

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

NOTICE OF OBJECTION

ON BEHALF OF

TISCO BANK PUBLIC COMPANY LIMITED

KRUNGTHAI BANK PUBLIC COMPANY LIMITED

SIAM COMMERCIAL BANK PUBLIC COMPANY LIMITED

1. INTRODUCTION

- 1.1 This is an objection against the confirmation of the South Tees Development Corporation (Land at former Redcar Steelworks, Redcar) Compulsory Purchase Order 2019.
- 1.2 The Royal Bank of Scotland Plc is the registered charge holder and security agent on behalf of the three Thai banks named above, who are mortgagees to Sahaviriya Steel Industries UK Limited (In Liquidation) in respect of land identified in the map as Plots 1, 2, 3, 20, 37, 44, 45, 51, 66, 67, 69, 70, 71, 80, 81, 107, 145, 146, 148, 150, 154, 157, 158, 159 and 166.
- 1.3 As the ultimate beneficiaries of those charges (and therefore as qualifying persons under S.12 (2A) (a) of the Acquisition of Land Act 1985) Tisco Bank Public Company Limited, and Krungthai Bank Public Company Limited and Siam Commercial Bank Public Company Limited] (together the "**Thai Banks**") object to the confirmation of the Order:
 - 1.3.1 because the Order cannot lawfully be confirmed due to procedural flaws in the process leading to the making of the Order as detailed below; and in any event
 - 1.3.2 because the Order should not be confirmed due to fundamental flaws in its basic rationale and in the supporting case as detailed below; and

- 1.3.3 in the alternative because the Order is premature, at the very least insofar as it relates to the Plots 1, 2 and 3 and plot 157, and should not therefore be confirmed unless it is first modified to exclude those interests together with necessary savings to preserve access to that land.
- 1.4 These grounds of objection are addressed in greater detail below.
- 1.5 The Thai Banks therefore request that a Public Inquiry into these grounds of objection be held before a suitably qualified Inspector prior to any decision being taken in respect of the Order.
2. **PROCEDURAL FLAWS**
 - Incorrect use of Statutory Power and lack of transparency***
 - 2.1 The South Tees Development Corporation ("STDC" and "acquiring authority") benefits from bespoke compulsory purchase powers as detailed in paragraph 2.4 of the Statement of Reasons. The use of those powers is subject to procedural safeguards, including that the approval of the Tees Valley Combined Authority ("TVCA") must be obtained before an Order is submitted to the Secretary of State for confirmation.
 - 2.2 It has not been demonstrated that such approval is in place. In particular:
 - 2.2.1 a gross lack of transparency exists due to STDC's near total failure to publish its relevant meeting agendas, reports and minutes, and to claims of confidentiality by TVCA in respect of key documentation, the result of which is
 - (a) that it is impossible to determine whether the Order as made is that which STDC has purportedly resolved to make and which TVCA is said to have authorised, and
 - (b) the (limited) background documentation that has been released shows at least a mis-match between the parties authorised to make the Order and that made, and perhaps in other areas.
 - 2.2.2 As at the date of this objection STDC has made available exactly three documents setting out its approach to the use of compulsory purchase powers. They are:
 - (a) the Statement of Reasons itself;
 - (b) a report to the STDC board dated 25 July 2018 which concluded that the proposed extent of the CPO land which included land comprising the Redcar Bulk Terminal which was '*vital to delivering its vision for the area*' and a recommendation for the board '*to authorise the Chief Executive to take all necessary steps to make the*

CPO and thereafter to continue the process for the confirmation and implantation of the CPO'; and

- (c) an undated STDC Board report containing almost entirely redacted minutes of the STDC Board meeting held on 25 July and a recommendation seeking changes to an earlier, undisclosed, resolution to enable more than one CPO to be made in order to accommodate the removal of critical land at Redcar Bulk Terminal and other land from the Order.

2.2.3 These papers make it clear that as at July 2018 STDC had not decided whether to make one compulsory purchase order or more than one, or which land or interests in land it would seek to acquire. It is also clear that at that time STDC considered the inclusion of the Redcar Bulk Terminal to be an integral and essential component of any CPO.

2.3 STDC then draw attention to the decision of TVCA's Cabinet on 25 March 2019, by which it is said authority to make the Order is conferred. However, TVCA have elected to claim confidentiality over the form of draft compulsory purchase order and map that they were asked to approve. It must be demonstrated that the Order is precisely the same as that which TVCA approved in order for the Secretary of State to be lawfully able to confirm the Order.

2.4 At least one factor suggests that may not be the case. TVCA expressly authorised the Chief Executive Officer of STDC to make a compulsory purchase order. It does not appear that such an officer currently exists. The Order appears to have been signed by TVCA's Mayor Ben Houchen, acting in the purported capacity of an "authorised officer".

2.5 STDC maintains a complete lack of transparency as to its internal governance, with no published list of meeting agendas or minutes other than those expressly disclosed in connection with the Order as referenced above. It is therefore impossible for the public to verify that Mayor Houchen (an outspoken critic of the Thai Banks) is both:

2.5.1 vested with the proper authority to execute the Order; and

2.5.2 properly able to carry out the functions of the (currently vacant) post of Chief Executive Officer, being the only STDC officer authorised by the STDC Board and by TVCA to proceed with a compulsory purchase order.

2.6 Before confirming any Order (modified or otherwise) the Secretary of State is asked to verify that STDC has adopted correct and appropriate resolutions to appoint Mayor Houchen to those roles and delegate appropriate authority to him. The use of extreme measures such as compulsory purchase power should not be permitted where such a gross lack of transparency and accountability exists. The right to supplement these Objections as appropriate is reserved, should further grounds of objection arise once full and proper disclosure is finally provided.

3. **LACK OF COMPELLING CASE IN THE PUBLIC INTEREST**

3.1 The Statement of Reasons comprehensively fails to meet the requirements for justification of the use of compulsory purchase powers, as set out in the February 2018 Guidance on Compulsory purchase process and The Crichel Down Rules (the "**Guidance**"). The main failings are summarised below by reference to the Guidance.

3.2 ***Compelling case in the public interest***

3.3 There is no doubt that returning productive, employment-generating uses to the currently under-used industrial land comprised in the Order is a laudable aspiration. However, it has not been demonstrated that a compulsory purchase of that land will in any way contribute to that goal. Put another way, the acquiring authority has made a compelling case for its desired outcome, but has made no case whatsoever to demonstrate any meaningful link between that outcome and the acquisition of the land (and certainly not the whole of the land) to which the Order relates.

3.4 In fact, the Statement of Reasons itself provides numerous indications that compulsory purchase is unnecessary to the achievement of those outcomes:

3.4.1 numerous parcels are cited as being excluded from the Order due to active or planned development proposals;

3.4.2 existing future proposals such as the creation of a 'free port' zone create significant commercial opportunities that are likely to generate yet further commercial interest in redevelopment and/or re-use of the Order land; and

3.4.3 half of the land (the Tata interests) has already been acquired by private treaty without the need for compulsory purchase. This land should be a sufficient spring-board for the acquiring authority to commence regeneration and establish a track record (if it can), without a prior need also to acquire all SSI land too at this time.

3.5 In the context of a desire to bring forward regeneration over a period of 25 years, there is simply no basis for concluding that acquisition of land by compulsion will accelerate or improve the likelihood of regeneration as against what is likely to occur over the same 25 year period in the absence of exercising compulsory purchase powers. There is simply no basis for the use of compulsory purchase in this case.

3.6 Importantly, the Statement of Reasons is incorrect in its claim that confirmation of the Order will somehow bring to an end the public expenditure that has been incurred in maintenance of the Order Land since steel production came to an end. A change in ownership will do nothing to diminish the holding costs of the land (to the extent these are actually justified, and necessarily incurred), costs which we are told central government has already committed to pay up to 2022. A more favourable way to reduce public expenditure would be to remove the threat of compulsory purchase which has stymied potential development proposals, and allow the market forces which have already proven effective in respect of numerous parts of the Order Land to have effect.

- 3.7 Specifically, the Thai Banks are engaged in discussions with various third parties with regard to the renewed exploitation of various parts of the land, all of which would include increased (local) employment opportunities. These projects include a possible re-start of steelmaking (as contemplated by the STDC Master Plan) and the expansion or monetisation of the two waste disposal sites, as well as the development of further parcels of land. But for the threat of compulsory purchase there is a real prospect of these discussions giving rise to early and meaningful regeneration.

Timing of Order

- 3.8 The Order is premature, as the Order Land (and certainly all of it) is not required immediately or in any realistically predictable timeframe. The acquiring authority does not know when or how it will use the land. Paragraph 13 of the Guidance advises:

"If an acquiring authority does not:

- *have a clear idea of how it intends to use the land which it is proposing to acquire; and*
- *cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale*

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making."

- 3.9 The acquiring authority has not:

- 3.9.1 provided any information regarding any potential end users of any part of the CPO Land;
- 3.9.2 obtained any planning permissions for any part of the CPO Land;
- 3.9.3 provided any reliable information regarding the likely timescale for delivery of development the Order seeks to enable. Imprecise and yet still wildly inconsistent estimates of either 12 or 25 years overall programme arise in the acquiring authority's internal reports and Statement of Reasons respectively, reflecting a similar disparity in the underlying planning policy expectations; or
- 3.9.4 provided any clear indication of the amounts of funding available or evidence of when (or, as below, whether) the sources of funding outlined in the Statement of Reasons might be secured.

- 3.10 There is clearly a significant amount of work to be undertaken in order to demonstrate a present need for the Order and unless and until such work has been satisfactorily completed, the making and confirmation of the Order is premature.

Adequate Resources

- 3.11 Paragraphs 13 and 14 of the Guidance make it clear that a compulsory purchase order should not be confirmed unless it has been demonstrated that the acquiring authority has, or is likely to have, adequate resources to meet the costs of *both*:
- 3.11.1 acquiring the land, and
 - 3.11.2 implementing the scheme.
- 3.12 The Statement of Reasons entirely fails to make a persuasive case that sufficient funding is or is likely to be available. Vague reference is made to several possible sources of funding, but when considering the indicators set out in paragraph 14 of the Guidance it is important to note that:
- 3.12.1 no agreements are in place for public or private funding (save as addressed below);
 - 3.12.2 the timing of funding is unclear but funds are plainly not currently available and are unlikely to be available early in the process;
 - 3.12.3 there has been no attempt to demonstrate that funding will be available within the statutory period under section 4 of the Compulsory Purchase Act 1965;
 - 3.12.4 there has been no attempt to demonstrate the existence of exceptional circumstances to justify present-day acquisition against a 25-year delivery programme; and
 - 3.12.5 no adequate evidence is provided of any immediately available funding to address potential blight notices, and as detailed below the assertion of £60 million of land acquisition funding from TCVA is both undocumented and based on hopelessly unrealistic valuation material.
- 3.13 The Statement of Reasons attempts to create an illusion of adequate funding by referring to numerous alternative revenue and funding streams. The reality, however, is that these are in the main no more than highly speculative possibilities which fall a very long way short of the level of certainty required before authorising compulsory purchase. Repeated reference is also made to historic central Government funding that has largely already been spent and/or committed, and which therefore does nothing to reassure the Secretary of State that the Order is adequately resourced.
- 3.14 In addition, the acquiring authority asserts in the Statement of Reasons (paragraph 5.13) that a sum of only £60 million is available and will be sufficient to meet the land acquisition costs of the Order. This is incorrect and misleading, as the Tees Valley Investment Plan 2019 – 2029 allocated a sum of £56.5 million to *both* land assembly and infrastructure provision.

- 3.15 In this context, this sum is hopelessly unrealistic, being insufficient to meet the compensation payable in respect of the land in which the Thai Banks have a security interest, and any associated infrastructure costs (for which no estimates have been provided by the acquiring authority).

Impediments / Reasonable Prospect of the Scheme going ahead within a reasonable time

- 3.16 In addition to the repeated reliance on funding from central Government without any assurances, there are conflicting assumptions in the Statement of Reasons and background documents relating to the extent and programming of remediation work required to unlock the Order Land. No cost estimation nor solution has been proposed for delivery of unfunded infrastructure and remediation
- 3.17 The South Tees Area SPD adopted in May 2018 and STDC's South Tees Regeneration Master Plan adopted in March 2019 both emphasise Redcar Bulk Terminal as being a vital strategic asset, the future management of which is pivotal to the success of the redevelopment of the South Tees Area, especially the major Northern Industrial Zone. Planning policy also states that 'Integrating these two major land areas [RBT and SSI Land] is essential to realising the full potential of this zone and the deep-water port facility it provides, the importance of which is recognised in Development Principle STDC4. Segregation would compromise the flexibility, range of uses and development layouts possible in this area.'
- 3.18 The acquiring authority's exclusion of land comprising Red Bulk Terminal from the Order represents a clear obstacle, creating significant uncertainty as to the realisation of many of the Scheme's benefits with consequential impacts on scheme viability and the ability to implement any planning permissions that may be obtained.

No Likelihood of Key Planning Permissions and Related Orders

- 3.19 In approving the use of compulsory purchase powers the acquiring authority's own Board Resolution of 25 July 2018 relied on a report which considered the land comprising the Redcar Bulk Terminal to be a "*vital gateway to the SSI and Tata land as has been evidenced by the extent of investor interest in it as an integral part of the Site*". At that time the draft order anticipated inclusion of that land, as demonstrated by the plan annexed to the report quoted. It is entirely correct that the "*deepest port in England, with a river frontage at the mouth of the Tees and approximately 300 acres of land*" in question is an "integral" element of the South Tees Area Supplementary Planning Document and the acquiring authority's own Master Plan.
- 3.20 The critical importance of the Redcar Bulk Terminal's deep water port and associated land is further emphasised in The Tees Valley Combined Authority's Finance Director reported on 1 June 2018 on the 'South Tees Site Company Transition Plan'. That report stated (at its paragraph 2):

2. There are 3 key land assets which are shown on the map in Appendix 2 and these are as follows:

a. The former SSI land which is currently owned by the Official Receiver and charged to the Thai Banks but operated by South Tees Site Company, a limited company owned by BEIS and chaired by Cllr Sue Jeffrey;

b. The Tata land; and

c. Redcar Bulk Terminal which is a limited company owned 50% by Greybull Capital and 50% by the Official Receiver.

- 3.21 The river access afforded by land at the Redcar Bulk Terminal is unique in the Tees. No other port facility in the area can handle full 'capesize' vessels (the largest dry cargo ships), and it is unlikely that any other capesize dock can realistically be developed in the future due to depth restrictions at other locations on the river. The Redcar Bulk Terminal therefore provides access to a class of shipping that is otherwise impossible to operate anywhere on the Tees, and has for good reason been considered an integral and critical component of the planning policy aspirations for regeneration of the area.
- 3.22 Without the deep water port forming part of the Scheme, there is no prospect of the "North Zone" or "Northern Industrial Zone" of the Master Plan being delivered in anything resembling the form on which the Order is predicated. It follows that there are no clear proposals for the majority of the Order Land over which the Thai Banks have a security interest, now that the Redcar Bulk Terminal and its associated land does not form part of the Scheme. As a consequence the proposals in the Masterplan for a new spine road and Northern Industrial Zone plainly cannot be delivered in their current form. Paragraph 15 of the guidance indicates that "obvious reasons why planning permissions would not be granted" must be discounted. The exclusion of the deep water port and associated land is precisely such an "obvious reason" which wholly undermines at least the Northern Industrial Zone.
- 3.23 Similarly, the Master Plan's Southern Industrial Zone is predicated on improvements to the shipping infrastructure along the river frontage comprised essentially in plot 142. Notably, none of the existing shipping infrastructure is included within the scope of the Order, and no indication is given as to the likelihood of rights being available to access the port so as to deliver that shipping access.
- 3.24 The Southern Industrial Zone is further predicated on the creation of an area of new harbour. At page 108 the Master Plan says:
- "The proposals include the creation of an inset quay (or basin) at the downstream end to provide additional capacity and create the potential for accommodating as wide a range of uses as possible. The river in this locale affords a navigable channel maintained to depths ranging from 7.0m to 10.5m, and reconstruction of existing wharfage could be redesigned to delivery greater draught at the quay interface, via pocket dredging."*
- 3.25 It is therefore surprising that the Statement of Reasons indicates at paragraph 6.4 that no additional orders are required. The wharf reconstructions and creation of a

new quay would require a substantial range of statutory authorisations, potentially including a Development Consent Order, Harbour Modification Order, together with dredging and Crown consents. The availability of such Orders is not addressed, and the Statement of Reasons offers no clear route to delivery of the Southern Industrial Zone.

- 3.26 Taken together, the obstacles facing both the Northern Industrial Zone and the Southern Industrial Zone render around two thirds of the Scheme undeliverable, wholly undermining the rationale for the Order.
- 3.27 It is also unclear to what extent STDC has been able to exclude risks from landfill gas migration and/or whether any necessary mitigation is achievable and affordable. The Statement of Reasons is totally silent on this issue, notwithstanding its prominence in the SPD as an identified issue.
- 3.28 More broadly, any substantial new proposals will require both EIA and HRA-compliant "appropriate assessment" (in particular, to consider impacts on the SPA/Ramsar site, and the pSPA). It is quite impossible to pre-judge the outcome of these important processes (indeed, it would be unlawful to attempt to do so), not least where the acquiring authority is unable to identify with any precision end-users or specific proposals. It cannot possibly be said there are "no obvious reasons why [planning consent] might be withheld" (Guidance, page 13).

Alternatives to the use of CPO powers

- 3.29 The Statement of Reasons relies heavily on the so-called 'fragmentation' of the Master Plan site (see paragraphs 1.6, 5.33 and 5.35). It is important to note that "fragmentation" in this sense is of relevance only insofar as it gives rise to a large number of land owning parties, so as to require complex multi-party negotiations to which compulsory powers are the only solution. In this case, it is true that a large number of parcels of land, of irregular shapes and widely varied sizes are caught within the bounds of the Order. However, beneath that superficial complexity lies a more important simplicity: acquisition of the whole of the Order Land requires agreements to be reached with only five private parties. Of those, the Official Receiver Mr Kenneth Beasley holds the vast majority of the land in question (subject to the security interest of the Thai Banks).
- 3.30 The reality is that the Master Plan site is now in largely cohesive ownership, in respect of which a further single transaction is all that the acquiring authority needs to assemble virtually the whole of the development opportunity to which the Statement of Reasons makes reference. As noted below, no genuine offer has been made by the acquiring authority for that substantial land holding. Further, the acquiring authority has not attempted to negotiate for the purchase of parts of that land, which together with specific parts of the Tata land in particular, may represent a coherent first phase of regeneration led by STDC.
- 3.31 Equally, that cohesive ownership provides a clear opportunity (given the enormous 25 year scope of the Master Plan) for the private sector to bring about regeneration

along the lines set out in the Master Plan without the need for compulsory purchase powers to be used.

Genuine last resort

- 3.32 Paragraph 2 of the Guidance confirms that compulsory purchase is intended as a last resort and that the acquiring authority will be expected to demonstrate that they have taken reasonable steps to acquire the land by agreement and that payment for the land will be as if it had been compulsorily purchased, unless the land was already on the open market. Paragraph 3 states that public sector organisations should make reasonable initial offers.
- 3.33 While there have been discussions between STDC and the Thai Banks, STDC has not made any financial offer for the Order land based on CPO compensation principles. Nor has any formal offer been made which is not contingent on the release of charges over other assets not associated with the Order Land.
- 3.34 Despite correspondence on behalf of the Thai Banks setting out deficiencies in valuation matters and attendance at meetings in Bangkok and London with STDC, STDC has refused to engage in any serious dialogue which contests the basis of the offer made, the clear message given is that the 'offer' is a take it or leave it position, regardless of whether its basis is flawed.

4. PREMATURITY – REQUIREMENT FOR MODIFICATION

- 4.1 The Northern Industrial Zone of the Master Plan is in just two ownerships. One of those, the Redcar Bulk Terminal and its associated land has been excluded from the scope of the Order. Without it, the other half of the Northern Industrial Zone is plainly undeliverable in the manner STDC envisages.
- 4.2 The acquiring authority acknowledges in its Statement of Reason that private enterprise is likely to secure delivery of regeneration of the deep water port and associated land. Plots 1, 2 and 3 have not been marketed by the Official Receiver most likely due to the looming threat of compulsory purchase. Absent that threat, the logic applied to the neighbouring deep water port and associated land applies equally to these plots. It is wholly artificial to regard liquidation as distinguishing one part of the Northern Industrial Quarter from the other when it comprises the fourth phase of a 25-year delivery aspiration.
- 4.3 Given the limited scope of other land interests to which the Order relates (see above), it is considered that this fundamental omission undermines the entire case supporting the Order. However, should the Secretary of State disagree, it is considered that the Order must be modified so as to exclude at least Plots 1, 2 and 3 prior to confirmation. Consequential modifications would also be required to ensure access is retained to that land.
- 4.4 In respect of the Southern Industrial Zone the Master Plan notes that "*a significant proportion of the SIZ is presently given over to landfill operations and waste treatment facilities. Recent assessments suggest a potential existing landfill capacity of up to 10*

million cubic metres. This offers ample space to accommodate, at much lower cost than off-site disposal, residual materials arising from the site remediation operations across the South Tees Area, whilst permitting existing privately operated waste management businesses to continue." (page 108)

- 4.5 Plot 157 comprises the landfill known as "High Tip". The above passage suggests that its inclusion in the Order is based on an assumption that in so doing there would be a substantial cost saving as against paying commercial rates to the operator of that landfill. This is both a flawed assumption (since the compensable value of the land would reflect its remaining capacity as an operational landfill which the Order proposes to maintain). This is, in any event, a wholly unacceptable basis on which to promote the compulsory acquisition of land. The acquiring authority plainly has no alternative use in mind for plot 157, which should be excluded from the Order prior to confirmation, together with necessary savings to preserve access.
- 4.6 Further, there are several disparities between the Statement of Reasons and the Order. Paragraph 3.10 of the Statement of Reasons, for example, appears to refer to plots which do not exist within the Order. Prior to confirmation the Order may need to be further modified to address the implications of these apparent errors.

5. **CONCLUSION**

- 5.1 The proposed justification for the Order is fundamentally misconceived, and significantly premature. On a realistic assessment the Order is not currently necessary for the regeneration of the Order Land, and it is not likely in any event to improve either the likelihood of that regeneration occurring or the timescale over which it may occur. As such the Order exceeds the STDC's statutory authority and may not lawfully be confirmed. It is in any event not supported by a compelling case in the public interest, and significant obstacles to its implementation exist including not least the lack of any demonstration of adequate funding. The interference with relevant A1P1 rights does not strike a fair balance, and is wholly unjustifiable and unlawful. Accordingly the Order should not be confirmed.
- 5.2 In the alternative, the Secretary of State is asked not to confirm the Order unless it is first modified to exclude at the very least Plots 1, 2 and 3 and plot 157 from the scope of the Order, together with necessary savings to ensure preservation of access to that land.

9 May 2019