 Point 3 of the Muckle Proof refers to discrepancies in boundaries shown on title plans which differ from those shown on the ground, and they assert that STDC are *‘proposing to acquire the land forming the discrepancy’* from the Objector. Highfield state that they own the discrepancy land, however STDC do not accept this and maintain that this falls within STDC’s ownership acquired in February 2019. Freehold title CE153526 (Appendix 10 to Muckle Proof) was created pursuant to a deed of exchange dated 28/3/1997 and deed of variation dated 18/12/2001. The plans attached to both documents are absolutely consistent with the registered title. STDC acknowledge that parts of this land, principally the perimeter access road, are subject to rights of access in favour of the Objectors, however, none of the land is subject to rights of exclusive occupation or use, save for access. To resolve this, STDC has offered a lease to the Objector in relation to this discrepancy land. Such lease to be coterminous with its registered leasehold interest CE222458 (Appendix 1 to Muckle Proof). This offer has not been accepted by the Objector. STDC considers the granting of a leasehold interest of this land to the Objector achieves a practical, fair solution to satisfy the concerns of the Objector.

**Clarification regarding treatment of environmental waste**

4.5 At points 4 and 5 of the Muckle Proof, they refer to the environmental waste which has been disposed of historically by SSI to the west of the Objector’s property within their legal boundaries. They also refer to the overspill due to discrepancy of boundaries

from the Objector's property beyond its legal boundary. They ask for clarification as to how STDC intend to deal with this.

- 4.6 STDC has offered to enter into an agreement with the Objector such that each would give reciprocal undertakings preventing either Objector or acquiring authority from taking any action against the other in perpetuity in respect of the historic over tipping, recognising the broadly equivalent affected land areas, and the on-going mutual reliance on the respective other parties' land for support. This has not been taken forward by the Objector.
- 4.7 STDC considers that such an agreement achieves a practical, fair solution to satisfy the concerns of the Objector regarding historic over tipping by SSI without prejudicing the interests of the acquiring authority in respect of the historic over tipping by the Objector. STDC would be agreeable to such an agreement being tri-partite with the Objector's landlord to regularise the issue of historic over tipping.

**Assertion: Highfield claims certain access rights and seeks protection of them**

- 4.8 Point 9 of the Muckle Proof asserts that the Objector '*currently exercises two separate pedestrian and vehicular access routes to the public highway.*' These are shown on plans attached to the Muckle Proof at Appendix 8 and 9. STDC considers that the Objector currently has no "right" of access across the Order land between points A and B shown on the plan at Appendix 8 to the Muckle Proof. The Objector's use of the acquiring authority's land for access along this route is entirely discretionary and by the consent of the acquiring authority and its predecessors in title.
- 4.9 At point 10 of the Muckle Proof, they state that "*the property benefits from a right of way over areas of land within the CPO as noted on the official copy of the register of title*" (Appendix 1 of Muckle Proof) "*comprising the route between points W and Y*" (Appendix 9 of Muckle Proof). STDC would like to make clear that the Objector's right of access between points W-Z-Y (Appendix 9 of Muckle Proof) as set out in the deed of exchange dated 28 March 1977 and deed of variation dated 18 December 2001 is time limited and that this right expires 31 December 2024. The Objector has right of access thereafter between points W-Z-X (Appendix 9 of Muckle Proof) which when asserted in conjunction with the Objector's rights over third party land outside of the Order lands are sufficient to facilitate access between the Objectors land and the public highway.
- 4.10 STDC has offered to undertake to honour the rights of access between W-Z-Y and W-Z-X (Appendix 9 of Muckle Proof) as set out in the deed of exchange dated 28 March 1977 and deed of variation dated 18 December 2001.
- 4.11 STDC considers that the Objector's request for a permanent right of access between points W-Z-Y (Appendix 9 of Muckle Proof) to replace the current time limited right expiring 31/12/2024 would represent a betterment and would be prejudicial to the acquiring authority's Scheme.
- 4.12 STDC has made clear its willingness to agree terms for a further easement in respect of the route W-Z-Y (Appendix 9 of Muckle Proof) beyond 31/12/2024 subject to agreement of terms to include maintenance contributions.

- 4.13 At point 12 of the Muckle Proof they refer to the regular use of *“the route between A and B”* (Appendix 8 Muckle Proof) and that some of the route *“falls within the CPO”*. They request that *“if the order were confirmed, rights of access for pedestrians and vehicles are maintained in order to avoid land locking of the property.”* STDC would like to make clear that the current use of the access over the Order land between points A and B (Appendix 8 of Muckle Proof) by the Objector is entirely discretionary. Nevertheless STDC has offered to formalise an easement in favour of the Objector in respect of that part of the route A-B (Appendix 8 of Muckle Proof) as falls under the control of the acquiring authority subject to agreement of terms to include maintenance contributions. This should satisfy the Objector’s concerns.
- 4.14 Point 13 of the Muckle Proof states that *“it is imperative the Property is granted such rights of way so that it enjoys a continuity of permanent right of way to a public highway”*. The Objector does not currently enjoy any permanent rights of access to the adopted highway across the Order lands, and this assertion is incorrect. The Objector has permanent rights over third party land which does not form part of the Order lands between point X and the adopted highway (Appendix 9 of Muckle Proof). The Objector’s request for a permanent right of way across STDC land to the adopted highway at point Y (Appendix 9 of Muckle Proof) would represent betterment.

**5. Statement of Truth/Declaration**

- 5.1 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.
- 5.2 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 5.3 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.
- 5.4 I confirm that I am not instructed under any conditional or other success based fee arrangement.
- 5.5 I confirm that I have no conflict of interest.
- 5.6 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Inquiry.
- 5.7 I confirm that my report complies with the requirements of Royal Institution of Chartered Surveyors (RICS), as set down in the RICS practice statement Surveyors acting as expert witnesses.
- 5.8 I confirm that I have conducted myself in accordance with the RICS Professional Standards & Guidance UK - Surveyors advising in respect of compulsory purchase & statutory compensation.

**Michael A King FRICS**

**Dated 4 February 2020**