

**Date:** Thursday, 29 February 2024 at 10.00am.

**Venue:** Teesworks Skills Academy, off Eston Road, Middlesbrough TS6 6UA.

**Membership:**

Mayor Ben Houchen (Tees Valley Mayor)  
Councillor Alec Brown (Leader, Redcar and Cleveland Borough Council)  
Graham Robb (Independent Member)  
David Smith (Independent Member)  
Neil Schneider (Independent Member)

**Associate Membership:**

Julie Gilhespie (Group Chief Executive TVCA, STDC)  
Tom Smyth (BEIS)  
John Samson (Managing Director, Redcar and Cleveland Borough Council)

## AGENDA

1. **Apologies for Absence**  
To receive any apologies for absence.
2. **Declarations of Interest**  
To receive any declarations of interest.
3. **Minutes**  
To approve as a correct record the minutes of the meeting held on 21 September 2023.
4. **Chair's Update**  
To receive a verbal update from the Chair on activity not highlighted elsewhere on the agenda.
5. **Group CEO Update**  
To receive a report from the TVCA Group Chief Executive providing an update on key matters in relation to STDC since the last Committee meeting.
6. **Financing Update**  
To receive a report from the Group Director of Finance and Resources presenting an update on financial performance for 2023/24 and the forecast position for the remainder of 2023/24.
7. **STDC Treasury Management Report**  
To receive a report from the Group Director of Finance and Resources presenting the Treasury Management, Capital and Investment Strategies for the financial year 2024/25. The Capital Strategy incorporates within it the Minimum Revenue Provision Policy.
8. **Budget 2024-25 and Medium-Term Financial Plan**  
To receive a report from the Group Director of Finance and Resources presenting the STDC Budget 2024-25 and Medium-Term Financial Plan for approval by the STDC Board.
9. **Site Maintenance Arrangements**  
To receive a report from the Chief Operating Officer outlining future arrangements for site maintenance at Teesworks.

**10. Bio-Diversity Net Gains Update**

To receive a presentation from Lichfields on bio-diversity net gain providing an overview of current and future requirements and implications for STDC.

**11. Tees Valley Review**

To receive an update on the Independent Review into the Tees Valley Combined Authority's oversight of the South Tees Development Corporation and Teesworks Joint Venture (Teesworks Limited).

**12. STDC V PD Ports – Litigation Update**

To receive a report from the TVCA Chief Executive providing the Board with an update in relation to the litigation with PD Ports for declaratory relief in respect of rights it was claimed PD Ports has over the Teesworks Site.

*Appendix 4 is exempt from publication pursuant to paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) and paragraph 5 (information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) of Schedule 12A of the Local Government Act 1972.*

*Appendix 5 is exempt from publication pursuant to paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Schedule 12A of the Local Government Act 1972.*

**13. STSC Update**

*This item is exempt from publication by virtue of paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) of schedule 12A of the Local Government Act 1972*

**14. JV Power Update**

*This item is exempt from publication by virtue of paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) of schedule 12A of the Local Government Act 1972*

15 **Date and Time of Next Meeting**  
To be confirmed.

**Members of the Public - Rights to Attend Meeting**

With the exception of any item identified above as containing exempt or confidential information under the Local Government Act 1972 Section 100A(4), members of the public are entitled to attend this meeting and/or have access to the agenda papers.

Persons wishing to obtain any further information on this meeting or for details of access to the meeting for disabled people, please contact:

[tvagovernance@teesvalley-ca.gov.uk](mailto:tvagovernance@teesvalley-ca.gov.uk)



## **South Tees Development Corporation Declaration of Interests Procedure**

1. The purpose of this note is to provide advice and guidance to all members of the Development Corporation Board and Audit & Risk Committee on the procedure for declaring interests. The procedure is set out in full in the Development Corporation's Constitution under the "Code of Conduct for Members" (Appendix 3).

### **Personal Interests**

2. The Code of Conduct sets out in full, the principles on the general conduct of members in their capacity at the Development Corporation. As a general principle, members should act impartially and should not use their position at the Development Corporation to further their personal or private interests.
3. There are two types of personal interests covered by the Constitution:
  - a. "disclosable pecuniary interests". In general, a disclosable pecuniary interest will involve any financial interests, such as paid employment or membership of a body, interests in contracts, or ownership of land or shares. Members have a pecuniary interest in a matter where there is a reasonable likelihood or expectation that the business to be considered will affect your well-being or financial position, or the well-being or financial position of the following persons:
    - i. a member of your family;
    - ii. any person with whom you have a close association;
    - iii. in relation to a) and b) above, their employer, any firm in which they are a partner, or a company of which they are a director;
    - iv. any person or body in whom persons described in a) and b) above have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
    - v. any body as described in paragraph 3 b) i) and ii) below.
  - b. Any other personal interests. You have a personal interest in any business of the Development Corporation where it relates to or is likely to affect:
    - i. any body of which you are a member (or in a position of general control or management) and to which you are appointed or nominated by the Development Corporation;
    - ii. any body which:
      - exercises functions of a public nature;
      - is directed to charitable purposes;
      - one of whose principle purposes includes influencing public opinion or policy (including any political party or trade union) of which you are a member (or in a position of general control or management).

### **Declarations of interest relating to the Councils' commercial role**

4. Financial relationships between the Development Corporation and individual councils do not in themselves create a conflict of interest for Council Leaders who are also Development Corporation Board members. Nor is it a conflict of interest if the Development Corporation supports activities within a council boundary. Nevertheless, there are specific circumstances where the Board may consider entering into direct contractual arrangements with a council, for example in relation to a particular commercial investment project, or in which that council is a co-funder. In these circumstances a non-pecuniary declaration of interest should be made by the Council Leader or their substitute.

### **Procedures for Declaring Interests**

5. In line with the Code of Conduct, members are required to adhere to the following procedures for declaring interests:

#### **Register of Interests**

6. Each member is required to complete a register of interests form with their personal interests, within 28 days of their appointment to the Development Corporation. If no declaration is received from elected members within 28 days the matter may be referred to the Head of Paid Service of your local authority and Leader of the political group you represent on your council for action. If a Declaration is not submitted within an appropriate timescale you may be prevented from attending committee meetings. Details of any personal interests registered will be published on the Development Corporation's website, with the full register available at the Development Corporation's offices for public inspection. The form will be updated on an annual basis but it is the responsibility of each member to notify the Monitoring Officer of any changes to the register throughout the year. Notification of a change must be made to the Monitoring Officer within 28 days of becoming aware of that change.

#### **Declaration of Interests at Meetings**

7. The Development Corporation will include a standing item at the start of each statutory meeting for declaration of interests. Where members are aware that any of their personal interests are relevant to an item of business being considered at a meeting they are attending, they must declare that interest either during the standing item on the agenda, at the start of the consideration of the item of business, or when the interest becomes apparent, if later.
8. Where members consider that their interest could be considered by the public as so significant that it is likely to prejudice the members' judgement then they may not participate in any discussion and voting on the matter at the meeting, but may attend the meeting to make representations, answer questions or give evidence relating to the business, before it is discussed and voted upon.
9. If the interest is a disclosable pecuniary interest (as summarised in paragraph 3a) then the member must leave the meeting room during discussion and voting on the item of business, but may make representations, give evidence and answer questions before

leaving the meeting room. Failure to comply with the requirements in relation to disclosable pecuniary interests is a criminal offence.

**Sensitive Information**

10. Members can seek the advice of the monitoring officer if they consider that the disclosure of their personal interests contains sensitive information.

## SOUTH TEES DEVELOPMENT CORPORATION (STDC) BOARD

These minutes are in draft form until approved at the next Board meeting and are therefore subject to amendments.

Date: 21<sup>st</sup> September, 2023

Time: 10am

Location: Teesworks Skills Academy, off Eston Road, Middlesbrough TS6 6UA.

<b>Attendees:</b>		<b>Apologies:</b>
Ben Houchen (Chair)	Tees Valley Mayor	John Sampson
Cllr Alec Brown	Leader, Redcar & Cleveland BC	
Graham Robb	Independent Member	
Neil Schneider	Independent Member	
David Smith	Independent Member	
Tom Smyth	BEIS, Interim Government Representative	
Julie Gilhespie	TVCA Group Chief Executive	
Gary Macdonald	TVCA Group Director of Finance & Resources	
Emma Simson	Acting Monitoring Officer. TVCA	
Chris Harrison	JV Partner	
John McNicholas	Teesworks	
Brian Archer	Redcar & Cleveland BC	
Sally Henry (Secretariat)	TVCA Governance Officer	

No.	Agenda Item	Summary of Discussion	Actions Required	Responsibility
STDC 13/23	<b>Welcome and apologies for absence</b>	<p>The Chair welcomed everyone to the meeting.</p> <p>Apologies were given as noted above.</p> <p>The Chair advised that Jacob Young has resigned from the Board with immediate effect following his appointment to the Department for Levelling Up, Housing and Communities.</p>		
STDC 14/2023	<b>Declarations of Interest</b>	No interests were declared.		
STDC 15/2023	<b>Minutes from previous meeting</b>	<p>The Board reviewed the minutes of the meeting held on 21<sup>st</sup> July, 2023.</p> <p>The Group Director of Finance &amp; Resources advised the Board that a presentation on bio-diversity net gains will be included on the agenda of a future meeting.</p> <p>Chris Harrison advised he had noted some typographical errors that he would speak to the Governance Officer about post meeting.</p> <p><b>Resolved that, once the typographical errors are amended, the minutes of the 21<sup>st</sup> July, 2023 are agreed.</b></p>		
STDC 16/2023	<b>Chairs Update</b>	The Chair advised the Board that there was nothing further to update them on that was not covered throughout the rest of the agenda.		

<p>STDC 17/2023</p>	<p><b>Governance Update</b></p>	<p>Board were advised that the Acting Monitoring Officer has carried out a review of the South Tees Development Corporation Constitution.</p> <p>The Review has identified a number of proposed amendments which are detailed in the Report. The review has also identified some further desirable amendments which will require a more thorough review including a review of the Scheme of Delegation, and as such, it is likely that further proposed amendments will be brought to the next Board meeting for consideration.</p> <p>Board were invited to:-</p> <ol style="list-style-type: none"> <li>1. approve of the proposed amendments to the STDC Constitution and agree the revised Constitution be submitted to TVCA Cabinet in December for final agreement and subsequent publication; or</li> <li>2. not approve the proposed amendments to the STDC Constitution.</li> </ol> <p>Board were recommended to approve the changes to the STDC Constitution to reflect STDC resource changes and administrative updates as detailed in the Report. This is the recommended action as not approving the changes will result in the governing document of STDC becoming less appropriate over time which will create risk to STDC.</p> <p>A Board member commented that the proposed changes were sound and asked whether the ongoing review would have any impact on the Constitution. Board were advised that if any issues are raised, the Constitution will be looked at again.</p> <p><b>Resolved that The Board approved the proposed amendments to the STDC Constitution.</b></p>		
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<p>STDC 18/2023</p>	<p><b>Finance Update</b></p>	<p>Board were presented with a report which updated on financial performance for 2023/24 against budget and the forecast position for remainder of 2023/24.</p> <p>The Group Director of Finance &amp; Resources highlighted the main points to note from the report.</p> <p>Decontamination has now been completed on the site. COMAH status cannot be removed until such time that all hazardous waste is removed from site. It is currently in sealed containers and investigations are on going to find new markets.</p> <p>HSE make regular visits to ensure all guidelines are met.</p> <p>The budget will reflect the changes in the operating model from Keep Safe to estate management.</p> <p><b>RESOLVED THAT the Board noted the update.</b></p>		
<p>STDC 19/2023</p>	<p><b>STSC Update</b></p>	<p>Board were provided an update on the key EHS activities in relation to works currently being undertaken.</p> <p>Board were recommended to note the content of the report for clarity of performance and awareness of legislative requirements.</p> <p>The Group Chief Executive further advised the Board that confirmation has now been received that no manslaughter charges will be brought following the tragic accident on site in 2018 when 2 people were killed.</p>		

		RESOLVED THAT the Board noted the update.		
<p><i>Under the terms of paragraph 3 of schedule 12a of the Local Government Act, the Chair passed a motion to exclude press and public at this stage of the meeting so the Board could discuss matters of a Confidential nature. The proposal was made by David Smith and seconded by Graham Robb</i></p>				
STDC 20/2023	Confidential Item 1	RESOLVED THAT:- the Board noted the update.		
STDC 21/2023	Confidential Item 2	RESOLVED Board:- agreed the recommendations within the update		
	Date & Time of Next Meeting	30 <sup>th</sup> November 2023 @ 10am		



## GROUP CHIEF EXECUTIVE UPDATE

### SUMMARY

The purpose of this report is to provide the South Tees Development Corporation (STDC) Board with an activity update since the last meeting.

### RECOMMENDATIONS

It is recommended that the STDC Board notes the content of this report.

### DETAIL

#### DECONTAMINATION PROJECT AND COMAH STATUS

1. A key obligation imposed on STDC in the original Business Case when the South Tees Site Company (STSC) transitioned to local control, was to deliver the Decontamination Project. The contract was procured prior to 2019 when HMG were in control of STSC, and which was responsible for decontaminating the 27km of coke oven gas main and 8km of heavy fuel oil main. This was the most significant aspect of work that had to be done to free the site from its Top Tier COMAH status and is the largest single contract delivered by STSC.
2. This contract is now complete, with the exception of 3km of heavy fuel oil main which was removed from the contract scope due to accessibility issues and will be picked up in the future as we develop the land. The COMAH substances arising from that contract have been safely disposed of and any remaining levels are now well below the COMAH threshold.
3. COMAH inventory materials quantities are now below the required thresholds of COMAH status. The Environment Agency (EA) confirmed on 15 November 2023 that the COMAH status has been removed from site.

#### INDEPENDENT REVIEW

4. The independent Tees Valley Review Report was published on 29 January 2024 and following a letter from the Secretary of State to the Tees Valley Mayor, a response to the recommendations is currently being produced with Local Authority partners. The Board will receive an update on the review as Agenda Item 11 in this meeting.

#### FREEPORT

5. Two new Freeports in Wales and, in addition, eight Investment Zones have been announced. The Investment Zones are expected to complement the Freeports.
6. The Freeport Governance Board met in December 2023 and following a Governance and workstream review agreed the two workstream responsibility areas that would consider thematic activity on behalf of the Freeport Governance Board :-
  - Risk and Accountability for Public Finance (Chaired by Councillor Alec Brown, Freeport Board member and Leader of RCBC)
  - Inward Investment and Marketing (Chaired by Siobhan McArdle, Freeport Board member and Chair of Tees Valley Business Board)

### **Tax Zones**

7. On Tax Zone West (at South Bank, Dorman Point and Lackenby), all demolition works have been completed. Of the c. 500 acres of land making up this tax zone, almost 200 acres have been remediated and readied for development, of which SeAH has taken a lease on 90 acres. A further 60 acres of land are presently the subject of ongoing remediation works. On Tax Zone East, all demolition works are complete. Regarding remediation in this tax zone, works are ongoing on 18 acres adjacent to Steel House, on the site of the proposed Park and Ride facility.
8. Tenant interest is strong and continues to grow across the Teesworks site including the tax zone areas with multiple tenants at various different commercial stages of development. Not only is the investment in the Teesside Freeport attracting high interest with tenants but also existing tenants are investing in the region and the supply chain with the most recent notable example being SeaH Wind's commercial agreement with British Steel for steel for its manufacturing facility at South Bank.

### **UTILITIES**

9. The work continues to develop the private wire network. Discussions with third parties are ongoing on the joint venture procurement of Teesworks' power needs. This will be covered in Agenda Item 14 during this meeting.
10. Work to connect and accommodate SeAH's power requirements continues with all four transformers delivered in location. Substation buildings are erected with switchgear in place in 11kV substations. Cable installation preparation continues along with 66kV busbar and switchgear installation.
11. STDC is working closely with Network Rail for excavations required as part of the cable installation in proximity to a rail embankment.
12. A higher capacity supply of 12 MVA for SeAH's construction supply was installed during October and energised on 30th October 2023.

13. Replacement of cabling to allow for clearance of NZT site has undergone a procurement process. It was anticipated that the contract would be awarded before the Christmas break. However, FID for NZT has been delayed by 6 months, this has had a consequential domino effect on the contract award date for the cable project.
14. Strategy for the network, optimisation of existing assets and the ability to supply potential customers is ongoing. Development planning is ongoing to understand further requirements for additional future developments.

## PROGRAMME DEVELOPMENT

### 15. Dorman Point

- Approximately 80 acres of land have now been remediated, amounting to around 60% of the developable area of the Dorman Point site.
- Contractual negotiations on the leasing by Circular Fuels of 24 acres of land at Dorman Point are well advanced, which, when concluded, will trigger a further phase of remediation of some 20 acres, along with the design and construction of the extension to the East-West road link through the site and the subsequent installation of various utilities, such as HV power, gas and water.

### 16. South Bank

- Construction of South Bank Quay Phase 1 is complete. Work continues on the design of its onshore utilities infrastructure, with construction work due to commence early in 2024, to be complete ahead of the Quay becoming operational late Q2 2024.
- Construction of the South Bank Link Road achieved practical completion in December, with the conclusion to the carriageway surfacing works.
- Regarding the South Bank Watercourse, Phase 1A (adjacent to the SeAH site), comprising 650 linear metres, is complete. Works on Phase 1B and 2A (a further 650 linear metres), by local firm Applebridge, are progressing and remain on programme. Phase 2B (the final phase) is now scheduled to commence construction in Q1 2024, for completion in July 2024.

### 17. Demolition Works Programme

- The demolition programme is 99% complete. The remaining demolition works, comprising the TMO offices and neighbouring facilities, are linked to the provision of the NZT site for BP; and based on latest BP timescales, these works are now scheduled to commence towards the end in Q2 2024.

### 18. Net Zero Teesside

- Ground remediation works to prepare the 100-acre NZT plot are progressing, with the project now 55% complete. BP has recently withdrawn the requirement for accelerated working, further to the NZT project FID date moving back six months to September 2024. Consequently, the remediation project is working to a revised practical completion date of 31-Jul-24.

19. Teesworks Park and Ride Facility

- Advance earthworks to prepare the site for construction of the Park and Ride project are progressing and will conclude in Q1 2024.
- Phases 1 and 2 of the project comprise the new signalised junction on the A1085 Trunk Road and 700m of internal access road. Design works are complete and the tender for construction of these phases is to be issued very soon. The design of Phase 3, comprising the car park and supporting operational facilities has recently been completed and will be tendered for construction in March. Delivery of the Park and Ride facility is linked to BP's construction schedule for the NZT project, which has recently been revised.

20. Key Risks to Delivery

- As noted, STDC is working on several significant projects all of which carry delivery risks. These are actively in mitigation through the comprehensive project management and related project controls processes being implemented by our appointed consultants, with robust project plans in place, regular project progress reviews being held, and intervention actions being taken, where necessary, to address potential impacts to cost and schedule, and ensure delivery to programme.

**EQUALITY & DIVERSITY**

21. No specific impacts on groups of people with protected characteristics have been identified.

**Name of Contact Officer:** Julie Gilhespie  
**Post Title:** Group Chief Executive Officer  
**Email Address:** [Julie.gilhespie@teesvalley-ca.gov.uk](mailto:Julie.gilhespie@teesvalley-ca.gov.uk)

## AGENDA ITEM 6

### REPORT TO THE STDC BOARD

29<sup>TH</sup> FEBRUARY 2024

## REPORT OF DIRECTOR OF FINANCE AND RESOURCES

### FINANCE UPDATE

#### SUMMARY

The purpose of this paper is to update the Board on financial performance for 2023/24 against budget and the forecast position for remainder of 2023/24.

#### RECOMMENDATIONS

It is recommended that the Board notes the content of this report.

#### FINANCIAL PERFORMANCE STDC GROUP 2023/2024

1. The financial information below for STDC, STDL and STSC covers:
  - Actual financial performance to 30<sup>th</sup> September 2023; and
  - Forecast financial position for the remainder of 2023/24.

#### ACTUAL FINANCIAL PERFORMANCE: GROUP

2. The table below shows the actual financial performance 30 September 2023.

**Table 1**

	Spent to date	Q1 and Q2 as a % of total spend for 23/24	23/24 Budget	23/24 Forecast	23/24 Variance
	£'000	£'000	£'000	£'000	£'000
Overheads	1,535	164%	937	2,677	1,740
<b>Operating Costs</b>	<b>1,535</b>	<b>164%</b>	<b>937</b>	<b>2,677</b>	<b>1,740</b>
Demolition	13,491	78%	17,352	22,379	5,027
Site Preparation and Infrastructure	15,533	-30%	52,065	47,924	-4,141
Enabling Studies and Other	2,190	80%	2,734	3,453	719
Quay	21,088	92%	22,855	25,601	2,746
<b>Project Expenditure</b>	<b>52,302</b>	<b>55%</b>	<b>95,006</b>	<b>99,357</b>	<b>4,351</b>
Ex SSI Costs	1,075	61%	1,762	1,762	0
<b>Net Expenditure</b>	<b>54,912</b>	<b>56%</b>	<b>97,705</b>	<b>103,796</b>	<b>6,091</b>
<b>Funded By</b>					
Quay Borrowing	7,523	79%	9,469	9,469	0
Other	47,389	54%	88,236	94,327	6,091
<b>Total</b>	<b>54,912</b>	<b>56%</b>	<b>97,705</b>	<b>103,796</b>	<b>6,091</b>

3. The financial performance for 6 months to 30 September 2023 shows a delivered spend of £54.9m being 56% of budgeted total spend for 2023/24. Delivery continues to be accelerated and significantly ahead of original plan.

#### 4. Project expenditure

The Project expenditure shows accelerated demolition and infrastructure activity to reflect current priorities. This has led to expenditure in this area of £388.9m to date of which £52.3m was incurred in 2023/24.

Prioritisation of tax site locations on Teesworks West and East and the development of SeAH site and South Bank Quay continue at pace to meet incoming tenant requirements.

5. The main areas of spend in 2023/24 were:

- **South Bank Quay** – South Bank Quay – Total spend on the Quay to date is £109.9m, of which £21.1m was in 23/24. Expenditure continued on phase 1 of the South Bank Quay and on the design of its onshore utilities infrastructure. Design of the Workshop and Offices building at the Quay continued and expenditure incurred on the structural steelwork order.
- **Site preparation and infrastructure** – Total spend to date is £108.9m of which £15.5m occurred in 2023/24. Expenditure has occurred on the South Bank Watercourse, Phase 1A (adjacent to the SeAH site), comprising 650 liner metres, this is now complete. Works on Phase 1B and 2A by local firm Applebridge progressed in line with budget. Other infrastructure expenditure was on the South Bank Link Road which is nearing completion.

Expenditure to date on the park and ride has focused on advanced earthworks to prepare the site for construction of the Park and Ride project are close to completing. Park and Ride expenditure of £7m has been reprofiled to 2024/25 in line with delivery priorities.

- **Demolition** – Total expenditure on demolition reached £96.8m with £13.4m expended in 2023/24, with site-wide progress being achieved. Demolition of the South Bank Coke Ovens, Redcar Coke Ovens Battery, Redcar Sinter Plant, BOS Plant and demolition work on the Redcar Coke Ovens By-Products plant are complete.

The program overall is 99% complete. A variance to budget of £5m has been incurred on the demolition program with the key driver being an overspend of £3m on the Redcar Coke Ovens. This has occurred due to hazardous materials being identified that were not identified on the inventory listing.

- **Land acquisition costs** – land acquisition costs have predominantly completed following the Compulsory Purchase Order (CPO) vesting process. This has delivered within the previous forecast level.
- **Overheads** – overheads incurred an overspend as demolition and remediation activity finalises. The complexity of the demolition of the coke oven by-products plants resulted in additional overheads for sector experts. The products have been in the process of being safely disposed of and the completion of this work has allowed for a formal application to HSE to be submitted to declassify the site and remove the COMAH status.
- **Enabling Studies and other** – Expenditure of £2.1m has occurred to date in 23/24, with an additional £0.7m forecast to be required. Expenditure focused on road design works that are required as part of planning conditions.
- **Ex SSI Costs** - A key obligation imposed on STDC in the original Business Case when the South Tees Site Company (STSC) transitioned to local control, was to deliver the Decontamination Project. The contract was procured prior to 2019 when HMG were in control of STSC, and which was responsible for decontaminating the 27km of coke oven gas main and 8km of heavy fuel oil main. This was the most significant aspect of work that had to be done to free the site from its Top Tier COMAH status and is the largest single contract delivered by STSC.

This contract is now complete. The COMAH substances arising from that contract

have been safely disposed of and any remaining levels are now well below the COMAH threshold.

Expenditure in respect of Site Company is continuing to decrease as a result of completion of the above activity, with £0.68m remaining forecast spend to be complete by Q4 2023/24.

6. **Financial commitments pipeline** – Since the previous meeting we can report successful procurement of cabling replacements to allow the necessary diversion of cabling to enable the NZT site work to progress.
7. **Site company expenditure** – Expenditure for electricity is in line with forecast. The market continues to be volatile, and we are continuously working with our provider to forecast the future costs. Support and costs were incurred in relation to supporting the demolition of the Redcar Coke Ovens.

## TOTAL EXPECTED OUTTURN FOR 2023/24

8. The table above shows the forecast spend for 2023/24 of £103.7m, with £48.8m forecast to occur in Q3 and Q4. A budget outlining the overall spend over the life of the project was presented at the July board. As the development has progressed, the scope of works has been updated to include emerging priorities that enhance the site for future tenants and have been deemed as financially beneficial to progress during the current development programme.
9. Expenditure is forecast to be incurred on the following main areas:
  - a) Final expenditure on the South Bank Link Road on major road surfacing works scheduled for November 2023 and completion by the end of the year;
  - b) South Bank Watercourse Phase 2 being a further 500 linear meters, with the contractor appointed;
  - c) Teesworks Park and Ride construction works;
  - d) Utilities construction works at the South Bank Quay, work due to commence early in 2024, to be complete ahead of the Quay becoming operational late Q2 2024;
  - e) Design of the Workshop and Offices building at the Quay, construction scheduled to commence mid-January.
10. The forecast has been updated to reflect the overspend on overheads and Redcar Coke Ovens, that occurred.
11. The forecast expenditure is fully funded through a mixture of grant funding, borrowing and income.

## 2023/23 OPERATING COSTS

12. STDC continues the transitioning from the legacy “keep safe” focus activity, following the departure of SSI from the site, to a more progressive estate management arrangement



that supports the various existing and planned tenants on site providing professional services across a range of activities.

13. The estate management operating expenditure incorporates all general operating costs across the site to ensure a secure and well-maintained development is provided for all current and prospective tenants. Elements of this expenditure will be recharged via an annual service charge to tenants with those areas unoccupied by tenants paid by STDL as landlord.
14. The below table sets out the operational expenditure against budget for 2023/24.

**Table 2**

	YTD Spend £'000	23/24 Budget £'000	23/24 Forecast £'000	23/24 Variance £'000
Estate Management Costs	2,906	5,542	5,542	0
Costs of Finance		6,996	6,754	-242
<b>Total Expenditure</b>	<b>2,906</b>	<b>12,538</b>	<b>12,296</b>	<b>-242</b>
<b><u>Funded By</u></b>				
Site Income		641	944	303
Other Retained Income		11,897	11,352	-545
<b>Total</b>	<b>0</b>	<b>12,538</b>	<b>12,296</b>	<b>-242</b>

15. The site income increase of £223K forecast is due to additional rental income expected, that was not originally budgeted.

## FINANCIAL IMPLICATIONS

16. Financial implications are discussed in the body of this report.

## LEGAL IMPLICATIONS

17. There are no legal implications associated with the recommendations of this report.

## **RISK ASSESSMENT**

18. This is an update report and as such is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

## **EQUALITY AND DIVERSITY**

19. There are no impacts of equality and diversity related to this report.

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## STDC TREASURY MANAGEMENT REPORT 2024-25

### SUMMARY

This report presents the Corporation's Treasury Management, Capital and Investment Strategies for the financial year 2024/25. The Capital Strategy incorporates within it the Minimum Revenue Provision Policy.

### RECOMMENDATIONS

It is recommended that the STDC Board:

- i. Approves the Treasury Management, Investment and Capital Strategies for 2024/25.

### DETAIL

1. The Chartered Institute of Public Finance and Accountancy Treasury Management Code was updated in 2021. This report fulfils the Authority's legal obligation under the Local Government Act 2003 to have regard to the CIPFA Code.
2. The code defines Treasury Management as, the management of the organisations borrowing, investments and cash flows, banking, money market and its capital market transactions. The effective control of the risks associated with those activities, and the pursuit of optimum performance consistent with those risks. This definition is intended to apply to all public service organisations in their use of capital and project financings, borrowings and all investments.
3. To meet with these requirements the following three strategies have been produced:-
  - i. Treasury Management Strategy (Appendix 1) - the management of the Authority's cash flows, borrowing, investments, and the associated risks.
  - ii. Capital Strategy (Appendix 2) - a high-level overview of how capital expenditure, capital financing and treasury management activity contribute

to the functions of the Authority. Including an overview of how associated risk is managed and the implications for future financial sustainability.

- iii. Investment Strategy (Appendix 3) – investments held by the Authority that are not managed as part of normal treasury management processes.
4. The underpinning Treasury Management Practices adopted to implement the Treasury Management Strategies have been revised this year to incorporate changes to CIPFA's Code of Practice for Treasury Management in Public Services and are elsewhere on this agenda for approval.

#### **FINANCIAL IMPLICATIONS**

- 5. None

#### **LEGAL IMPLICATIONS**

- 6. None

#### **RISK ASSESSMENT**

- 7. . The Treasury Management Strategy is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

#### **CONSULTATION & COMMUNICATION**

- 8. None

**Name of Contact Officer: Gary Macdonald**  
**Post Title: Group Director of Finance and Resources**

## TREASURY MANAGEMENT STRATEGY 2024/25

### 1. Introduction

Treasury management is the management of the Corporation's cash flows, borrowing and investments, and the associated risks. The Corporation will invest sums of money and is therefore exposed to financial risks including the loss of invested funds and the revenue effect of changing interest rates. The successful identification, monitoring and control of financial risk are therefore central to the Corporation's prudent financial management.

Treasury risk management at the Corporation is conducted within the framework of the Chartered Institute of Public Finance and Accountancy's Treasury Management in the Public Services: Code of Practice 2021 Edition (the CIPFA Code) which requires the Corporation to approve a treasury management strategy before the start of each financial year. This report fulfils the Corporation's legal obligation under the Local Government Act 2003 to have regard to the CIPFA Code.

The Corporation is supported by Tees Valley Combined Authority (TVCA) who engage with professional advisors Arlingclose Limited, in order to ensure that up to date market advice and information on the most appropriate investment / borrowing options are obtained.

Through a service level agreement, TVCA group contracts with Stockton Borough Council (SBC) who provide a treasury management service. The CIPFA code requires that staff with responsibility for treasury management receive adequate training to carry out this role. SBC assess the requirements for training as part of the staff appraisal process and they regularly attend courses and seminars provided by Arlingclose and CIPFA.

### 2. Economic Context

#### *Economic Background*

The impact on the UK from higher interest rates and inflation, a weakening economic outlook, an uncertain political climate due to an upcoming general election, together with war in Ukraine and the Middle East, will be major influences on the Corporation's treasury management strategy for 2024/25.

The Bank of England (BoE) increased Bank Rate to 5.25% in August 2023, before maintaining this level for the rest of 2023. In December 2023, members of the BoE's Monetary Policy Committee voted 6-3 in favour of keeping Bank Rate at 5.25%. The three dissenters wanted to increase rates by another 0.25%.

The November quarterly Monetary Policy Report (MPR) forecast a prolonged period of weak Gross Domestic Product (GDP) growth with the potential for a mild contraction due to ongoing weak economic activity. The outlook for CPI inflation was deemed to be highly uncertain, with upside risks to CPI falling to the 2% target coming from potential energy price increases, strong domestic wage growth and persistence in price-setting.

Office for National Statistics (ONS) figures showed CPI inflation was 3.9% in November 2023, down from a 4.6% rate in the previous month and, in line with the recent trend, lower than expected. The core CPI inflation rate declined to 5.1% from the previous month's 5.7%, again lower than predictions. Looking ahead, using the interest rate path implied by financial markets the BoE expects CPI inflation to continue falling slowly, but taking until early 2025 to reach the 2% target before dropping below target during the second half 2025 and into 2026.

ONS figures showed the UK economy contracted by 0.1% between July and September 2023. The BoE forecasts GDP will likely stagnate through 2024. The BoE forecasts that higher interest rates will constrain GDP growth, which will remain weak over the entire forecast horizon.

The labour market appears to be loosening, but only very slowly. The unemployment rate rose slightly to 4.2% between June and August 2023, from 4.0% in the previous 3-month period, but the lack of consistency in the data between the two periods made comparisons difficult. Earnings growth has remained strong but has showed some signs of easing; regular pay (excluding bonuses) was up 7.3% over the period and total pay (including bonuses) up 7.2%. Adjusted for inflation, regular pay was 1.4% and total pay 1.3%. Looking forward, the MPR showed the unemployment rate is expected to be around 4.25% in the second half of calendar 2023, but then rising steadily over the forecast horizon to around 5% in late 2025/early 2026.

### ***Credit Outlook***

Credit Default Swap (CDS) prices were volatile during 2023, spiking in March on the back of banking sector contagion concerns following the major events of Silicon Valley Bank becoming insolvent and the takeover of Credit Suisse by UBS. After then falling back in Q2 of calendar 2023, in the second half of the year, higher interest rates and inflation, the ongoing war in Ukraine, and now the Middle East, have led to CDS prices increasing steadily.

On an annual basis, CDS price volatility has so far been lower in 2023 compared to 2022, but this year has seen more of a divergence in prices between ringfenced (retail) and non-ringfenced (investment) banking entities once again.

Moody's revised its outlook on the UK sovereign to stable from negative to reflect its view of restored political predictability following the volatility after the 2022 mini-budget. Moody's also affirmed the Aa3 rating in recognition of the UK's economic resilience and strong institutional framework.

Following its rating action on the UK sovereign, Moody's revised the outlook on five UK banks to stable from negative and then followed this by the same action on five rated local authorities. However, within the same update the long-term ratings of those five local authorities were downgraded.

There remain competing tensions in the banking sector, on one side from higher interest rates boosting net income and profitability against another of a weakening economic outlook and likely recessions that increase the possibility of a deterioration in the quality of banks' assets.

However, the institutions on our adviser Arlingclose's counterparty list remain well-capitalised and their counterparty advice on both recommended institutions and maximum duration remain under constant review and will continue to reflect economic conditions and the credit outlook.

### ***Interest Rate Forecast***

Although UK inflation and wage growth remain elevated, the Groups treasury management adviser Arlingclose forecasts that Bank Rate has peaked at 5.25%. The Bank of England's Monetary Policy Committee will start reducing rates in 2024 to stimulate the UK economy but will be reluctant to do so until it is sure there will be no lingering second-round effects. Arlingclose sees rate cuts from Q3 2024 to a low of around 3% by early-mid 2026.

Arlingclose expects long-term gilt yields to be broadly stable at current levels (amid continued volatility), following the decline in yields towards the end of 2023, which reflects the expected lower medium-term path for Bank Rate. Yields will remain relatively higher than in the past, due to quantitative tightening and significant bond supply. As ever, there will undoubtedly be short-term volatility due to economic and political uncertainty and events.

A more detailed economic and interest rate forecast provided by Arlingclose is in Appendix A.

### **3. Local Context**

The underlying need to borrow for capital purposes is measured by the Capital Financing Requirement (CFR), while balance sheet resources are the underlying sums available for investment. The Corporation's proposed strategy is to maintain borrowing and investments equal to or below their underlying levels, sometimes known as internal borrowing. Forecast changes in these sums are shown in the analysis in table 1 below.

CIPFA's Prudential Code for Capital Finance in Local Authorities recommends that the Corporation's total debt should be lower than its highest forecast CFR over the next three years. Table 1 shows that the Corporation expects to comply with this recommendation during 2024/25.

	<b>31.3.24 Estimate £'000</b>	<b>31.3.25 Forecast £'000</b>	<b>31.3.26 Forecast £'000</b>	<b>31.3.27 Forecast £'000</b>
Capital financing requirement (cumulative)	347,145	377,507	378,970	379,379
Less: External borrowing	-336,898	-373,979	-376,681	-377,619
<b>Internal Borrowing</b>	<b>10,247</b>	<b>3,528</b>	<b>2,289</b>	<b>1,760</b>

**Liability benchmark:** To compare the Corporation's actual borrowing against an alternative strategy, a liability benchmark has been calculated showing the lowest risk level of borrowing. This assumes the same forecasts as the table above, but that cash and investment balances are kept to a minimum level of £0.1 million at each year-end to maintain sufficient liquidity but minimise credit risk.

The liability benchmark is an important tool to help establish whether the Corporation is likely to be a long-term borrower or long-term investor in the future, and so shape its strategic focus and decision making. The liability benchmark itself represents an estimate of the cumulative amount of external borrowing the Corporation must hold to fund its current capital and revenue plans while keeping treasury investments at the minimum level required to manage day-to-day cash flow.

	31.3.24 Estimate £m	31.3.25 Forecast £m	31.3.26 Forecast £m	31.3.27 Forecast £m
Loans CFR (Cumulative)	347	378	379	379
Less: Balance sheet resources	-10	-5	-5	-1
<b>Net loans requirement</b>	337	373	374	378
Plus: Liquidity allowance	1	1	1	1
<b>Liability benchmark</b>	<b>338</b>	<b>374</b>	<b>375</b>	<b>379</b>

#### 4. Borrowing Strategy

The Corporation's chief objective when borrowing money will be to strike an appropriately low risk balance between securing low interest costs and achieving certainty of those costs over the period for which funds are required. The flexibility to renegotiate loans should the Corporation's long-term plans change is a secondary objective.

The Corporation's borrowing strategy will address the key issue of affordability without compromising the longer-term stability of the debt portfolio. By following the borrowing strategy, the Corporation will be able to reduce net borrowing costs and reduce overall treasury risk.

The Corporation intend to raise the majority of its long-term borrowing from TVCA who will access the PWLB. PWLB loans are no longer available to buy investment assets primarily for yield; the Corporation intends to avoid this activity in order to retain its access to PWLB loans via TVCA.

Alternatively, the Corporation may arrange forward starting loans during 2024/25, where the interest rate is fixed in advance, but the cash is received in later years. This would enable certainty of cost to be achieved without suffering a cost of carry in the intervening period.



### *Sources of Borrowing*

The approved sources of long-term and short-term borrowing are:

- Tees Valley Combined Authority
- UK Infrastructure Bank
- any institution approved for investments
- any other bank or building society authorised to operate in the UK
- any other UK public sector body
- UK public and private sector pension funds
- capital market bond investors
- UK Municipal Bonds Agency plc and other special purpose companies created to enable local Corporation bond issues.

### *Other Sources of Debt Finance*

Capital finance may be raised by the following methods that are not borrowing, but may be classed as other debt liabilities:

- leasing
- hire purchase
- sale and leaseback

The Corporation when borrowing will investigate all available sources of finance to achieve the most favourable rates.

The Prudential Code for Capital Finance in Local Authorities (Prudential Code) has been developed by the Chartered Institute of Public Finance and Accountancy to underpin the system of capital finance embodied in Part 1 of the Local Government Act 2003.

The key objectives of the Prudential Code are to ensure that capital investment plans are affordable, prudent and sustainable. The Prudential Code supports a system of self-regulation that is achieved by the setting and monitoring of a suite of Prudential Indicators that directly relate to each other.

The Prudential Indicators which the Corporation will follow, and the minimum revenue provision statement are set out in the capital strategy report (Appendix 2)

## **5. Investment Strategy**

The Corporation does not currently hold any invested funds, however if funds are invested in the future, they will comply with Corporations proposed Investment Strategy which is set out below.

The CIPFA Code requires the Corporation to invest its funds prudently, and to have regard to the security and liquidity of its investments before seeking the highest rate of return, or yield. The Corporation's objective when investing money is to strike an appropriate balance between risk and return, minimising the risk of incurring losses from defaults and the risk of receiving unsuitably low investment income. Where balances are expected to be invested for more than one year, the Corporation will aim to achieve a total return that is equal or higher than the prevailing rate of inflation, in

order to maintain the spending power of the sum invested. The Corporation aims to be a responsible investor and will consider environmental, social and governance (ESG) issues when investing.

**Strategy:** As demonstrated by the liability benchmark above, the Corporation expects to be a long-term borrower and new treasury investments will therefore be made primarily to manage day-to-day cash flows using short-term low risk instruments.

**ESG policy:** Environmental, social and governance (ESG) considerations are increasingly a factor in global investors' decision making, but the framework for evaluating investment opportunities is still developing and therefore the Corporation's ESG policy does not currently include ESG scoring or other real-time ESG criteria at an individual investment level. When investing in banks and funds, the Corporation will prioritise banks that are signatories to the UN Principles for Responsible Banking and funds operated by managers that are signatories to the UN Principles for Responsible Investment, the Net Zero Asset Managers Alliance and/or the UK Stewardship Code.

Surplus cash of the Corporation will be invested in short-term unsecured bank deposits, with other local authorities and money market funds. The Corporation may invest its surplus funds with any of the counterparty types in the table below, subject to the cash limits (per counterparty) and the time limits shown.

Approved investment counterparties and limits

Credit rating	Banks unsecured	Banks	Government	Corporates	Registered Providers
		secured			
UK Govt	n/a	n/a	£ Unlimited 10 years	n/a	n/a
AAA	£7,500,000 5 years	£15,000,000 10 years	£15,000,000 10 years	£7,500,000 10 years	£7,500,000 10 years
	£7,500,000 5 years	£15,000,000 10 years	£15,000,000 10 years	£7,500,000 10 years	£7,500,000 10 years
AA	£7,500,000 4 years	£15,000,000 5 years	£15,000,000 10 years	£7,500,000 5 years	£7,500,000 10 years
	£7,500,000 3 years	£15,000,000 4 years	£15,000,000 10 years	£7,500,000 4 years	£7,500,000 10 years
A+	£7,500,000 2 years	£15,000,000 3 years	£7,500,000 5 years	£7,500,000 3 years	£7,500,000 5 years
	£7,500,000 13 months	£15,000,000 2 years	£7,500,000 5 years	£7,500,000 2 years	£7,500,000 5 years
A-	£7,500,000 6 months	£15,000,000 13 months	£7,500,000 5 years	£7,500,000 13 months	£7,500,000 5 years
	None	n/a	£15,000,000 10 years	£5,000,000 5 years	£7,500,000 5 years
Pooled funds and real estate investment trusts		£15m per fund			

This table must be read in conjunction with the notes below

**Credit rating:** Investment limits are set by reference to the lowest published long-term credit rating from a selection of external rating agencies. Where available, the credit rating relevant to the specific investment or class of investment is used, otherwise the counterparty credit rating is used. However, investment decisions are never made solely based on credit ratings, and all other relevant factors including external advice will be taken into account.

**Banks unsecured:** Accounts, deposits, certificates of deposit and senior unsecured bonds with banks and building societies, other than multilateral development banks. These investments are subject to the risk of credit loss via a bail-in should the regulator determine that the bank is failing or likely to fail. See below for arrangements relating to operational bank accounts.

**Banks secured:** Covered bonds, reverse repurchase agreements and other collateralised arrangements with banks and building societies. These investments are secured on the bank's assets, which limits the potential losses in the unlikely event of insolvency, and means that they are exempt from bail-in. Where there is no investment specific credit rating, but the collateral upon which the investment is secured has a credit rating, the higher of the collateral credit rating and the counterparty credit rating will be used to determine cash and time limits. The combined secured and unsecured investments in any one bank will not exceed the cash limit for secured investments.

**Government:** Loans, bonds and bills issued or guaranteed by national governments, regional and local authorities and multilateral development banks. These investments are not subject to bail-in, and there is generally a lower risk of insolvency, although they are not zero risk. Investments with the UK Central Government may be made in unlimited amounts for up to 50 years.

**Corporates:** Loans, bonds and commercial paper issued by companies other than banks and registered providers. These investments are not subject to bail-in but are exposed to the risk of the company going insolvent.

**Registered providers:** Loans and bonds issued by, guaranteed by or secured on the assets of registered providers of social housing and registered social landlords, formerly known as housing associations. These bodies are tightly regulated by the Regulator of Social Housing (in England), the Scottish Housing Regulator, the Welsh Government and the Department for Communities (in Northern Ireland). As providers of public services, they retain the likelihood of receiving government support if needed.

**Pooled funds:** Shares or units in diversified investment vehicles consisting of any of the above investment types, plus equity shares and property. These funds have the advantage of providing wide diversification of investment risks, coupled with the services of a professional fund manager in return for a fee. Short-term Money Market Funds that offer same-day liquidity and very low or no volatility will be used as an alternative to instant access bank accounts, while pooled funds whose value changes with market prices and/or have a notice period will be used for longer investment periods.

Bond, equity and property funds offer enhanced returns over the longer term but are more volatile in the short term. These allow the Corporation to diversify into asset

classes other than cash without the need to own and manage the underlying investments. Because these funds have no defined maturity date, but are available for withdrawal after a notice period, their performance and continued suitability in meeting the Corporation's investment objectives will be monitored regularly.

***Real estate investment trusts:*** Shares in companies that invest mainly in real estate and pay the majority of their rental income to investors in a similar manner to pooled property funds. As with property funds, REITs offer enhanced returns over the longer term, but are more volatile especially as the share price reflects changing demand for the shares as well as changes in the value of the underlying properties.

***Operational bank accounts:*** The Corporation may incur operational exposures, for example through current accounts, collection accounts and merchant acquiring services, to any UK bank with credit ratings no lower than BBB- and with assets greater than £25 billion. These are not classed as investments but are still subject to the risk of a bank bail-in, and balances will therefore be kept below £25 million per bank. The Bank of England has stated that in the event of failure, banks with assets greater than £25 billion are more likely to be bailed-in than made insolvent, increasing the chance of the Corporation maintaining operational continuity.

***Risk assessment and credit ratings:*** Credit ratings are obtained and monitored by the Corporation's treasury advisers, who will notify changes in ratings as they occur. Where an entity has its credit rating downgraded so that it fails to meet the approved investment criteria then:

- no new investments will be made,
- any existing investments that can be recalled or sold at no cost will be, and
- full consideration will be given to the recall or sale of all other existing investments with the affected counterparty.

Where a credit rating agency announces that a credit rating is on review for possible downgrade (also known as "rating watch negative" or "credit watch negative") so that it may fall below the approved rating criteria, then only investments that can be will be made with that organisation until the outcome of the review is announced. This policy will not apply to negative outlooks, which indicate a long-term direction of travel rather than an imminent change of rating.

***Other information on the security of investments:*** The Corporation understands that credit ratings are good, but not perfect, predictors of investment default. Full regard will therefore be given to other available information on the credit quality of the organisations in which it invests, including credit default swap prices, financial statements, information on potential government support, reports in the quality financial press and analysis and advice from the Corporation's treasury management adviser. No investments will be made with an organisation if there are substantive doubts about its credit quality, even though it may otherwise meet the above criteria.

**Reputational aspects:** The Corporation is aware that investment with certain counterparties, while considered secure from a purely financial perspective, may leave it open to criticism, valid or otherwise, that may affect its public reputation, and this risk will therefore be taken into account when making investment decisions.

When deteriorating financial market conditions affect the creditworthiness of all organisations, as happened in 2008, 2020 and 2022, this is not generally reflected in credit ratings, but can be seen in other market measures. In these circumstances, the Corporation will restrict its investments to those organisations of higher credit quality and reduce the maximum duration of its investments to maintain the required level of security. The extent of these restrictions will be in line with prevailing financial market conditions. If these restrictions mean that insufficient commercial organisations of high credit quality are available to invest the Corporation's cash balances, then the surplus will be deposited with the UK Government via the Debt Management Office or invested in government treasury bills for example, or with other local authorities. This will cause a reduction in the level of investment income earned but will protect the principal sum invested.

**Investment limits:** The maximum that will be lent to any one organisation (other than the UK Government) will be £15 million. A group of banks under the same ownership will be treated as a single organisation for limit purposes. Limits will also be placed on fund managers, investments in brokers' nominee accounts, foreign countries and industry sectors as below. Investments in pooled funds and multilateral development banks do not count against the limit for any single foreign country, since the risk is diversified over many countries.

Investment limits

	Cash limit
Any single organisation, except the UK Central Government	£15,000,000
UK Central Government	unlimited
Any group of organisations under the same ownership	£15,000,000
Any group of pooled funds under the same management	£37,500,000
Negotiable instruments held in a broker's nominee account	£37,500,000
Foreign countries	£15,000,000
Registered providers and registered social landlords	£37,500,000
Unsecured investments with building societies	£15,000,000
Loans to unrated corporates	£15,000,000
Money Market Funds	Unlimited
Real estate investment trusts	£37,500,000

**Liquidity management:** The Corporation uses cash flow forecasting to determine the maximum period for which funds may prudently be committed. The forecast is compiled on a prudent basis to minimise the risk of the Corporation being forced to borrow on unfavourable terms to meet its financial commitments. Limits on long-term investments are set by reference to the Corporation's investment plan and cash flow forecast.

## 6. Treasury Management Indicators

The Corporation measures and manages its exposures to treasury management risks using the following indicators.

**Liquidity:** The Corporation has adopted a voluntary measure of its exposure to liquidity risk by monitoring the amount of cash available to meet unexpected payments within a rolling three-month period, without borrowing.

Liquidity risk indicator	Target
Total cash available within 3 months	£1.0m

**Interest rate exposures:** This indicator is set to control the Corporation's exposure to interest rate risk. Based on the current level of investments held, the one-year revenue impact of a 1% rise or fall in interest rates will be:

Interest rate risk indicator	Limit
One-year revenue impact of a 1% <u>rise or fall</u> in interest rates	£0

**Maturity structure of borrowing:** This indicator is set to control the Corporation's exposure to refinancing risk. The upper and lower limits on the maturity structure of borrowing will be:

Refinancing rate risk indicator	Upper limit	Lower limit
Under 12 months	100%	0%
12 months and within 24 months	100%	0%
24 months and within 5 years	100%	0%
5 years and within 10 years	100%	0%
10 years and above	100%	0%

The limits will be reviewed and amended as the Corporation takes out further borrowing.

**Principal sums invested for periods longer than a year:** The purpose of this indicator is to control the Corporation's exposure to the risk of incurring losses by seeking early repayment of its investments. The limits on the long-term principal sum invested to final maturities beyond the period end will be:

Price risk indicator	2023/24	2024/25	2025/26
Limit on principal invested beyond year end	£1m	£1m	£1m

## 7. Related Matters

The CIPFA Code requires the Corporation to include the following in its treasury management strategy.

**Financial Derivatives:** Public Sector entities have previously made use of financial derivatives embedded into loans and investments both to reduce interest rate risk (e.g. interest rate collars and forward deals) and to reduce costs or increase income at the expense of greater risk (e.g. LOBO loans and callable deposits). The general power of competence in section 113A of the Local Democracy, Economic Development and Construction Act 2009 removes much of the uncertainty over the use of standalone financial derivatives (i.e. those that are not embedded into a loan or investment).

The Corporation will only use standalone financial derivatives (such as swaps, forwards, futures and options) where they can be clearly demonstrated to reduce the overall level of the financial risks that the Corporation is exposed to. Additional risks presented, such as credit exposure to derivative counterparties, will be taken into account when determining the overall level of risk. Embedded derivatives, including those present in pooled funds and forward starting transactions, will not be subject to this policy, although the risks they present will be managed in line with the overall treasury risk management strategy.

Financial derivative transactions may be arranged with any organisation that meets the approved investment criteria, assessed using the appropriate credit rating for derivative exposures. An allowance for credit risk calculated using the methodology in the Treasury Management Practices document will count against the counterparty credit limit and the relevant foreign country limit.

In line with the CIPFA Code, the Corporation will seek external advice and will consider that advice before entering into financial derivatives to ensure that it fully understands the implications.

**Markets in Financial Instruments Directive:** The Group has opted up to professional client status with its providers of financial services, including advisers, banks, brokers and fund managers, allowing it access to a greater range of services but without the greater regulatory protections afforded to individuals and small companies. Given the size and range of the Corporation's treasury management activities, the Groups Director of Finance believes this to be the most appropriate status.

The CIPFA Code does not prescribe any particular treasury management strategy for entities to adopt. The Groups Director of Finance believes that the above strategy represents an appropriate balance between risk management and cost effectiveness. Some alternative strategies, with their financial and risk management implications, are listed below and will be considered if circumstance significantly change.

Alternative	Impact on income and expenditure	Impact on risk management
Invest in a narrower range of counterparties and/or for shorter times	Interest income will be lower	Lower chance of losses from credit related defaults, but any such losses may be greater
Invest in a wider range of counterparties and/or for longer times	Interest income will be higher	Increased risk of losses from credit related defaults, but any such losses may be smaller
Borrow additional sums at long-term fixed interest rates	Debt interest costs will rise; this is unlikely to be offset by higher investment income	Higher investment balance leading to a higher impact in the event of a default; however long-term interest costs may be more certain
Borrow short-term or variable loans instead of long-term fixed rates	Debt interest costs will initially be lower	Increases in debt interest costs will be broadly offset by rising investment income in the medium term, but long-term costs may be less certain
Reduce level of borrowing	Saving on debt interest is likely to exceed lost investment income	Reduced investment balance leading to a lower impact in the event of a default; however long-term interest costs may be less certain



## Appendix A – Arlingclose Economic & Interest Rate Forecast – December 2023

### Underlying assumptions:

- UK inflation and wage growth remain elevated but have eased over the past two months fuelling rate cuts expectations. Near-term rate cuts remain unlikely, although downside risks will increase as the UK economy likely slides into recession.
- The MPC's message remains unchanged as the Committee seeks to maintain tighter financial conditions. Monetary policy will remain tight as inflation is expected to moderate to target slowly, although some wage and inflation measures are below the Bank's last forecasts.
- Despite some deterioration in activity data, the UK economy remains resilient in the face of tighter monetary policy. Recent data has been soft but mixed; the timelier PMI figures suggest that the services sector is recovering from a weak Q3. Tighter policy will however bear down on domestic and external activity as interest rates bite.
- Employment demand is easing. Anecdotal evidence suggests slowing recruitment and pay growth, and we expect unemployment to rise further. As unemployment rises and interest rates remain high, consumer sentiment will deteriorate. Household and business spending will therefore be weak.
- Inflation will fall over the next 12 months. The path to the target will not be smooth, with higher energy prices and base effects interrupting the downtrend at times. The MPC's attention will remain on underlying inflation measures and wage data. We believe policy rates will remain at the peak for another 10 months, or until the MPC is comfortable the risk of further 'second-round' effects have diminished.
- Maintaining monetary policy in restrictive territory for so long, when the economy is already struggling, will require significant loosening in the future to boost activity.
- Global bond yields will remain volatile. Markets are currently running with expectations of near-term US rate cuts, fuelled somewhat unexpectedly by US policymakers themselves. Term premia and bond yields have experienced a marked decline. It would not be a surprise to see a reversal if data points do not support the narrative, but the current 10-year yield appears broadly reflective of a lower medium-term level for Bank Rate.
- There is a heightened risk of fiscal policy and/or geo-political events causing substantial volatility in yields.

### Forecast:

- The MPC held Bank Rate at 5.25% in December. We believe this is the peak for Bank Rate.
- The MPC will cut rates in the medium term to stimulate the UK economy but will be reluctant to do so until it is sure there will be no lingering second-round effects. We see rate cuts from Q3 2024 to a low of around 3% by early-mid 2026.
- The immediate risks around Bank Rate have become more balanced, due to the weakening UK economy and dampening effects on inflation. This shifts to the downside in the short term as the economy weakens.

- Long-term gilt yields are now substantially lower. Arlingclose expects yields to be flat from here over the short-term reflecting medium term Bank Rate forecasts. Periodic volatility is likely.

	Current	Dec-23	Mar-24	Jun-24	Sep-24	Dec-24	Mar-25	Jun-25	Sep-25	Dec-25	Mar-26	Jun-26	Sep-26
<b>Official Bank Rate</b>													
Upside risk	0.00	0.00	0.25	0.25	0.50	0.50	0.50	0.50	0.50	0.75	0.75	1.00	1.00
Central Case	5.25	5.25	5.25	5.25	5.00	4.75	4.25	4.00	3.75	3.50	3.25	3.00	3.00
Downside risk	0.00	0.00	-0.25	-0.50	-0.75	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>3-month money market rate</b>													
Upside risk	0.00	0.00	0.25	0.25	0.50	0.50	0.50	0.50	0.50	0.75	0.75	1.00	1.00
Central Case	5.40	5.40	5.40	5.30	5.15	4.80	4.30	4.10	3.80	3.50	3.25	3.05	3.05
Downside risk	0.00	0.00	-0.25	-0.50	-0.75	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>5yr gilt yield</b>													
Upside risk	0.00	0.25	0.75	0.85	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Central Case	3.77	3.75	3.75	3.75	3.70	3.60	3.50	3.50	3.40	3.30	3.30	3.30	3.35
Downside risk	0.00	-0.25	-0.75	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>10yr gilt yield</b>													
Upside risk	0.00	0.25	0.75	0.85	0.85	0.90	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Central Case	3.72	3.75	3.80	3.80	3.80	3.80	3.80	3.80	3.75	3.65	3.60	3.65	3.70
Downside risk	0.00	-0.25	-0.75	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>20yr gilt yield</b>													
Upside risk	0.00	0.25	0.75	0.85	0.85	0.90	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Central Case	4.16	4.20	4.20	4.20	4.20	4.20	4.20	4.20	4.20	4.20	4.20	4.20	4.25
Downside risk	0.00	-0.25	-0.75	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>50yr gilt yield</b>													
Upside risk	0.00	0.25	0.75	0.85	0.85	0.90	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Central Case	3.76	3.80	3.85	3.90	3.90	3.90	3.90	3.90	3.90	3.90	3.95	3.95	3.95
Downside risk	0.00	-0.25	-0.75	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00

PWLB Standard Rate = Gilt yield + 1.00%

PWLB Certainty Rate = Gilt yield + 0.80%

PWLB HRA Rate = Gilt yield + 0.40%

UK Infrastructure Bank Rate = Gilt yield + 0.40%

## CAPITAL STRATEGY 2024/25

### 1. Introduction

The capital strategy provides a high-level overview of how capital expenditure, capital financing and treasury management activity contribute to the delivery of the Corporation's Masterplan along with an overview of how associated risk is managed and the implications for future financial sustainability.

### 2. Capital Expenditure and Financing

Capital expenditure is where the Corporation spends money on assets, such as land, property or vehicles that will be used for more than one year. In local government this includes spending on assets owned by other bodies, and loans and grants to other bodies enabling them to buy assets.

The capital programme will be reviewed as individual projects come forward in advance of individual project approval. The assurance process in place for all capital investments will ensure that each meets the requirements of the prudential code that they are prudent, affordable, and sustainable.

Any opportunities that arise will be appraised and reviewed individually assuring they also meet the requirements of the prudential code and fit in with the Corporations' Masterplan.

In 2024/25, the Corporation is planning capital expenditure of £68.3 million as summarised below:

*Table 1: Prudential Indicator: Estimates of Capital Expenditure in £'000*

	2023/24	2024/25	2025/26	2026/27	2027/28
	Forecast	Budget	Budget	Budget	Budget
Capital Expenditure	119,057	68,286	7,110	490	0

#### ***Governance:***

For the Corporations capital investment decisions the Board will be presented with the business plans, risks/opportunities associated with the investment and the type and level of finance required to deliver the proposals as part of the Development Corporation's Final Investment Decision including any debt finance requested from TVCA. The Board will be kept apprised of any terms agreed with TVCA and obligations placed on the Corporation, wherever applicable, as part of loan agreements with TVCA and will ensure appropriate approvals are in place to consider and, as required, accept the loan agreements

All capital expenditure must be financed, either from external sources (government grants and other contributions), the Corporation's own resources (revenue, reserves and capital receipts) or debt (borrowing and leasing). The planned financing of the above expenditure is as follows:

Table 2: Capital financing in £'000

	2023/24	2024/25	2025/26	2026/27	2027/28
	Forecast	Budget	Budget	Budget	Budget
Capital Grants	6,000	19,000	0	0	0
Capital Receipts	0	10,000	0	0	0
Capital Contributions	21,700	22,469	7,110	490	0
Borrowing	91,357	16,817	0	0	0
<b>Total</b>	<b>119,057</b>	<b>68,286</b>	<b>7,110</b>	<b>490</b>	<b>0</b>

Debt is only a temporary source of finance, and this is therefore replaced over time by other financing, usually from revenue which is known as minimum revenue provision (MRP). MRP is only charged in the year following the related asset becoming operational, Planned MRP is as follows:

Table 3: Replacement of debt finance in £'000

	2023/24	2024/25	2025/26	2026/27	2027/28
	Forecast	Budget	Budget	Budget	Budget
Revenue Streams	1,779	1,924	3,497	3,591	3,687

Department for Levelling Up, Housing and Communities (DHLUC) Guidance requires the Corporation to approve an Annual MRP Statement each year and recommends a number of options for calculating a prudent amount of MRP. The recommended statement is attached at schedule 1 for approval.

The Corporation's cumulative outstanding amount of debt finance is measured by the capital financing requirement (CFR). This increases with new debt-financed capital expenditure and reduces with MRP, loan fund repayments and capital receipts used to replace debt. The Corporation's estimated CFR is as follows:

Table 4: Prudential Indicator: Estimates of Capital Financing Requirement in £'000

	2023/24	2024/25	2025/26	2026/27	2027/28
CFR (cumulative)	347,145	377,507	378,970	379,379	337,563

### 3. Treasury Management

Treasury management is concerned with keeping sufficient but not excessive cash available to meet the Corporation's spending needs, while managing the risks involved. Surplus cash is invested until required, while a shortage of cash will be met by borrowing, to avoid excessive credit balances or overdrafts in the bank current account.

**Borrowing strategy.** The Corporation's main objectives when borrowing is to achieve a low but certain cost of finance while retaining flexibility should plans change in future. These objectives are often conflicting, and therefore when borrowing the Corporation will seek to strike a balance between cheap short-term loans and long-term fixed rate loans where the future cost is known but higher.

The Corporation does not borrow to invest for the primary purpose of financial return and therefore retains full access to the Public Works Loans Board via TVCA.

Projected levels of the Corporation's total outstanding external debt are shown below, compared with the capital financing requirement (see above).

*Table 5: Prudential Indicator: Gross Debt and the Capital Financing Requirement in £'000*

	2023/24	2024/25	2025/26	2026/27	2027/28
	Forecast	Budget	Budget	Budget	Budget
Debt	336,898	373,979	376,681	377,619	332,057
CFR	347,145	377,507	378,970	379,379	337,563

Statutory guidance is that debt should remain below the capital financing requirement, except in the short-term. As can be seen in table 5, the Corporation expects to comply with this in the medium term.

**Affordable borrowing limit:** The Corporation is legally obliged to set an affordable borrowing limit (also termed the authorised limit for external debt) each year. In line with statutory guidance, a lower "operational boundary" is also set as a warning level should debt approach the limit.

*Table 6: Prudential Indicators: Authorised limit and operational boundary for external debt in £'000*

	2023/24	2024/25	2025/26	2026/27	2027/28
Authorised Limit	420,000	456,000	456,000	456,000	408,000
Operational Boundary	350,000	380,000	380,000	380,000	340,000

Further details on borrowing are included in the Treasury Management Strategy included at Appendix 1.

**Investment strategy:** Treasury investments arise from receiving cash before it is paid out again. Investments made for service reasons or for pure financial gain are not generally considered to be part of treasury management.

The Corporation's policy on treasury investments is to prioritise security and liquidity over yield, which is to focus on minimising risk rather than maximising returns. Cash that is likely to be spent in the near term is invested securely, for example with the government, Local Authorities or selected high-quality banks, to minimise the risk of loss.

Further details on treasury investments are included in the Treasury Management Strategy included at Appendix 1.

**Risk Management.** The effective management and control of risk are prime objectives of the Corporation's treasury management activities. The treasury management strategy therefore sets out various indicators and limits to constrain the risk of unexpected losses and details the extent to which financial derivatives may be used to manage treasury risks.

**Governance:** Decisions on treasury management investment and borrowing are made daily and are therefore delegated to the Group Director of Finance & Resources and finance staff, who must act in line with the treasury management strategy and TVCAs treasury management practices. Mid-term and annual reports on treasury management activity are to be presented to the Board.

#### 4. Investments for Service Purposes

The Corporation can make investments to assist in delivering the Masterplan.

**Governance:** Decisions on such investments have to adhere to parameters approved by the Corporations board.

Further details on service investments are included within the Investment Strategy included at Appendix 3.

#### 5. Liabilities

As set out in table 6 above, the Corporation forecasts to hold £337 million of debt as at 31<sup>st</sup> March 2024.

**Governance:** The risk of liabilities crystallising and requiring payment is monitored by the Group Finance team and reported appropriately.

#### 6. Revenue Budget Implications

Capital expenditure is not charged directly to the revenue budget, interest payable on loans and MRP are charged to revenue, offset by any investment income receivable. The net annual charge is known as financing costs; this is compared to the net revenue stream i.e. the amount of revenue funding available.

*Table 7: Prudential Indicator: Proportion of financing costs to net revenue stream*

	2023/24	2024/25	2025/26	2026/27	2027/28
Financing costs (£'000)	6,011	9,251	15,166	16,244	16,241
Proportion of revenue	52%	63%	73%	75%	67%

#### 7. Knowledge and Skills

The Group has professionally qualified staff across a range of disciplines that follow continuous professional development (CPD) and attend courses on an ongoing basis to keep abreast of new developments and skills. The skills available from internal resources allow the Corporation to assess business cases for capital investment and external professional advice is taken where required.

Through a service level agreement Stockton Borough Council (SBC) provides TVCA with the treasury management service. The CIPFA code requires that staff with responsibility for treasury management receive adequate training to carry out this role. SBC assess the requirements for training as part of the staff appraisal process and they regularly attend courses and seminars provided by Arlingclose and CIPFA.

## Schedule 1 – Annual Minimum Revenue Provision Statement 2024/25

Where the Corporation finances capital expenditure by debt, the Capital Financing Requirement (CFR), it must put aside resources to repay that debt in later years. The amount charged to the revenue budget for the repayment of debt is known as Minimum Revenue Provision (MRP), although there has been no statutory minimum since 2008. The Local Government Act 2003 requires the Corporation to have regard to the Department for Communities and Local Government's Guidance on Minimum Revenue Provision (the MHCLG Guidance) most recently issued in 2018.

The broad aim of the MHCLG Guidance is to ensure that debt is repaid over a period that is either reasonably commensurate with that over which the capital expenditure provides benefits, or, in the case of borrowing supported by Government Grants, reasonably commensurate with the period implicit in the determination of that grant.

The MHCLG Guidance requires the Corporation to approve an Annual MRP Statement each year and recommends a number of options for calculating a prudent amount of MRP. The following statement incorporates options recommended in the Guidance as well as locally determined prudent methods.

- The nature of the Corporation's investment is to regenerate land within the boundaries of the South Tees Development Corporation area. As the Corporation's borrowing cannot be directly linked to an individual asset the number of years used for MRP calculations will be 50 years (the maximum allowable under the statutory guidance) reflecting Investment in land, a non-depreciable asset class. The MRP will be determined by charging the expenditure over this period on an annuity method.
- Where borrowing occurs to directly support projects, MRP will be determined by charging the expenditure over the expected useful life of the relevant asset determined on an annuity method. MRP will commence from the 1<sup>st</sup> April of the year following the asset becoming operational.
- Where Capital Expenditure is incurred on capital loans, which are not an investment for commercial purposes, MRP will be charged to the equivalent of the expected credit loss which has been recognised in the year. Capital loan repayments received will be used to reduce the CFR on that loan.
- Finance Lease principal repayments are used to reduce the CFR on the leased asset on an annual basis.

Capital expenditure incurred during 2024/25 will not be subject to a MRP charge until the following year.

## INVESTMENT STRATEGY 2024/25

### 1. Introduction

The Corporation invests its money for two broad purposes:

- because it has surplus cash as a result of its day-to-day activities, for example when income is received in advance of expenditure (known as treasury management investments), and
- to assist in delivering of the Corporations Masterplan by lending to or investing in other organisations (investments)

This investment strategy meets the requirements of statutory guidance on local government investments issued by the government in January 2018 (issued under section 15(1)(a) of the Local Government Act 2003) and focuses on the second of these categories.

The statutory guidance defines investments as “all of the financial assets of a Development Corporation as well as other non-financial assets that the organisation holds primarily or partially to generate a profit; for example, investment property portfolios.” The Corporation interprets this to exclude (a) trade receivables which meet the accounting definition of financial assets but are not investments in the everyday sense of the word and (b) property held partially to generate a profit but primarily for the provision services. This aligns the Corporation’s definition of an investment with that in the 2021 edition of the CIPFA Prudential Code, a more recent piece of statutory guidance.

### 2. Treasury Management Investments

The Corporation activities, plus the timing of borrowing decisions, could lead to a cash surplus which is invested in accordance with guidance from the Chartered Institute of Public Finance and Accountancy (CIPFA).

**Contribution:** The contribution that these investments make to the objectives of the Corporation is to support effective treasury management activities.

**Further details:** Full details of the Corporation’s policies and its plan for 2024/25 for treasury management investments are covered in a separate document, the Treasury Management Strategy, attached at Appendix 1.

### 3. Investments – Loans

The Corporation can lend money to deliver the Corporations Masterplan, loans are not issued by the Corporation for purely financial return, they are provided if the proposal meets the priorities set out in the Masterplan and related strategies.

Details of the loans provided as at 31 December 2023 are shown in table 1 below, with proposed approved limits.



**Security:** The main risk when making loans is that the borrower will be unable to repay the principal lent and/or the interest due. In order to limit this risk and ensure that total exposure to loans remains proportionate to the size of the Corporation, statutory government guidance requires us to set upper limits on the outstanding loans to each category of borrower. The limits are set as follows;

*Table 1: Loans in £'000*

	Balance at 31.12.23 £'000	2024/25 Approved Limits £'000
Subsidiaries / JVs	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>

**Risk assessment:** In making loans the Corporation is exposing itself to the risk that the borrower defaults on repayments. The Corporation therefore ensures they are prudent and fully considers the risk implications, with regard to both the individual loan and that the cumulative exposure of the Corporation is proportionate and prudent.

The Corporation will ensure that a full due diligence exercise is undertaken, and adequate security is in place. The business case will balance the benefits and risks. All loans are approved in line with the constitution and approved policies. All loans will be subject to close, regular monitoring.

#### 4. Proportionality

Table 2 below shows the extent to which the expenditure planned to meet the service delivery objectives of the Corporation is dependent on achieving the expected net profit from investments over the lifecycle of the Medium-Term Financial Plan.

*Table 2: Proportionality of Investments*

	2023/24	2024/25	2025/26	2026/27	2027/28
Revenue Expenditure £'000	11,511	15,091	21,005	22,081	22,076
Investment Returns £'000	0	0	0	0	0
Proportion	0%	0%	0%	0%	0%

#### 5. Borrowing in Advance of Need

Government guidance is that Development Corporation's must not borrow more than or in advance of their needs purely in order to profit from the investment of the extra sums borrowed. The Corporation has not borrowed and has no plans to borrow in advance of need.

## 6. Capacity, Skills and Culture

**Elected members and statutory officers:** For all investment decisions the Corporation follows the constitution. Due Diligence is carried out on all investments by internal and external resources depending on the type of investment. Internal Group resources available cover economic, legal and financial issues but external expertise is drawn on when required. Internal Group members of staff carry out regular professional development through training courses and conferences. The input from the above resources results in a comprehensive appraisal of all investments which is consulted on and provided to the Board for a decision.

**Commercial deals:** Within the Corporation there is experience in both Public and Private Sector deals. Where required external support is drafted in to assist in these deals.

**Corporate governance:** The Corporation is committed to the pursuit of proper corporate governance throughout its businesses and services, and to establishing the principles and practices by which this can be achieved. Accordingly, the treasury management function and its activities will be undertaken with openness and transparency, honesty, integrity, and accountability.

The Corporation had adopted and has implemented the key recommendations of the CIPFA Prudential Code. This, together with the other arrangements such as the production of Treasury Management Practices and Treasury Management Strategy are considered vital to the achievement of proper corporate governance in treasury management, and the responsible officer will monitor and, if and when necessary, report upon the effectiveness of these arrangements.

## 7. Investment Indicators

The Corporation has set the following quantitative indicator to allow Board members and the public to assess the Corporation's total risk exposure as a result of its investment decisions.

**Total risk exposure:** The indicator shows the Corporation's total exposure to potential investment losses. This includes amounts the Corporation is contractually committed to lend but have yet to be drawn down and guarantees the Corporation has issued over third-party loans.

Table 3: Total investment exposure in £'000

	31.03.23 Actual £'000	31.03.24 Forecast £'000	31.03.25 Forecast £'000
Treasury Management Investments	0	0	0
Investment – Loans	0	0	0
<b>TOTAL INVESTMENTS</b>	<b>0</b>	<b>0</b>	<b>0</b>
Commitments to Lend	0	0	0
<b>TOTAL EXPOSURE</b>	<b>0</b>	<b>0</b>	<b>0</b>



AGENDA ITEM 8  
REPORT TO THE STDC BOARD

29 FEBRUARY 2024

REPORT OF GROUP DIRECTOR OF FINANCE & RESOURCES

BUDGET 2024-25 AND MEDIUM-TERM FINANCIAL PLAN

SUMMARY

The STDC constitution requires that the Corporation annually sets out a financial budget, which must be formally approved by the board each year. The Budget provides the financial framework within which the Corporation will operate in the forthcoming financial year (2024-2025) and over the medium term.

This report provides the budget for 2024-25.

RECOMMENDATIONS

It is recommended that the South Tees Development Corporation ("STDC") Board:

- . Approves the Budget for 2024-25.

DETAIL

1. This report sets out the Budget for 2024-25 and the medium-term financial plan (MTFP) for the period to March 2028. The Budget presents all forecast funding and expenditure for the plan period.
2. For the MTFP period the Corporation will have a total of £80.8m available funding resources. This comprises site income and reserves.

## Economic Outlook

3. UK inflation remained high over much of the period compared to the US and euro zone, keeping expectations elevated of how much further the Bank of England (BoE) would hike rates compared to the regions. However, inflation data published in the latter part of the period undershot expectations, causing financial markets to reassess the peak in BoE Bank Rate. This was followed very soon after by the BoE deciding to keep Bank Rate on hold at 5.25% in September, against expectation for another 0.25% rise.
4. Financial market Bank Rate expectations moderated over the period as falling inflation and weakening data gave some indication that higher interest rates were working. Expectations fell from predicting a peak of over 6% in June to 5.5% just ahead of the September MPC meeting, and to then expecting 5.25% to be the peak by the end of the period.
5. Following the September MPC meeting, Arlingclose, the Group's treasury adviser, modestly revised its interest forecast to reflect the central view that 5.25% will now be the peak in Bank Rate. In the short term the risks are to the upside if inflation increases again, but over the remaining part of the time horizon the risks are to the downside from economic activity weakening more than expected.
6. Financial market sentiment and bond yields remained volatile, with the latter generally trending downwards as there were signs inflation, while still high, was moderating and interest rates were at a peak.
7. Gilt yields fell towards the end of the period. The 5-year UK benchmark gilt yield rose from 3.30% to peak at 4.91% in July before trending downwards to 4.29%, the 10-year gilt yield rose from 3.43% to 4.75% in August before declining to 4.45%, and the 20-year yield from 3.75% to 4.97% in August and then fell back to 4.84%.
8. Arlingclose expects long-term gilt yields to eventually fall from current levels reflecting the lower medium-term path for Bank Rate. However, yields will remain relatively higher than in the past, partly due to quantitative tightening, with continued elevated volatility.
9. The Authority has been working closely with our treasury management advisors to establish the short- and long-term rate forecasts. This work has enabled various models to be produced with sensitivities conducted to inform a borrowing strategy which has informed the rates built into this budget.
10. Senior management have set parameters for accessing future borrowing to allow the Corporation to be agile in reacting to market changes in order to secure the most cost-effective rates.

## DEVELOPMENT BUDGET

11. The objective of the South Tees Development Corporation (“STDC”) is to bring forward the regeneration of the Teesworks site which includes the UK’s largest Freeport. STDC is tasked with regenerating the site, by converting assets into opportunities and driving forward its redevelopment to create jobs, secure investment and transform the region.
12. In 2023/24 following the successful business case to Government securing funding to support the development programme, significant progress was made on the agreed accelerated scope of development that focussed on: -
  - Completion of the site wide demolition decontamination programme. Leading to subsequent removal of COMAH status on the former SSI site;
  - Completion of site preparation activities to create developable areas for new tenants; and
  - Construction of the South Bank Quay to facilitate operation of the offshore wind manufacturing hub.
13. A key obligation imposed on STDC in the original Business Case when the South Tees Site Company (STSC) transitioned to local control was the decontamination project. Following its successful completion, the site had its Top Tier COMAH status removed in 2023/24.
14. Following the COMAH status removal STDC focus is on its long-term objective. To create a world class, modern industrial park that will become a hotbed of clean energy activity, leading the way in the Green Industrial Revolution. Securing investment in the cleaner, healthier and safer industries of tomorrow, it will be positioned as the UK’s premier hub for offshore wind and lead the UK’s ambitions of industrial decarbonisation and carbon net zero by 2050. In doing this, it will help create thousands of high-quality jobs for local people further driving economic regeneration across the Tees Valley.
15. The site’s accelerated demolition programme, one of the most complex and condensed demolition projects in the UK, concluded in 2023 with the final explosive demolition of the Redcar Power Station. The Redcar Blast Furnace, the site’s former Sinter Plant, Coke Ovens, stoves and incinerator stacks were all brought down. This was alongside others including the Basic Oxygen Steelmaking plant – one of the largest single explosive demolitions in the UK in 75 years. The entire demolition programme concluded, within just over a two-year timeframe, nearly two years ahead of the original four-year estimate.
16. The development phase of the site is progressing well with delivery ahead of any schedules previously considered in the original business case and this is enabling accelerated inward investment opportunities for the area leading to skilled jobs in new clean growth sectors repositioning the Tees Valley as a leading player in these areas.

## Development Expenditure 2024/2025

17. The 2024/25 works will continue to focus on the completion of STDC areas of responsibility;

- South Bank Quay
- SeaH enabling works
- Park and Ride

18. The below table sets out the proportion of the overall development programme which is forecast for 2024/25.

	23/24 Forecast £'000	24/25 Budget £'000
Overheads	2,677	500
<b>Operating Costs</b>	<b>2,677</b>	<b>500</b>
Demolition	23,379	4,145
Site Preparation and Infrastructure	44,924	36,612
Enabling Studies and Other	3,453	180
Quay	25,601	3,225
<b>Project Expenditure</b>	<b>97,357</b>	<b>44,162</b>
<b>Ex SSI Costs</b>	<b>1,762</b>	<b>1,155</b>
<b>Net Expenditure</b>	<b>101,796</b>	<b>45,817</b>
<b>Funded By</b>		
Quay Borrowing	6,063	0
Other	95,733	45,817
<b>Total</b>	<b>101,796</b>	<b>45,817</b>

19. The construction of the South Bank Quay including the heavy lift platform is forecast for practical in Q4 of 2023/24 and enabling works to continue into 2024/25. Private sector investment has been secured for the Quay and the heavy lift platform which extends the Quay by 100 metres. The heavy lift plaextension will significantly increase the capacity of the quay for heavy lift products allowing for multiple dock berths and simultaneous loading.

20. Work is continuing on SeaH winds £450m offshore wind monopile production facility. Enabling activities continue to ensure utilities are in place including power. Site preparation Infrastructure works to the Hinterland continue to connect the SeaH facility with the South Bank Quay. All related enabling works will occur in Q1 and Q2 of 2024/25 to facilitate SeaH to move their products across the Quay.

21. Expenditure on infrastructure and enabling works for the Park and Ride development, which will serve thousands of workers during construction phases initially, is underway with funding secured in 2023/24. The progression of the development within the current programme is essential to ensure facilities are in place to host the large numbers of construction staff required for ongoing developments such as SeAH and Net Zero Teesside.
22. TEMCO Capex requirements previously reported to the board have been included within the development budget to ensure that the site infrastructure is maintained at a high standard.

## Budget and MTFP

23. The below table summarises the projected operating funding and expenditure across the medium term:

	<b>23/24 Forecast £'000</b>	<b>24/25 Budget £'000</b>	<b>25/26 Budget £'000</b>	<b>26/27 Budget £'000</b>	<b>27/28 Budget £'000</b>
Estate Management Costs	5,500	5,500	5,500	5,500	5,500
Costs of Finance	6,011	9,590	15,505	16,581	16,576
<b>Total Expenditure</b>	<b>11,511</b>	<b>15,090</b>	<b>21,005</b>	<b>22,081</b>	<b>22,076</b>
<b>Funded By</b>					
Site Income	3,115	5,942	10,890	15,158	22,627
Other Income	5,561	1,000	0	0	0
Use of Reserves	2,835	8,148	10,115	6,923	0
<b>Total</b>	<b>11,511</b>	<b>15,090</b>	<b>21,005</b>	<b>22,081</b>	<b>22,627</b>
<b>Surplus</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>551</b>

	<b>23/24 Forecast £'000</b>	<b>24/25 Budget £'000</b>	<b>25/26 Budget £'000</b>	<b>26/27 Budget £'000</b>	<b>27/28 Budget £'000</b>
Reserves Opening Balance	29,212	26,377	18,229	8,114	1,191
In Year	-2,835	-8,148	-10,115	-6,923	551
<b>Reserves Closing Balance</b>	<b>26,377</b>	<b>18,229</b>	<b>8,114</b>	<b>1,191</b>	<b>1,742</b>

24. The completion of STDC areas of responsibility on site in terms of public sector remediation, decontamination and demolition activity within mark a major milestone in transitioning from the legacy “keep safe” focus activity following the departure of SSI from the site to a more progressive estate management arrangement that supports the various existing and planned tenants on site providing professional services across a range of activities.
25. The estate management operating expenditure incorporates all general operating costs across the site to ensure a secure and well-maintained development is provided for all current and prospective tenants. Elements of this expenditure will be recharged via an annual service charge to tenants. However, in the short term until tenancy levels rise these outlays will be financed from income received and retained during the development period.
26. In order to complete the Development obligations borrowing has been secured against future revenues from the quay and wider site, the expenditure associated with the financing of this borrowing will be required in advance of the revenues being generated. As with the estate related expenditure these costs will be financed from income received and retained from during the development period.

#### Developer Expenditure and Funding

27. The STDC/L delivery model was presented and approved by the STDC board on the 16<sup>th</sup> March 2023.
28. The Net Zero Teesside project will follow this STDC/L delivery model. Net Zero Teesside is a collection of industrial, power and hydrogen businesses which aim to decarbonize their operations through the deployment of carbon capture utilisation and storage (CCUS). The Net Zero Teesside (Power) Project is a joint venture between BP and Equinor.
29. The Net Zero Teesside project is the second significant private sector investment and tenant proposing to locate to the east of Teesworks at the Foundry. This is proposed to lead to c£1.5bn of capital investment in a Carbon Capture Utilisation and Storage (CCUS) facility and dedicated power plant etc. This will lead to c4,000 construction jobs in addition to the direct and indirect jobs associated with the facility.
30. As part of the delivery model STDC/L will undertake remediation works as landowner. When work is completed on the NZT site and all costs are accounted for (including landfill tax reliefs) Teesworks Limited will exercise its option. All development activity and costs will be fully funded by Teesworks Limited and/or BP Project Contributions as required.
31. The below table summarises the projected private sector developer expenditure funded in advance via STDC across the medium term:



## Developer Expenditure and funding

	<b>23/24 Forecast £'000</b>	<b>24/25 Budget £'000</b>	<b>25/26 Budget £'000</b>	<b>26/27 Budget £'000</b>	<b>27/28 Budget £'000</b>
NZT Development Costs	21,700	22,469	7,110	490	0
<b>Total Expenditure</b>	<b>21,700</b>	<b>22,469</b>	<b>7,110</b>	<b>490</b>	<b>0</b>
<b>Funded By</b>					
Private Sector Contributions	21,700	22,469	7,110	490	0
<b>Total</b>	<b>21,700</b>	<b>22,469</b>	<b>7,110</b>	<b>490</b>	<b>0</b>

32. All obligations are funded through a combination of BP “Project Contributions” and any other funding requirements being met by Teesworks Limited via a direct commercial agreement with STDC/L. The combination of the option agreement project contribution from BP and Teesworks Limited direct funding will cover 100% of all project costs including management costs and interest.

33. Private sector investment has been secured for the Quay and the heavy lift platform which extends the Quay by 100 metres. Private sector obligations in respect of the Quay are included in the operating table in point 23. The repayments are reflected in site income.

## Cost of Borrowing

34. The arrangements for Corporation borrowing are set out in the annually agreed Treasury Management Policy.

35. The Corporation intend to raise the majority of its long-term borrowing from TVCA who will access the PWLB.

36. In 2024/25, the Corporation is planning capital expenditure of £68.3 million as summarised below:

	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>2027/28</b>
	<b>Forecast</b>	<b>Budget</b>	<b>Budget</b>	<b>Budget</b>	<b>Budget</b>
Capital Expenditure	119,057	68,286	7,110	490	0

37. All capital expenditure must be financed, either from external sources (government grants and other contributions), the Corporation's own resources (revenue, reserves and capital receipts) or debt (borrowing and leasing). The planned financing of the above expenditure is as follows:

Table 2: Capital financing in £'000

	2023/24	2024/25	2025/26	2026/27	2027/28
	Forecast	Budget	Budget	Budget	Budget
Capital Grants	6,000	19,000	0	0	0
Capital Receipts	0	10,000	0	0	0
Capital Contributions	21,700	22,469	7,110	490	0
Borrowing	91,357	16,817	0	0	0
<b>Total</b>	<b>119,057</b>	<b>68,286</b>	<b>7,110</b>	<b>490</b>	<b>0</b>

38. The borrowing strategy includes a range of maturities, short and long term, with ability to refinance built in. These are all driven from the latest interest rate forecasts from Arlingclose which are set out in the table below.

	Current	Dec-23	Mar-24	Jun-24	Sep-24	Dec-24	Mar-25	Jun-25	Sep-25	Dec-25	Mar-26	Jun-26	Sep-26
<b>Official Bank Rate</b>													
Upside risk	0.00	0.25	0.50	0.50	0.75	0.75	0.75	0.75	0.75	0.75	0.75	1.00	1.00
Central Case	5.25	5.25	5.25	5.25	5.00	4.75	4.25	4.00	3.75	3.50	3.25	3.00	3.00
Downside risk	0.00	0.00	-0.25	-0.50	-0.75	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>3-month money market rate</b>													
Upside risk	0.00	0.25	0.50	0.50	0.75	0.75	0.75	0.75	0.75	0.75	0.75	1.00	1.00
Central Case	5.40	5.40	5.40	5.30	5.15	4.80	4.30	4.10	3.80	3.50	3.25	3.05	3.05
Downside risk	0.00	0.00	-0.25	-0.50	-0.75	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>5yr gilt yield</b>													
Upside risk	0.00	0.50	0.70	0.70	0.85	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Central Case	4.38	4.50	4.50	4.40	4.25	4.00	3.75	3.50	3.40	3.30	3.30	3.30	3.35
Downside risk	0.00	-0.50	-0.70	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>10yr gilt yield</b>													
Upside risk	0.00	0.50	0.70	0.70	0.80	0.90	1.00	1.10	1.20	1.20	1.20	1.20	1.20
Central Case	4.27	4.40	4.35	4.30	4.25	4.15	4.00	3.80	3.75	3.65	3.60	3.65	3.70
Downside risk	0.00	-0.50	-0.70	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>20yr gilt yield</b>													
Upside risk	0.00	0.50	0.70	0.70	0.80	0.90	1.00	1.10	1.20	1.20	1.20	1.20	1.20
Central Case	4.67	4.65	4.60	4.55	4.45	4.35	4.25	4.20	4.20	4.20	4.20	4.20	4.20
Downside risk	0.00	-0.50	-0.70	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00
<b>50yr gilt yield</b>													
Upside risk	0.00	0.50	0.70	0.70	0.80	0.90	1.00	1.10	1.20	1.20	1.20	1.20	1.20
Central Case	4.25	4.25	4.20	4.15	4.10	4.10	4.10	4.10	4.10	4.10	4.10	4.10	4.10
Downside risk	0.00	-0.50	-0.70	-0.85	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00	-1.00

PWLB Standard Rate (Maturity Loans) = Gilt yield + 1.00%; PWLB Certainty Rate (Maturity Loans) = Gilt yield + 0.80%; PWLB HRA Rate (Maturity Loans) = Gilt yield + 0.40%; UKIB Rate (Maturity Loans) = Gilt yield + 0.60%

39. Arlingclose expects long-term gilt yields to eventually fall from current levels reflecting the lower medium-term path for Bank Rate. However, yields will remain relatively higher than in the past, partly due to quantitative tightening,

with continued elevated volatility. In line with this advice the interest rate for future borrowing has been updated based on Arlingcloses forecasts.

## **FINANCIAL IMPLICATIONS**

40. This report provides the budget for the Corporation and the Medium-Term Financial Plan.

## **LEGAL IMPLICATIONS**

41. There are no legal implications associated with the recommendations within this report.

## **RISK ASSESSMENT**

42. This Budget Report has been categorised as medium risk. The overall risk to the longer-term financial position of the Corporation revolves around securing of tenants. The financial risks of this in the short term have been mitigated from retention of income generated during the development stage to bridge the gap until tenancy levels increase.

## **CONSULTATION & COMMUNICATION**

43. The subject of this report is a matter for STDC Board approval therefore no additional consultation and communication has been undertaken.

## **EQUALITY & DIVERSITY**

44. This report does not impact on groups of people with protected characteristics.

**Name of Contact Officer:** Gary Macdonald  
**Post Title:** Group Director of Finance and Resources

**AGENDA ITEM 9**  
**REPORT TO THE STDC BOARD**  
**29 FEBRUARY 2024**

**REPORT OF GROUP CHIEF EXECUTIVE OFFICER**

**SITE MAINTENANCE ARRANGEMENTS**

**SUMMARY**

The Board has previously been updated on 20<sup>th</sup> April 2023 regarding managing the South Tees Development Corporation (STDC) and South Tees Developments Limited (STDL) retained estate requirements at the Teesworks site, including the proposed funding requirements, definitions of the retained estate and the risks to STDC not performing its obligations.

The Board approved the following recommendations on 20<sup>th</sup> April 2023: -

- Notes the STDC and STDL retained estates areas of responsibility and associated requirements for maintaining them;
- Notes the Special Economic Area (SEA) statutory requirements for the use of retained business rates;
- Notes the current estimated financial investment into the retained estate;
- Approves the use of future business rates to proactively fund and manage the retained estate requirements ensuring this remains compliant with SEA statutory requirements

As part of the operational requirements for STDC & STDL to fulfil its obligations on the Teesworks site, there is a requirement to set up a legal entity to deliver these obligations. This paper sets out approval for South Tees Development Corporation (STDC) to establish a 100% owned subsidiary to undertake the maintenance of the estate and administer the service charge regime to property owners and tenants as they come on board.

The required staff are already in place and undertaking the roles but in order to be able to manage this appropriately to service third party property owners and tenants, these activities need to be ring fenced into a stand-alone company.

## RECOMMENDATIONS

It is recommended that the STDC Board:

- i. Approves the submission of a request to TVCA Cabinet to establish a 100% owned subsidiary of STDC under s212(2) of Localism Act 2011. The approval to set-up the company is subject to TVCA Cabinet approval; and
- ii. Approves appointing TEMCo as the service management provider for the STDC / STDL communal estates; and
- iii. Approves appointing TEMCo as the service management provider for the STDC / STDL retained estates; and
- iv. Approves for the STDC appointed Directors of South Tees Developments Limited (STDL), as landowner, to provide the necessary rights of access and for operational activity to take place in respect of TEMCo activities across the STDL owned site areas; and
- v. Approves TEMCo to engage with Teesworks Limited and tenants as applicable to discharge any of TEMCo's areas of responsibility across the Teesworks site ensuring where appropriate the agreement of appropriate charging mechanisms in consultation with the Group Chief Executive Officer, Group Director of Finance and Resources and Monitoring Officer.

## DETAIL

1. South Tees Site Company (STSC) is the company established by BEIS following the closure of the Redcar Steelworks in 2015. This company transitioned to local control in 2020 as part of the settlement with HMG.
2. STSC was staffed by former steelworkers and was responsible for the keep safe (including maintenance) of the site whilst it was COMAH regulated.
3. Most of its activities have now ceased following the removal of COMAH status and what remains is the establishment of an appropriately commercial operation to manage both STDL's retained estate and the shared communal estate.
4. In order to do this appropriately and on the basis recommended by RICS, this needs to be done through a standalone company, albeit 100% owned by STDC. It is not appropriate to use the STSC company because of the need not to pass on any historic liabilities and it is recommended by best practice by RICS to set up a new entity to ensure that the operational activities and financial administration of the estate management company is distinctly separate from that of either STDC or STDL.
5. For these reasons, STDC will look to set up a new, off-the-shelf subsidiary and appoint that corporate entity to deliver and administer the retained and communal estate maintenance business on STDL's behalf. This will include the staff that work in this area who will transfer under TUPE and ensure the long-term employment of these key staff. It will also include the current relevant contracts with key suppliers and other stakeholders.
6. The new company's role is simply to manage the provision of estates services and recharge costs to property owners and tenants in respect of estate management services. It has no involvement or responsibility for the future development of the site, the responsibility for which now sits with Teesworks Limited.

7. The detailed decision regarding this will be the responsibility of the STDC Board but in accordance with s212(2) of the Localism Act 2011, permission to set up a body corporate needs to be granted to STDC by TVCA on each occasion and this paper seeks the relevant approval from STDC Board to recommend this to TVCA Cabinet in respect of this company.
8. The new company will be called Teesworks Estate Management Company Limited (TEMCo). TEMCo will enter into contracts with STDL to provide, on its behalf, estate management services to STDL's Communal Estate (shared roads, bridges, gatehouses, watercourses and site wide security of the same) and also to manage STDL's Retained Estate (Development Plots, Buildings and other land not yet drawn down by Teesworks Limited under their land purchase options).
9. The cost of managing and maintaining STDL's Retained Estate falls to STDL and TEMCo would make charges to STDL for providing this service to STDL.
10. The primary responsibility for the provision of services and costs of managing and maintaining the STDL Communal Estate lies with STDL and costs incurred are recharged proportionately to property owners and tenants under RICS guidelines via an estate service charge. STDL are responsible for the payment of that proportion of the estate service charge costs as are proportionate to the relative size of its Retained Estate relative to the entire Teesworks Estate. TEMCo would provide the Communal Estate Services on STDL's behalf and would charge STDL and other property owners and tenants the proportionate costs of doing so.
11. The appointment of TEMCo as retained and communal estate service provider to STDL does not absolve STDL of legal responsibility for the provision and financial administration of all such services. TEMCo would primarily be providing those services on behalf of STDL under terms clearly set out in legal contracts.
12. TEMCo might in addition contract to provide property management related services to others on commercial terms such as Teesworks Limited who have expressed an interest in TEMCo undertaking its financial administration of communal service charges with its tenants on Teesworks Limited's behalf.
13. TEMCo might in addition also contract directly with end user customers within the Teesworks Estate on commercial terms to provide facilities management services to site occupiers own premises. Examples of facilities management services that might be provided are cleaning, landscape maintenance and security services.
14. TEMCo may acquire from STDL certain site assets such as weighbridges, water and sewerage network and railtracks and thereafter offer those assets for use to third parties on commercial terms.
15. As part of Teesworks Limited options, Teesworks Limited have the right to purchase TEMCo,
16. Should Teesworks Limited purchase TEMCo at a future date, TEMCo will retain all of its rights and obligations of access, operations and other elements that the company sets up in order to fulfil its obligations to tenants and all property owners, including STDC and STDL.

## **FINANCIAL IMPLICATIONS**

17. The establishment of a 100% owned company in itself has no financial implications other than any necessary administrative costs in its creation and ongoing management which will be managed from within the STDC budget.

18. The operational budget for TEMCo will be managed through two principle income and expenditure streams.

- a. the Communal Estate service charge regime for the Teesworks Estate apportioning costs across all Property Owners and tenants including STDL's proportionate share; and
- b. the Retained Estate costs which fall directly to STDL. Whilst STDL remains a landowner it will be responsible for 100% of the costs for the retained estate that it owns.

These costs and assumptions are factored into the STDC Budget and Medium-Term Financial Plan.

19. In the event that Teesworks Limited exercises its right to acquire TEMCo at market value an independent valuation of the company will be conducted at the time of any transaction. STDL will be required to follow public procurement rules to commission its own estate management services which may, or may not, be via TEMCo.

## **LEGAL IMPLICATIONS**

20. Section 212(2) of the Localism Act 2011, as amended by the Section 1(3)(b) of the Schedule to the Tees Valley Combined Authority (Functions) Order 2017 provides that, with the consent of the Combined Authority, a Mayoral Development Corporation (in this case STDC) may form or acquire an interest in a body corporate.

21. South Tees Development Corporation is a public authority and is therefore required by law to obtain best value for money for the assets it disposes of. This will include the any sale of the proposed 'TEMCo' to a third party.

## **RISK ASSESSMENT**

22. The subject matter of this report is categorised as low to medium risk for TVCA. Existing management systems and daily routine activities are sufficient to control and reduce risk.

## **EQUALITY & DIVERSITY**

23. This report has no negative impacts on groups of people with protected characteristics.

<b>Name of Contact Officer:</b>	Jon Rokk
<b>Post Title:</b>	Chief Operations Officer
<b>Email Address:</b>	jon.rokk@teesworks.co.uk

## Briefing Note

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**Our ref** 63262/01/AGR/HO  
**Date** 29 February 2024  
**To** South Tees Development Corporation  
**From** Anthony Grealley

### Subject **The New Biodiversity Net Gain System**

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#### **1.0 Introduction**

- 1.1 On 12<sup>th</sup> February 2024 a new mandatory requirement for developments to deliver a minimum of 10% net gain in biodiversity value was introduced into the planning system in England - the Biodiversity Net Gain (BNG) system. The requirement will apply to most forms of development with a few exceptions, which development on sites with no measurable biodiversity value, and a delay to its introduction for smaller sites until 2<sup>nd</sup> April 2024.
- 1.2 The BNG system will work by imposing a standard condition on planning permissions for applicable developments to seek to ensure the development proposal delivers at least a 10% net gain in biodiversity value. This will apply to application submitted from the 12<sup>th</sup> February, and not to any applications already subject to determination at that point. The BNG system was introduced by the Environment Act 2021, and is implemented by amendment to the Town and County Planning Act 1990 and through introduction of a series of new regulations, all of which is supported by detailed guidance on the intended operation of the BNG system.
- 1.3 Lichfields' presentation sets out the background to the new BNG system and the national and international environmental objectives from which it stems. It explains the mechanics of the process - how net gain is to be measured and delivered in association with new development; and which forms of development proposals will be captured by the new requirement. It goes on to summarise the work that has been done at Teesworks to 'get ahead of the curve' in respect of the mandatory requirement and to plan ahead for the delivery of habitat creation and enhancements both on and off-site at Teesworks, which will enable development there to achieve a net gain in biodiversity value. Finally, the presentation explains the steps that are now being taken to update the Teesworks Biodiversity Strategy to reflect the recently revised guidance and secondary legislation at the national level.

#### **2.0 Applicable Development**

- 2.1 The mandatory requirement will apply to most forms of development, for which planning permission is required, and will lead to the imposition of a planning condition requiring a Biodiversity Gain Plan to be provided ahead of the commencement of the development. The BNG requirement will also be applicable to developments requiring permission through the



Development Consent Order (DCO) process, albeit the requirement on DCO schemes requires separate legislation and is not expected to be introduced until April 2025. There are a few exemptions to the BNG requirement, including for schemes which impact less than 25sqm of habitat and where there is no recordable existing “baseline” biodiversity value (such as on sealed surfaces).

- 2.2 The 10% BNG requirement cannot be imposed on planning permissions retrospectively, i.e. on permissions originally submitted or granted prior to 12<sup>th</sup> February 2024, and therefore, cannot be applied as a condition on the grant of reserved matters approval or a material amendment approval (where the main permission to which those applications relate was submitted or granted prior to January 2024). Nor can the requirement be applied to applications to vary an existing planning permission (Section 73 application) where the original permission predates the introduction of BNG.

### **3.0 Avoid, Mitigate, Compensate**

- 3.1 The system is encouraging an established hierarchical approach to be followed, whereby the first objective is to avoid the loss of biodiversity value from a site. This will encourage developers to maintain valuable habitats and existing landscaping on a development site and design developments around those habitat features. This inevitably brings challenges on constrained sites and particularly previously developed sites, and for certain types of development such as large-scale industrial developments where landscaping would need to be continuously and regularly actively managed.
- 3.2 Where development impacts the on-site biodiversity value, then mitigation options should be fully explored on site, through the provision of new landscape features and habitat creation / enhancement. Opportunities to uplift the existing biodiversity value should be explored through introducing landscaping of a higher biodiversity value and its active management. Again, this will be more challenging with certain developments (such as commercial and industrial) than others (such as residential and more rural uses, including renewable energy installations), particularly over the mandatory 30-year minimum time period.
- 3.3 Finally, compensation measures can be relied upon where the development will not achieve a 10% net gain through on-site avoidance and / or mitigation measures. These compensation measures will take place off-site on land, including third party land, which has the potential for measurable habitat enhancements, or through the purchase of biodiversity ‘units’ from third party brokers or through Government’s own credit system.
- 3.4 The costs associated with off-site compensation solutions are expected to range between £25-30,000 per biodiversity unit (BDU), when arranged through local markets, though could be as high as £42,000 - £650,000 per credit if purchased as credits from Government’s national credit system (one credit equates to 0.5 BDUs). Government is deliberately setting high charges for those credits in order to dissuade their purchasing, to instead encourage habitat enhancement solutions to be delivered through local markets.

## **4.0 Challenges**

- 4.1 As the mandatory net gain system is so new, and the delivery mechanisms have only just been put in place, including the resources to ensure that local markets, and Local Nature Recovery Strategies are set up and operate effectively. Without on-site solutions or access to off-site compensation opportunities, the development industry faces significant financial burdens being imposed if it is to meet a 10% BNG requirement on many forms of development. Disappointingly, the BNG system does not allow decision makers to weigh up the ability to meet the requirement, and the impact of such net gain objectives on the viability of the development in the planning balance against the benefits arising from the delivery of the development. The inability to remove or vary the BNG requirement on viability grounds could have very significant implication for the delivery of development on sites with specific types of habitat, such as Open Mosaic Habitat which are highly valued and difficult to recreate, and thus very expensive to compensate for.

## **5.0 Teesworks Biodiversity Strategy**

- 5.1 In 2021, Lichfields, working with ecology advisors INCA and land agents, GSC Grays, completed the first iteration of the Teesworks Biodiversity Strategy. The strategy maps the entire Teesworks landholdings and established a baseline existing biodiversity value (by habitat type, condition, distinctiveness and biodiversity unit (BDU) quantity) totalling 1,334 BDUs and 20 river units. The potential to achieve an uplift of nearly 350BDUs was identified in the undevelopable areas of the Teesworks land. Off-site, over 400ha of land has been assessed in discussions with around 15 rural and industrial land owners, resulting in the identification of that land having the potential to deliver over 1,500 BDUs.
- 5.2 The Biodiversity Strategy was agreed with Natural England and has been formally submitted to Redcar and Cleveland Borough Council.

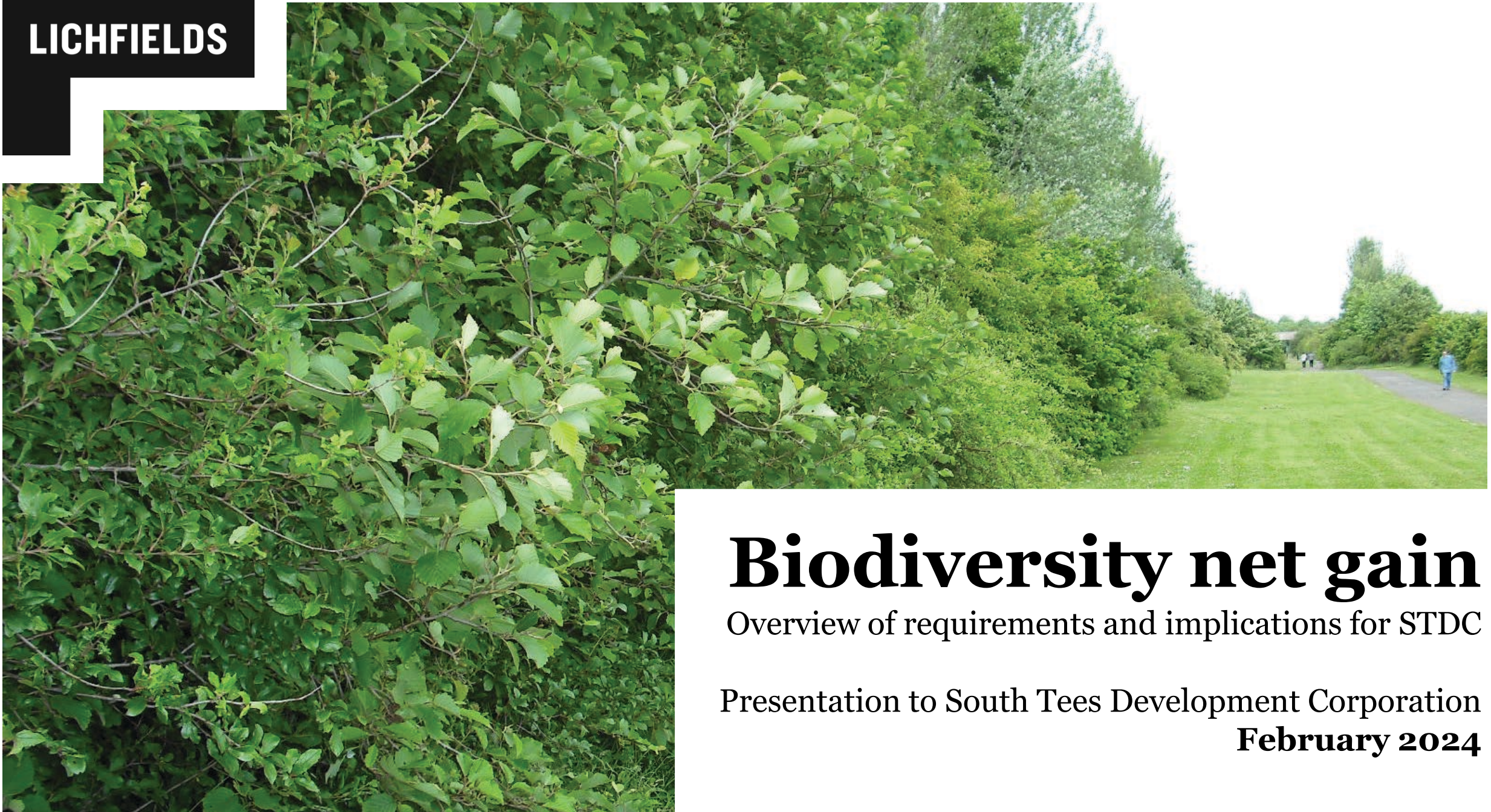
## **6.0 Next Steps**

- 6.1 The next steps will be to update the Teesworks Biodiversity Strategy so as to closely align it with the mandatory BNG system, where appropriate. It is also proposed to update the extent and potential uplift value of the undevelopable areas of the Teesworks area identified in the strategy. Initial considerations by INCA have identified a considerable opportunity to create new Open Mosaic Habitat on many of the undevelopable areas, which are anticipated to have a high value in the offsite biodiversity gain market.
- 6.2 Teesworks will then proceed to deliver on-site biodiversity enhancements in line with the Strategy. Off-site, Teesworks will work with the identified landowners to enter into the necessary agreements that will enable habitat enhancements to be delivered and managed there also.
- 6.3 It would also appear appropriate for those involved in the preparation of the Teesworks Biodiversity Strategy to work closely with the Tees Valley Combined Authority, as the Responsible Authority for preparing a publishing a Local Nature Recovery Strategy (LNRS) for the Tees Valley. The LNRS will support the development of local markets, by recording opportunities and priorities to establish and improve habitats to assist developments across

Tees Valley achieve their net gain requirements, and help local authorities achieve nature recovery objectives. Sites identified in the LNRS will be given a higher biodiversity value to encourage the preparation and operation of LNRSs.



**LICHFIELDS**



# **Biodiversity net gain**

Overview of requirements and implications for STDC

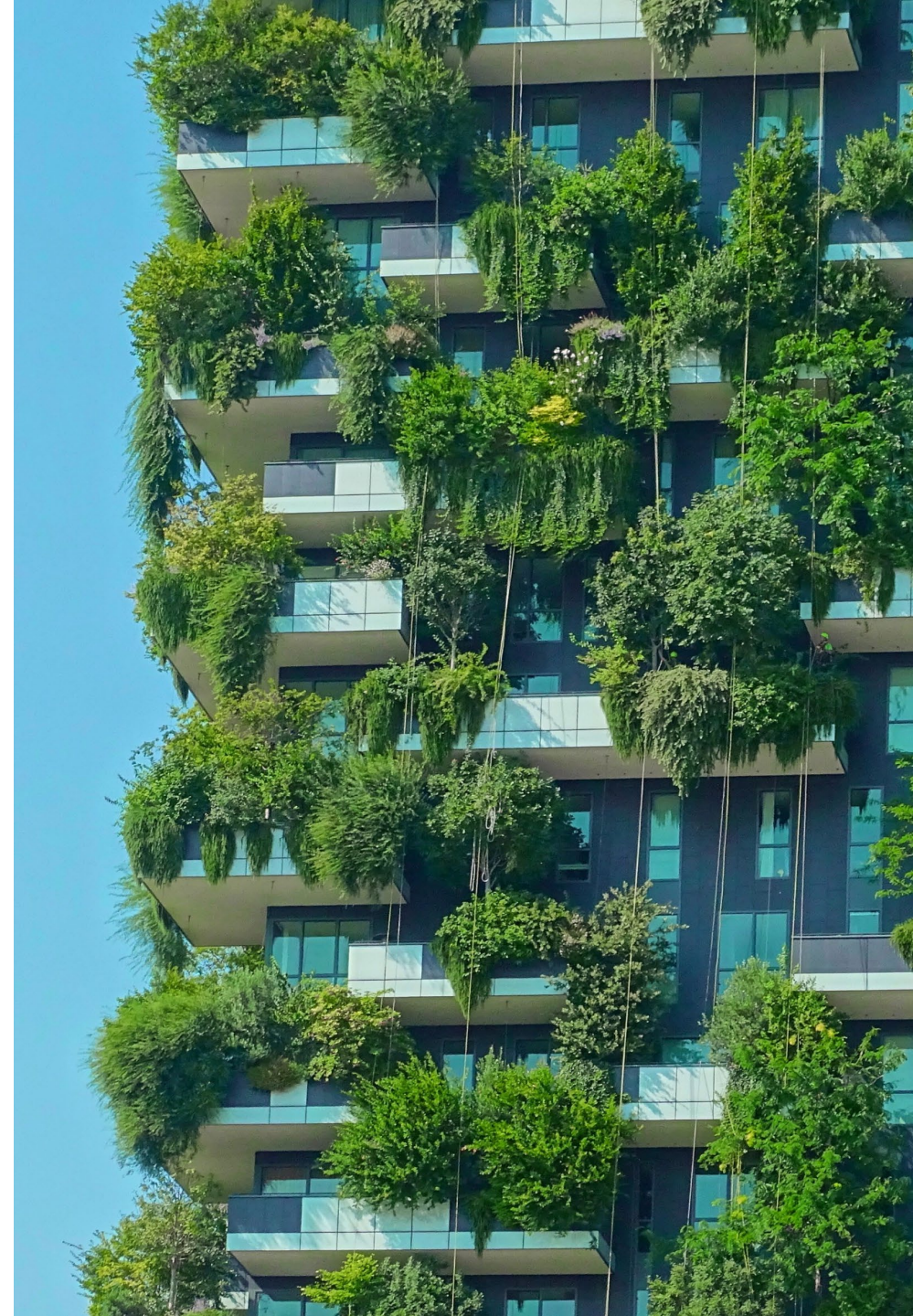
Presentation to South Tees Development Corporation

**February 2024**



# Contents

- Introduction and Basics
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- Recent Updates
- BNG: the Mechanics
- The Biodiversity Gain Hierarchy
- Delivery options: Off Site Gains
- Off-site units – the mechanics
- Teesworks Biodiversity Strategy
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# Introduction and Basics

## What is the BNG requirement

Environment Act 2021

Minimum requirement for 10% Net Gain

This means **110%** of your baseline

Applies to major applications **submitted**  
from 12<sup>th</sup> February 2024

For non-majors it applies from 2<sup>nd</sup> April  
2024

Statutory Biodiversity Metric

## Where it fits in the planning system

New schedule in the TCPA

Every grant of planning permission  
subject to a pre-commencement  
condition

Exemptions and transitional  
arrangements

Different approach for phased  
development



# Exemptions and points to note

## 1.

### De minimis

Impacts\* less than:

- 25 sqm area based habitat
- 5m linear habitat

No priority habitat

\*lost or degraded habitat causing a fall in value

## 2.

### Biodiversity Gain Site

Development undertaken solely or mainly to fulfil a Biodiversity Condition in relation to another development

## 3.

### Development Order

Development granted permission by a development order – includes Permitted Development

## 4.

### Reserved Matters

The BNG condition cannot be applied at RM if it was not applied to the outline permission

## 5.

### Vary existing permission

The BNG condition cannot be applied to an application to vary an existing permission where the original permission pre-dates mandatory BNG



# Recent Updates

## New Secondary Legislation regarding...

- The planning system
  - Validation requirements
  - Transition arrangements
  - Pre-commencement condition
- Biodiversity Gain Site Register
- Exemptions
- Irreplaceable Habitats

## Guidance

- Meeting the requirement as a developer
- Delivering off site gains: land manager guidance
- LPA Guidance
- Update to PPG
- Combining payments (stacking and bundling)
- What counts towards BNG (additionality)
- Exemptions from BNG
- Biodiversity metric
- Onsite and offsite BNG
- Statutory biodiversity credits
- Securing gain sites (legal agreements)
- Biodiversity gain plan
- Habitat Management and Monitoring Plans





# BNG: the mechanics

New schedule in the Town and County Planning Act: all grants of planning permission in England shall be subject to a condition:

## Development may not be begun unless:

- a) a **biodiversity gain plan** has been submitted to the planning authority, and
- b) the planning authority has approved the plan.

## Biodiversity Gain Plan

The LPA must approve the plan if satisfied that:

- the pre- and post- **biodiversity value** information is correct;
- any **offsite gain** is registered and allocated;
- any **biodiversity credits** have been purchased;
- that the **biodiversity gain objective** is met; and
- The **biodiversity gain hierarchy** has been followed

**Biodiversity gain objective:** The objective is met if the biodiversity value attributable to the development > pre-development value by at least 10%

**Biodiversity value:** must be measured using the Statutory Metric

**Offsite gains:** purchased in the local biodiversity gain site market

**Biodiversity credits:** last resort and sold by Natural England

**Biodiversity Gain Hierarchy:** priority order of actions which must be followed when meeting the BNG requirement

# Follow the Biodiversity Gain Hierarchy

**A**

For onsite habitats of medium, high or very high distinctiveness:

1) first avoid adverse effects

2) where unavoidable, mitigate those adverse effects

**B**

Compensate for adverse effects to all onsite habitats by:

1) Onsite habitat enhancements

2) Creation of new habitats onsite

3) Registered offsite biodiversity gain

4) Purchase of statutory biodiversity credits

# Delivery Options: Off Site Gains

## Local Market:

- Buy biodiversity units for specific habitat creation/enhancement measures
- Price locally determined – Defra estimates units will sell for £25-30K
- Measured using metric
- Must be on the NE Register **and** allocated to your development
- Must have a legal agreement in place



## Statutory Credits:

- Sold by Natural England
- Price set by Defra – indicative prices range from £42K – 650K / credit
- Price ranges by habitat type
- You need to purchase 2 credits for every biodiversity unit required



# Off-site units – the mechanics

## **Biodiversity Gain Site Register:**

- All off-site compensation must be registered and allocated to the development
- Natural England will run the register
- Secured by legal agreement
- HMMP required
- Habitat banking: creation of biodiversity units before selling them

## **Stacking payments:**

- only allowed in combination with nutrient credits: i.e. on the same land and same measures
- Can use same land for different payment schemes but BNG must be from additional enhancement measures



# Teesworks Biodiversity Strategy

- Endorsed by Natural England
- Submitted to RCBC to enable Teesworks to fulfil its obligations relating to habitat mitigation and compensation through the discharge of relevant conditions on planning applications for developments on its land.
- **The Strategy:**
  - Identifies the anticipated loss of Biodiversity value across Teesworks area and the opportunities on- and off- site to compensate for it;
  - Makes commitments for how Teesworks will endeavour to deliver compensation; and
  - Provides a mechanism to secure compensatory measures and to monitor their delivery
- Represents a new approach to the delivery of biodiversity enhancements, with few, if any, examples of similar strategies in operation.
- Will be updated and submitted to RCBC annually and will evolve over time to reflect changes in the baseline position, the scope of on-site opportunities and the deliverability of off-site measures.

# The Objectives of the Strategy

1. To address the requirements of:
  - a) Current national and local planning policy; and
  - b) The relevant conditions on existing and future planning permissions
2. To deliver the compensatory habitat in accordance with the principles of the Defra Metric;
3. To demonstrate the feasibility of delivering on and off-site compensatory habitat equivalent to the value of onsite biodiversity that will be lost through the regeneration of Teesworks;
4. To deliver the identified biodiversity value in an ambitious yet realistic timeframe; and
5. To provide sufficient flexibility to enable the identified habitat enhancement opportunities in the Strategy to change over time, where necessary

# Biodiversity loss and opportunity

- INCA's Biodiversity Strategy Feasibility Report identified that a total of 1,334.35 area BDUs and 20 River Units would be lost should the full extent of redevelopment be achieved across the developable areas of Teesworks;
- INCA have identified the potential to create 349.58 BDUs on-site, within the undevelopable areas of Teesworks however, this now being reviewed in light of greater understanding of undevelopable land and opportunities for OMH creation;
- In total INCA have identified 50 rural and industrial sites, totalling over 400ha with the potential to create 1,582.71 BDUs; those sites being in 14 separate ownerships.



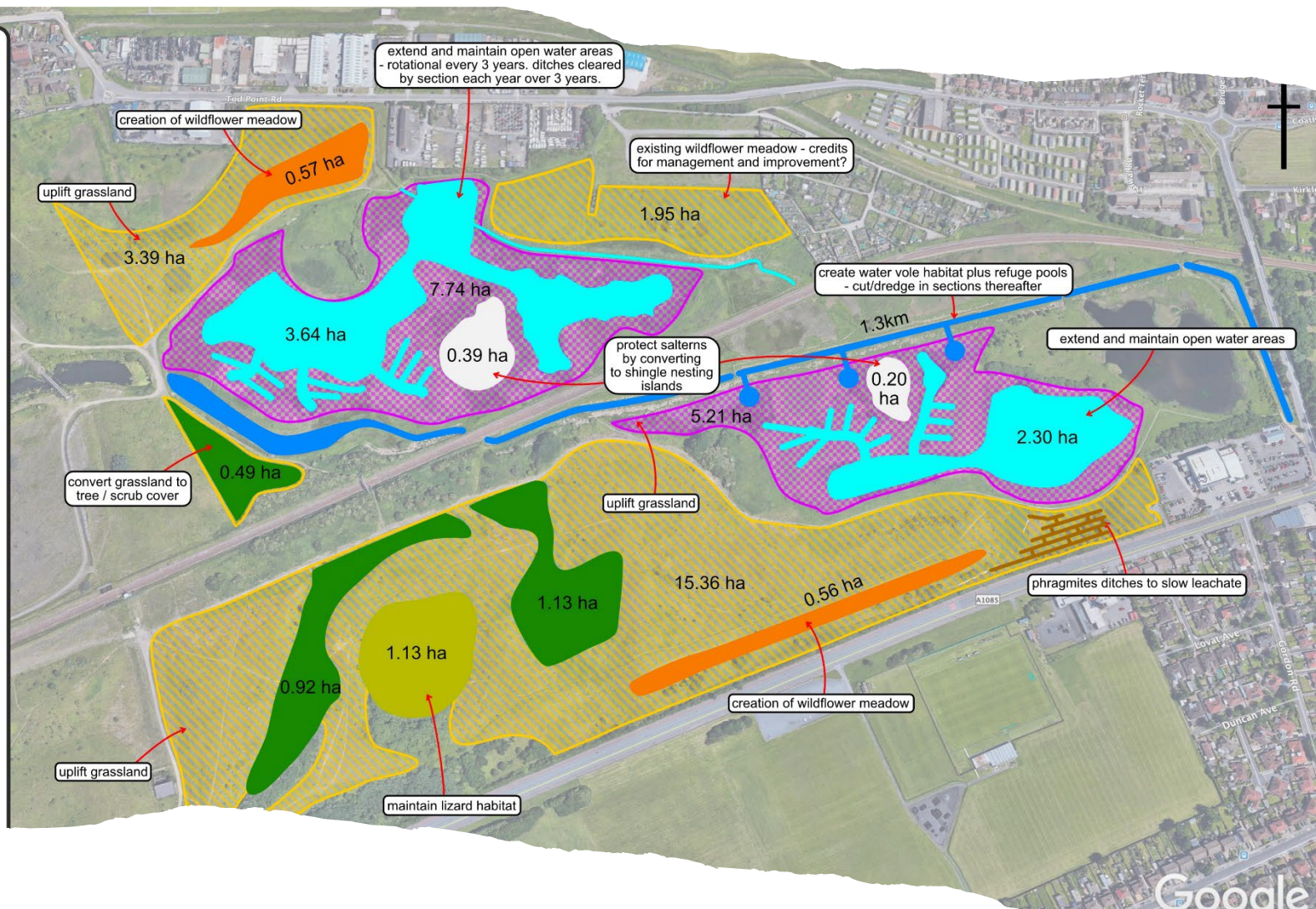
# On-site Compensation

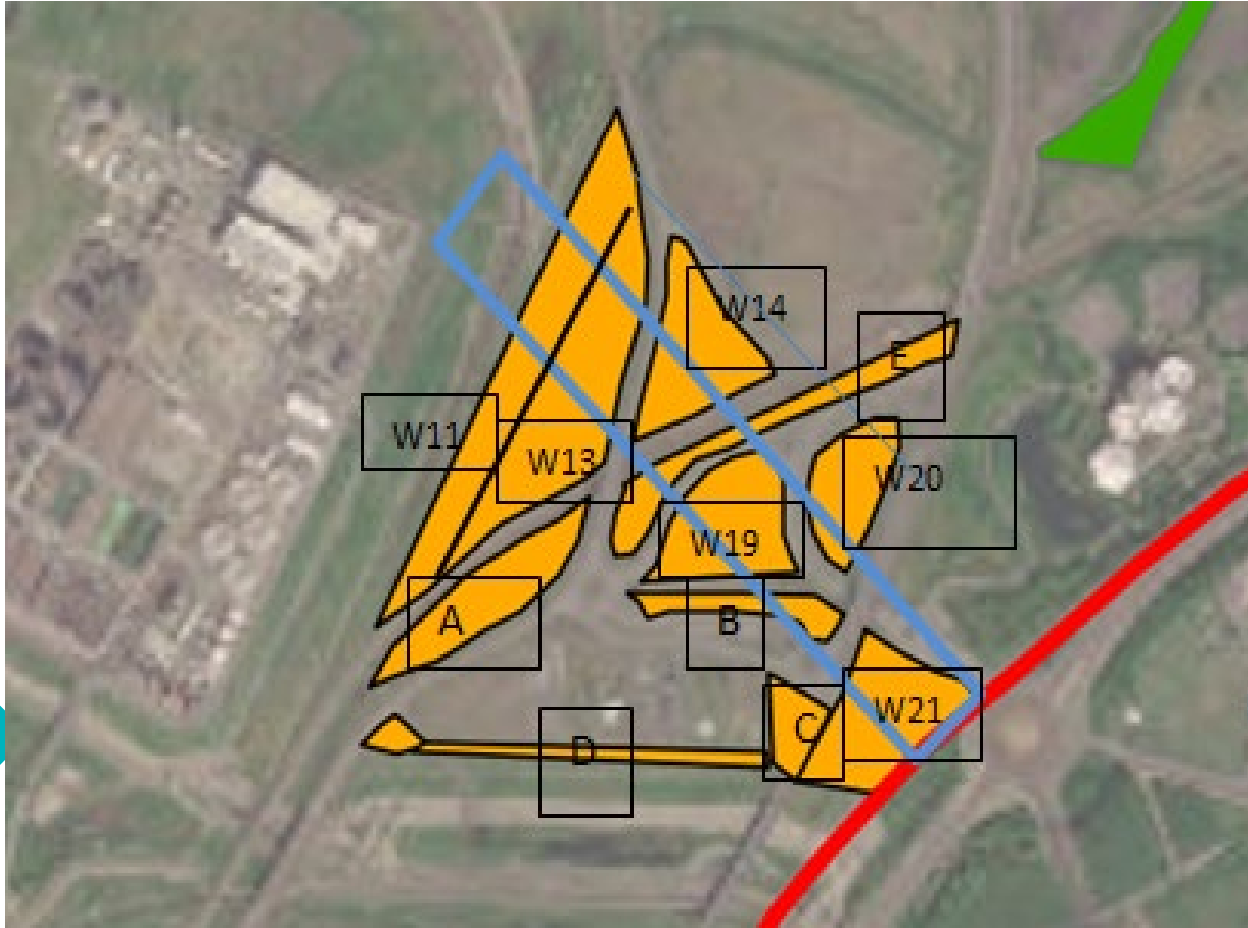
- Onsite opportunities have been identified in those parts of the Teesworks area where development is not possible or planned:
- Coatham Marsh: 101.89 BDUs
- Dorman Point: 100.28 BDUs
- High Tip: 100 BDUs
- Central Hub: 47.41
- Delivery of Coatham Marsh is a priority



# Coatham Marsh Credit Options

- water vole habitat
- leachate remediation
- tree/scrub planting
- lizard area
- open water
- nesting islands
- creation of wildflower meadow
- total grassland for uplift
- total reedbed for uplift





## Central Hub Opportunities

The habitat to be created in each orange polygon will be **Open Mosaic Habitat in good condition**, which is the highest scoring achievable habitat.

Assuming that this is achieved, a total of 29.35 BDUs could be achieved across those areas prefixed “W” with a further 18.1 across all of areas A-E, giving a total of **47.45**

## Off-site Compensation

The offsite measures are based on 50 sites totalling over 400ha within the landholdings of 14 landowners where:

- INCA have identified that realistic opportunities for habitat enhancement/creation; and
- GSC Grays have established, a willingness of landowners to enter into legal agreements giving Teesworks the ability to draw on their landholdings to deliver habitat schemes.

The options for delivering the offsite compensatory BDUs have then been prioritised according to the following factors:

- Number and type of BDUs that could be achieved;
- Cost of delivering and maintaining the compensatory habitat; and
- Practical and commercial ease of delivery.

Initial engagement with landowners by GSC Grays has confirmed that at least seven separate landowners or managers are interested in proceeding with an agreement to provide offsite compensatory biodiversity measures

## Next Steps

- Update the Teesworks Biodiversity Strategy to account for new regulations and guidance and to reflect the opportunities presented by revised assessment of undevelopable areas - March 2024
- Deliver on-site enhancements at Coatham Marsh
- Consider registering undevelopable areas as offsite gains for use by Teesworks and others
- Develop off-site opportunities
- Monitor and consider alternatives – local markets and local nature recovery strategies
- Work with TVCA (as ‘responsibility authority’) for producing Local Nature Recovery Strategy



LICHFIELDS

# Questions



**LICHFIELDS**

**@LichfieldsUK**



**AGENDA ITEM 11**  
**TEES VALLEY REVIEW UPDATE**  
**29<sup>th</sup> FEBRUARY 2024**  
**REPORT OF THE GROUP CHIEF  
EXECUTIVE**

## **SUMMARY**

The purpose of this report is to provide the Board with an update on the Independent Review into the Tees Valley Combined Authority's oversight of the South Tees Development Corporation and Teesworks Joint Venture (Teesworks Limited).

The Tees Valley Review was commissioned by the Secretary of State for the Department for Levelling up Housing and Communities on 7 June 2023 and the Terms of Reference are attached at **Appendix 1**. The Tees Valley Review report on conclusion of the review is provided at **Appendix 2**. A letter from the Secretary of State to the Tees Valley Mayor requesting a response to the report recommendations is also provided at **Appendix 3**.

## **RECOMMENDATIONS**

It is recommended that STDC Board: -

1. Notes this report and notes the work TVCA is coordinating to respond to the Secretary of State and the timescales within which TVCA is working;
2. Notes the recommendations for His Majesty's Government within the report;
3. Notes the STDC Board's role in considering the Tees Valley Review report and;
4. Endorses the proposed process to respond to the recommendations from the Tees Valley Review report, detailed in Paragraph 5 of this Report; and
5. Formally appoints Neil Schneider as the STDC Board sponsor for the process.
6. Instructs the Group Chief Executive to formally write to the joint venture partners to request a renegotiation of the joint venture terms and to codify them into one agreement.

## **DETAIL**

### **BACKGROUND**

1. On 24 May 2023, the Secretary of State for Levelling Up, Housing and Communities wrote to Ben Houchen, Tees Valley Mayor, to:

***"...confirm that he had taken the exceptional decision to support the commissioning of an independent review of the South Tees Development Corporation (STDC) and Teesworks Joint Venture. This followed allegations of***

***corruption, wrongdoing and illegality around the operations of Teesworks and a letter from Mayor Houchen to the Secretary of State on 16 May seeking an independent review of the matter by a ‘relevant body’.***

2. The Secretary of State set out the scope for the review in the Terms of Reference (**Appendix 1**). A Review Panel was convened consisting of experienced public sector officials:
  - Angie Ridgwell, Chief Executive at Lancashire County Council
  - Richard Paver, Former Treasurer, Greater Manchester Combined Authority
  - Quentin Baker, Director of Law and Governance at Hertfordshire County Council.
3. The Tees Valley Review panel has now concluded its work and has reported its findings to the Secretary of State on 29 January 2024. A full copy of the review and associated recommendations is attached at **Appendix 2**.
4. The Secretary of State has also written to the Tees Valley Mayor (**Appendix 3**) requesting a response to the report and the recommendations:

***“...I ask that you now engage with the panel’s recommendations, working with the Combined Authority and partners as appropriate, and provide me with an initial report by 8 March on how you intend to respond to the Panel’s recommendations...”***
5. TVCA has set out a plan for responding to the Secretary of State, to detail its proposed response to the Tees Valley Review panel's recommendations. This incorporates extensive work with local authority representatives. The key stages are set out below:
  - Establish a cross-authority working group, including statutory officers from all five constituent authorities (Chief Executives, Monitoring Officers and a S151 Officers) to consider and approve the response to report recommendations.
  - Appoint a STDC Board sponsor for the working group.
  - Provide a formal response to Secretary of State letter by 8 March 2024 to confirm the initial approach to recommendations.
  - Undertake a comprehensive review of the recommendations.
  - Submit recommended actions to TVCA Cabinet Annual General Meeting (AGM) in June 2024 together with the appropriate revised governance documentation.
  - Submit recommended actions to STDC and TVCA A&G committees as well as TVCA Overview and Scrutiny committee for consideration.
  - Submit recommended actions together with the revised governance documentation to STDC Board at its AGM in June 2024.
6. None of the recommendations in the report are solely for the consideration of STDC Board. Where STDC is included in recommendations these are primarily for TVCA



and / or the Local Authorities to consider in relation to its governance and oversight of STDC and as a result will initially be considered by the working group.

7. The Review also recommends that STDC requests that the joint venture partners are asked to reconsider elements of the JV deal, though does not stipulate which aspects and that the agreements are codified into one document. It is recommended that the Group Chief Executive formally writes to the partners on behalf of the Board making the request and reports back to Board the response and outcome of any discussions.
8. As part of the process STDC is being asked to appoint a Board sponsor to the process whose role will be primarily to be briefed on the emerging action plan and provide input from an STDC Board perspective. The Board is free to nominate any member of the Board to this role, but given his relevant background, it is recommended that Neil Schneider is appointed to this role.
9. It should be noted that some of the recommendations in the Tees Valley Review report have identified potential deficiencies in legislation which requires clarification from HM Government. It is therefore proposed that these recommendations fall outside of the remit of the working group referred to in par 5 above.
10. The Tees Valley Review report is publicly available and is also currently being reviewed by External Auditors to inform their Audit Completion work for the 2021-22 financial year.
11. The working group been established and met for the first time on 13 February 2024 where it:
  - Discussed Terms of Reference, and agreed they would be taken to the next Tees Valley Chief Executive Officer Group on which there is representation from TVCA and its 5 Constituent Authorities for approval;
  - agreed which of the 28 recommendations were wholly in scope, and which required some clarity from HM Government;
  - agreed an approach to each of the recommendations, and where within the group's membership responsibility lies for addressing them to bring back to the group's next meeting for actions to be agreed.

## **FINANCIAL IMPLICATIONS**

12. There are no financial implications associated with the recommendations set out in this report.

## **LEGAL IMPLICATIONS**

13. There are no legal implications associated with the recommendations set out in this report however there is an imperative from a legal and governance perspective to

ensure that the recommendations are considered very carefully, and appropriate action is taken in respect of them.

## **RISK ASSESSMENT**

14. A risk assessment of the recommendations contained within the Tees Valley Review Report will be formulated alongside the development of any responses to the report.

## **CONSULTATION**

15. The Tees Valley Review Terms of Reference and Report are all published on the Governments website and copies of the report are available to all local stakeholders. The content of the report will be discussed with Local Authority representatives as part of the normal TVCA processes.

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> [Independent review: Teesworks Joint Venture - reviewer appointment letters and terms of reference](#)

[Department for  
Levelling Up,  
Housing &  
Communities](#)

Correspondence

# Terms of reference

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## **Terms of reference: Independent Review into the Tees Valley Combined Authority's oversight of the South Tees Development Corporation and Teesworks Joint Venture**

On 24 May 2023, the Secretary of State for Levelling Up, Housing and Communities wrote to Ben Houchen, Tees Valley Mayor, to confirm that he had taken the exceptional decision to support the commissioning of an independent review of the South Tees Development Corporation (STDC) and Teesworks Joint Venture. This followed allegations of corruption, wrongdoing and illegality around the operations of Teesworks and a letter from Mayor Houchen to the Secretary of State on 16 May seeking an independent review of the matter by a 'relevant body', reflecting the Mayor's concern that continued allegations would undermine confidence in the site.

The department has seen no evidence of corruption, wrongdoing, or illegality, but recognises that the continued allegations pose a risk to the government's and the combined authority's shared ambitions to deliver jobs and economic growth in Teesside. The review will include consideration of these specific allegations made in relation to the Joint Venture, and ascertaining the facts is the primary basis for the Secretary of State seeking this independent review.

As part of that process, the review will focus on the following themes, reflecting the government's existing approach for assurance reviews of local authorities and general principles of economy, efficiency and effectiveness:

- Governance - e.g. sense of strategic vision and direction; adequate internal processes and scrutiny; key senior posts filled with permanent appointments; effectiveness and transparency of decision making and external scrutiny arrangements (including independent audit); relationships between organisational leadership and officers; openness to challenge; focus on improvement.
- Finance - e.g. quality and robustness of financial management and accounting, arrangements, ability to deliver value for money with public money; effective management of financial and commercial risks.

In view of the serious allegations of corruption, wrongdoing and illegality that have been made in relation to the Teesworks Joint Venture, the government has asked the review to specifically to respond on that issue. The following specific questions/issues have been identified for the review to explore:

1. An assessment of the governance arrangements at the STDC, including how decisions are made and the transparency of those decisions.
2. An assessment of the arrangements through which the Tees Valley Combined Authority (TVCA) meets its responsibilities for effective and appropriate oversight of the activity of the STDC (the Mayoral Development Corporation responsible for the Teesworks site) and the Teesworks Joint Venture (the public-private partnership between the STDC and its partners).

3. An assessment of the processes, systems and delivery mechanism in place to deliver the expected value and benefits of the Teesworks Joint Venture.

4. An assessment of the arrangements and capacity in place to ensure that decision making across the TVCA, including STDC and Teesworks Ltd (the Joint Venture vehicle), is evidence-based (where practical), takes full consideration of value for money, and reflects an appropriate balance of risk and reward between the public and private sector.

5. An assessment of the level of confidence by which the government have that key decisions to date in relation to the Teesworks Joint Venture have been evidence-based and taken appropriate consideration of value for money.

6. An assessment of the robustness of local systems and operations in place to guard against any alleged wrongdoing, in particular in relation to:

- The sale of the site now occupied by SeAH Wind.
- The change in the Teesworks ownership structure in August 2021 from 50% public to 90% private.
- The extent to which correct procurement rules have been followed in relation to the site and any disposal of publicly-owned land or assets.
- The sale of land at the site to private sector partners.
- Potential conflicts of interest between various parties, and contractors carrying out remediation or other works at the site.
- The evidence of investment from private sector partners in the context of significant public investment in remediation of the site.
- The adequacy of transparency and accountability underpinning key decisions, including ongoing engagement with and reporting to His Majesty's Government (HMG).

7. An assessment of the effectiveness of arrangements for external scrutiny of the STDC and Teesworks Joint Venture (including Teesworks Ltd), including independent audit, and of the relevant parties' response to any findings or recommendations from that process.

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# Tees Valley Review

23<sup>rd</sup> January 2024

Panel Members: Angie Ridgwell (Chair)  
Quentin Baker  
Richard Paver

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# 1. Executive Summary

- 1.1. Teesworks is the local brand that represents the project to remediate and redevelop the former Redcar steelworks following the liquidation of the then steelworks owner SSI (Sahaviriya Steel Industries UK Ltd) in 2015. The Tees Valley Combined Authority (TVCA) requested that the Secretary of State create the South Tees Development Corporation (STDC) for the purposes of managing and keeping safe the site and, if possible, its redevelopment. This was granted on 1<sup>st</sup> August 2017.
- 1.2. Teesworks is one of, if not the largest, brownfield remediation projects in Europe. To date £560m of resources, including £246m in government grants and £257m prudential borrowing. This is planned for investment in the site by end of 2024/25 and has delivered<sup>1</sup>:
  - 17% of the land under contract with a further 40% at Heads of Terms
  - 940 construction jobs plus a further 1,950 recently announced
  - 2,295 direct and 3,890 indirect jobs created once sites operational
  - 450 acres of land remediated or in remediation
  - £1.3bn business rate income potential over the next 40 years with a further £1.4bn at Heads of Terms
  - A new 450m Quay

A further £238m investment including £40m for Net Zero Teeside, is potentially to be incurred by STDC utilising prudential borrowing. Prudential borrowings are due to be repaid over the next 50 years from a combination of retained business rates, Teesworks Limited (TWL) profits from operating the Quay, and contractual commitments from TWL.

- 1.3. Delivery has been supported by a Joint Venture Company, Teesworks Limited (TWL), between STDC and two local businessmen: Chris Musgrave and Martin Corney.
- 1.4. There are many voices which articulate a positive view of the project, highlighting the work that has been done and the clear evidence of the achievements which have been made in regenerating an historic part of the UK's industrial heritage, the final demise of which, in 2015/16 had devastating results for a community that had been badly affected by the changing global patterns of industrial production. A significant amount of regeneration of the area has occurred and new businesses are moving in bringing jobs and other collateral benefits for the local area.
- 1.5. Consequently, there is good support for the redevelopment of the site. However, there has also been growing concern about the operations and delivery of the Teesworks project with allegations of corruption, wrongdoing, and illegality, which is impacting confidence in the project and putting future private sector investment at risk.
- 1.6. The Secretary of State of the Department for Levelling Up, Homes and Communities (DLUHC) commissioned a review into these allegations. The terms of reference for the review are attached at Appendix 1. They can also be found on the government website at <https://www.gov.uk/government/collections/independent-review-teesworks-joint-venture>.
- 1.7. The review Panel has now completed its work within the scope of the terms of reference. Based on the information shared with the Panel, we have found no evidence to support allegations of corruption or illegality. However, there are issues of governance and transparency that need to be addressed and a number of decisions taken by the bodies

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<sup>1</sup> Quarterly BEIS/MHCLG report April-June 2023 and management evidence received 13/11/23

involved do not meet the standards expected when managing public funds. The Panel have therefore concluded that the systems of governance and finance in place within TVCA and STDC at present do not include the expected sufficiency of transparency and oversight across the system to evidence value for money.

- 1.8. It is important that local leaders work together to secure the much needed regeneration of the site. Securing permanent local jobs, economic growth and opportunity, as well as increased tax income for the local area that can be reinvested in local services and continued growth is a priority and shared endeavour. To this end we have made a number of recommendations for the Secretary of State, TVCA and STDC to consider.

## 2. Recommendations

**Recommendation 1** – TVCA and STDC should develop a full understanding of the liabilities of both STDC and TVCA in relation to the activities of STDC and TWL and ensure appropriate management arrangements are in place to manage and mitigate the consequential financial risks to both organisations and the constituent authorities.

**Recommendation 2** – TVCA and STDC should jointly agree the use of retained business rates over the 25 year period in support of both TVCA and STDC risks and liabilities and consider the funding strategy for liabilities that will exist thereafter. Such agreement to be agreed by TVCA Cabinet and STDC Board.

**Recommendation 3** – STDC update and maintain its financial model to reflect its current business model including identified retained liabilities and business rates forecasts in line with recommendations 1 and 2 above.

**Recommendation 4** - Government should clarify its proposals for landfill tax in terms of public sector land remediation, including timescales for legislation, as currently eligibility for the scheme and STDC's liability for tax are an ongoing, and increasing risk.

**Recommendation 5** – DLUHC to clarify the regulations in respect of TVCA and STDC (and if necessary other combined authorities and development corporations) including oversight, reserve matters and consents as well as stranded liabilities.

**Recommendation 6** –TVCA Cabinet review its current delegations and directions to STDC to ensure it meets its statutory obligations, including appropriate oversight by Overview and Scrutiny Committees, to enable value for money to be delivered and evidenced through effective scrutiny of significant decisions.

**Recommendation 7** – TVCA and STDC invite the Centre for Governance & Scrutiny to undertake a review of the O&S function and produce recommendations as to improving it in line with the statutory guidance and new English Devolution and Accountability Framework 2023.

**Recommendation 8** –TVCA and STDC should modify their constitutions to reflect any changes in delegations and directions that may arise from recommendations.

**Recommendation 9** –TVCA should amend its constitution to give effect to TVCA's duty to keep STDC's existence under review, to provide guidance to STDC, and to assess its own financial risks relating to STDC. We would recommend this be at least annually.

**Recommendation 10** – TVCA and STDC agree a protocol and code of conduct for shared statutory officers to ensure the boundaries between the two organisations are maintained, that advice is given in the best interests of the specific organisation, and that any and all communication is clear in terms of the organisation being represented.

**Recommendation 11** – TVCA review the group statutory officer roles and consider, where allowable in law, whether having different officers, perhaps drawn from the Constituent Authorities, would provide a greater degree of checks and balance.

**Recommendation 12** – TVCA and STDC review their Financial Regulations and schemes of delegation to satisfy themselves that control is enacted at the appropriate level to facilitate the value for money test and ensure the STDC Board and TVCA's duty of oversight, is met as well as provide appropriate protections for officers. This should include the recording and reporting to STDC Board/TVCA Cabinet of key decisions taken under delegation.

**Recommendation 13** – TVCA should, in consultation with monitoring officers of Constituent Authorities, review and revise the local governance framework to ensure that greater degree of oversight over STDC and TWL is afforded to TVCA cabinet members and the Constituent Authority statutory officers.

**Recommendation 14** – Constituent members should ensure they seek advice and guidance from their own statutory officers ahead of TVCA Cabinet meetings to ensure they get an independent view to inform their strategic decision making.

**Recommendation 15** – Statutory officers of constituent members should ensure they inform themselves of the statutory context of STDC/TVCA and maintain an active and inquisitive engagement with both organisations to ensure they can effectively provide independent advice to their own organisations and fulfil their statutory obligations to them.

**Recommendation 16** – Review the makeup of the Board, including the Chair and role of associate members, to ensure relevant expertise and knowledge is in place to support the Mayor in setting and delivering his strategic ambitions, under the current phase of delivery.

**Recommendation 17** – Ensure the Board are provided with comprehensive and accurate reports, supported by appropriate advice in a timely fashion so they can properly consider and debate the decisions to be made.

**Recommendation 18** – Any oral advice and supporting presentations should be made publicly available (where possible) to support the decision record.

**Recommendation 19** – The monitoring officer should ensure training for all STDC /TVCA members and officers takes place on conflicts of interest and ensure proper declarations are made and individuals recuse themselves appropriately in meetings.

**Recommendation 20** – A robust and comprehensive briefing arrangement be put in place between statutory officers of TVCA/STDC and the constituent members to ensure there is a collective and considered understanding of the opportunities and implications of proposed decisions.

**Recommendation 21** – STDC should articulate and document the agreed arrangements with the JV partners in a single document.

**Recommendation 22** - STDC should explore opportunities to influence when and how land is drawn down and developed and if possible, renegotiate a better settlement for taxpayers under the JV agreement.

**Recommendation 23** – Once a final position is agreed with the JV Partners this should be formally shared with the STDC Board and TVCA Cabinet for approval.

**Recommendation 24** – All STDC recruitment be subject to fair, open, and transparent processes.

**Recommendation 25** – The STDC executive regularly review operations on site to ensure JV Partner activity is not incurring risks and liabilities for STDC.

**Recommendation 26** – Monitoring Officer to review the approach to confidentiality and the handling of FoI to ensure that the public interest test is properly understood and applied. Devise a local protocol to clarify what information will be deemed confidential and on what basis and provide training for staff. This should include guidance on the disclosure of confidential information to TVCA Cabinet, Overview & Scrutiny and TVCA/STDC Audit Members who should have enhanced rights of access.

**Recommendation 27** – Director of Finance and Resources review internal audit arrangements and provide advice to both TVCA and STDC Audit Committees as to how these can be strengthened. Consideration should be given to securing CIPFA or other external support to provide independent assessment of proposed changes.

**Recommendations 28** – Director of Finance and Resources work with the external auditor to support the completion of their value for money arrangements work for 2021/22, including any additional risk-based work that may arise in light of the Panel's findings. The progress of this work should be reported to TVCA and STDC Audit Committees

### 3. Background

- 3.1. The **Tees Valley Combined Authority (TVCA)** was established on 1<sup>st</sup> April 2016 as a combined authority covering the geographical boundaries of the 5 local authorities in the area:
  - Darlington Borough Council
  - Hartlepool Borough Council
  - Middlesbrough Council
  - Redcar and Cleveland Borough Council (R&C)
  - Stockton on Tees Borough Council
- 3.2. The liquidation of the SSI steelworks in 2015 left a hazard that presented a real danger to human and environmental health and gave rise to around 3,000 redundancies as well as wider supply chain impacts. The Official Receiver took on responsibility for the orderly wind down, safety and security of the site on top of his normal duties of releasing any value for creditors. A Government funded task force supported impacted workers, supply chain company diversification and private sector stimulus.

- 3.3. An independent review by Lord Heseltine was commissioned in Autumn 2015 and his report '[Tees Valley: Opportunity Unlimited](#)' was published in June 2016. His key recommendation for the future of the site development is in 4.6.10:

*“Recommendation. That the South Tees Development Corporation is established as quickly as possible, and that Government and local partners put the relevant resource in place in order to realise this goal. Also, that Government begins engagement with the Combined Authority on how and when ownership and management of the SSI site can be moved to the South Tees Development Corporation, including with relevant Her Majesty’s Treasury funding agreements, and the agreement of the Combined Authority.”*

- 3.4. A shadow Mayoral Development Corporation (MDC) was set up by the Government pending mayoral elections in May 2017. The Board was made up of a number of professionals with relevant experience and chaired by the Leader of Redcar and Cleveland Borough Council (R&C).
- 3.5. The first Tees Valley Mayor, Ben Houchen, was elected in May 2017. He formally proposed the creation of the MDC and STDC was established in August 2017. The Mayor established a new board, with himself as chair, largely taking on the arrangements put in place for the shadow board.
- 3.6. In parallel government formed the South Tees Site Company (STSC) as an ‘intermediate body’. Its role was to continue to manage the safety and security of the site, bringing the costs down to around £18m per year, by removing the most unsafe and dangerous structures.
- 3.7. The key initial priorities for STDC were to:
- Develop a masterplan for the site.
  - Secure ownership of the site.
  - Ensure sufficient funding to manage the safety and security of the site, and
  - develop the site potential to create new jobs.
- 3.8. Very little of the site was in public ownership. The ex-SSI holdings had a charge by three Thai banks, and most of the rest of the land was owned by Tata Steel. The preference was to secure land through negotiation and the Tata land was acquired for a payment of £12m. However, the Thai banks refused to agree the sale of their interests and a Compulsory Purchase Order (CPO) was considered necessary.
- 3.9. The CPO process was not without risk, and an option secured on 70 acres of Redcar Bulk Terminal (RBT) land by local developers Chris Musgrave and Martin Corney was used as leverage to remove objections to the CPO raised by the three Thai banks. Following a Public Inquiry the CPO was approved by the Public Inspector without modification in April 2020.
- 3.10. The creation of the 50/50 joint venture partnership between STDC and Musgrave and Corney (the JV Partners) was part of the CPO negotiations and was agreed by the STDC Board in February 2020, with the TVCA Cabinet delegating powers to STDC to enable them to complete the transaction in March 2020.
- 3.11. Government funding was limited to the safety and security of the site (keepsafe functions), the establishment of STDC and limited land regeneration. There were no funded plans in place to remove all the redundant assets or start the regeneration programme. TVCA

developed a business case for this, which was signed off by the Government (the Department for Business, Energy, and Industrial Strategy – BEIS) in July 2020.

- 3.12. The business case was based on removing the potential long-term liability by transferring the site and STSC to local control and ownership. It also proposed limited redevelopment on part of the site, with receipts from partial sales/leases funding future remediation over a 35-year time scale. It was expected that this would generate up to 20,000 new jobs by 2035. The business case was clear that the public sector funding would not be sufficient to complete the remediation of the site and that a private sector partner would be required, referencing the then recently established Joint Venture Partnership Teesworks Limited (TWL).
- 3.13. After the announcement by Government in March 2021 of the Teesside Freeport, including 2 tax sites within the STDC area, and following his re-election in May, the Mayor made clear his intention to accelerate development on the site to maximise the time limited tax incentives available. The proposal indicated that an injection of new private sector capital and transfer of risk from the public to the private sector would be required to achieve this. Consequently, the JV Partnership was renegotiated and in August 2021 the STDC Board agreed to a 90/10 split in favour of the JV Partners.
- 3.14. In March 2023 in response to expected legislation to enable public sector bodies to secure landfill tax grants for remediation schemes that would not otherwise be viable, STDC Board agreed a new operating model whereby STDC will undertake the work funded by prudential borrowing and subsequently be reimbursed by TWL. The legislation remains outstanding and as such, STDC hold the risk for any landfill tax costs not met through grant.

## 4. Review methodology and constraints

- 4.1. Through this report we set out the findings from our review. These cover:
  - The structure and culture of the relationships between TVCA, the constituent members (the 5 local authorities), STDC, the statutory officers and the JV partnership
  - The decision-making processes in respect of the initial JV, and subsequent amendments
  - The funds flow between TVCA, STDC and the JV, including some of the individual land transactions
  - Some specific allegations around procurement and recruitment
- 4.2. The Panel undertook a desktop review of information provided by TVCA and STDC before calling for written submissions and following up with face-to-face interviews where appropriate. The Panel understand the complexities involved in the project; however, our experience has been that securing the information in a way that could be easily navigated was challenging. Initially, the Panel were overwhelmed with documents presented in an unstructured way and lacking a cohesive narrative. Subsequently, responses were limited to the specifics of the question posed. This has caused drift and delay in the process and reduced our confidence that we have been given access to all relevant materials. We have, however, confirmed to the Mayor and TVCA/STDC that we have received answers to all our questions and in turn received assurances from them that everything asked for has been provided if available.



- 4.3. In the time available to the Panel, we have not been able to pursue all lines of evidence or examine all transactions. We therefore chose to look at a number of significant decisions that have shaped the current arrangements. These being:
- Arrangements for the CPO
  - Establishment of the JV 50/50
  - Change to JV 90/10
  - Operations, including scrap and site management
  - Land transactions – specifically 3 transactions GE, which subsequently became the SeAH transaction, South Bank Quay and NTZ
  - Governance and structures, including how public money is controlled and how cash/benefits flow between organisations
- 4.4. A number of issues have been raised by third parties which are outside the scope of our review. We have not investigated issues raised in respect of wildlife die off (previously covered by Defra), Teesside Airport, or health and safety. We have also excluded the dispute with PD ports as this is a matter currently with the courts and will be a public record once determined.
- 4.5. As the report was being concluded we were made aware by a third party<sup>2</sup> that STDC were in the process of establishing a new JV company - Steel River Energy Company - with the same JV Partners. We have not reviewed this further development, but the findings of this report will be pertinent to that process.
- 4.6. The Panel had no means to compel anyone to engage with the review and while we were not overwhelmed with responses to our requests for evidence, we were able to get sufficient depth and breadth of knowledge and experience to reach our conclusions. A list of individuals who submitted written evidence and/or attended interviews is attached at Appendix 2.
- 4.7. A former TVCA/STDC Monitoring Officer whose tenure covered September 2020 – December 2022 and who advised TVCA and STDC in respect of some significant decisions including the move to the JV 90/10 and TVCA oversight of STDC, was invited to interview but declined because they felt their professional duties barred them from participating in the review. TVCA confirmed to the Panel that they had informed the individual that they had no objection to their participating.
- 4.8. Through the work we have done, we have reviewed over 1400 documents and held some 45 interviews. Notwithstanding the constraints, we have sufficient evidence and consistency of views to form our conclusions as set out in the report.
- 4.9. We would like to thank everyone who has supported us in the review. It is hugely complex, and we have sought much information and looked at issues from a number of angles in order to understand them and triangulate our evidence. This has required patience on occasion, both for the Panel and those being engaged.

## 5. Financial Overview

- 5.1. Planned public sector investment in Teesworks up to the end of 2024/25 is in excess of £560m, including keepsafe obligations but excluding any additional spend linked to the

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<sup>2</sup> Evidence received 11/11/23

new operating model. This is funded as set out below, noting that TWL has obligations in respect of £113m of borrowing, linked to Quay profitability and throughput, and Business Rates income is anticipated to support the balance.

	<b>£m</b>	
Government/TVCA Grants	246	
Borrowing	257	Including £206m from TVCA as at 31.03.23
Commercial income	57	Scrap and repayments due from TWL
	<u><b>560</b></u>	

5.2. As of 31<sup>st</sup> July 2023 TWL had generated some £196m in income and retained £63m at bank against future liabilities. Of the £45m paid to STDC, £40m represents an advance on future dividends. TWL has future commitments to STDC in respect of tonnage fees, subject to profitability, estimated at £113m and potential site development agreements of £217m.

	<b>£m</b>	
<b>Income</b>	<u><b>197</b></u>	scrap, land deals and interest
<b>Expenditure</b>		
Tax and overheads	34	
Land transaction	10	TVCA SeAH land transaction
STDC	45	
JV Partners	45	
	<u><b>134</b></u>	
<b>Cash at Bank</b>	<u><b>63</b></u>	

5.3. The business model for the site is complex and fluid, evolving at pace. It was always assumed that private sector investment would be necessary. However the original financial model considered by TVCA for the CPO was based on a number of benefits aligned to the public sector such as borrowing rates, tax efficiencies and its covenant strength for possible income strips. This has fundamentally changed over time with the JV arrangements and subsequent amendments. These changes have not been reflected in the underpinning financial model, including the financial proposition in the BEIS business case. The Panel has sought to test how risk has transferred to the private sector through these arrangements and note STDC has a number of retained liabilities, as does TVCA. The Panel has been unable to quantify all risks but note they include:

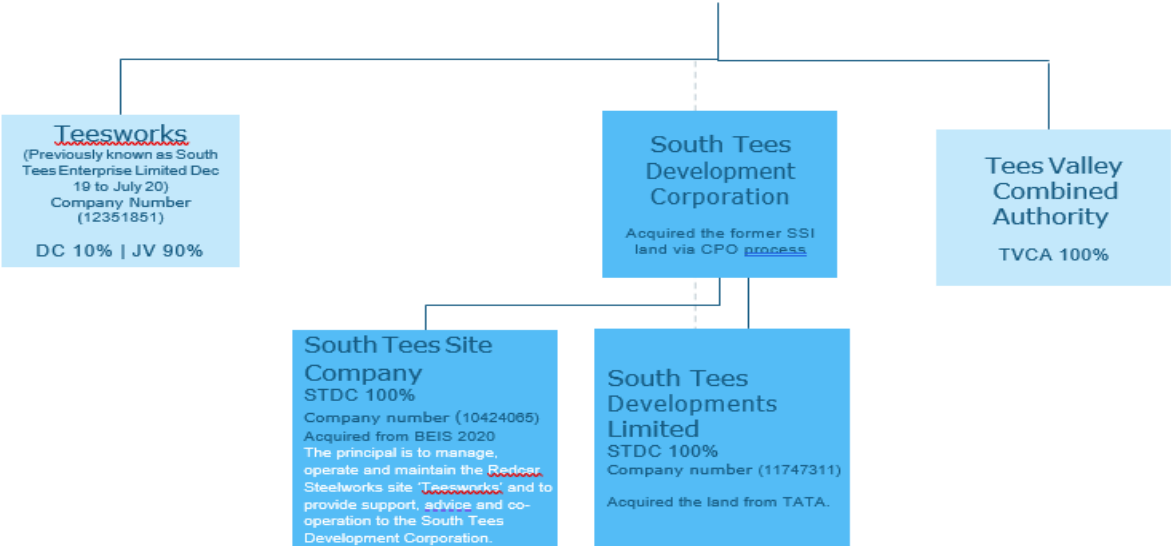
- Ongoing liabilities in respect of the site and land bank until such time as TWL exercises its options to drawdown and develop individual plots.
- Land fill tax risk on remediation work which is not recoverable from TWL.
- Borrower risk of £247m (of which £206m is long term borrowing by TVCA) in part if TWL does not meet its payments in respect of South Bank Quay. Further borrowings to be incurred post 31 March 2023.
- Infrastructure, park and ride and undevelopable sites.

- 5.4. TVCA and R&C will receive additional business rates income generated by the development which needs to be re invested for the benefit of the site. These business rates are assumed to be available to STDC to support the original business case and financial model and may be used to offset some of these liabilities, however it is unclear if this decision has been explicitly made by TVCA.
- 5.5. The whole Tees Valley area will also benefit from the jobs and growth that are already being delivered and the ongoing growth expected.
- 5.6. The financial arrangements in place are complex and are explored in more detail in chapter 19 of the report.

## 6. Company Structures

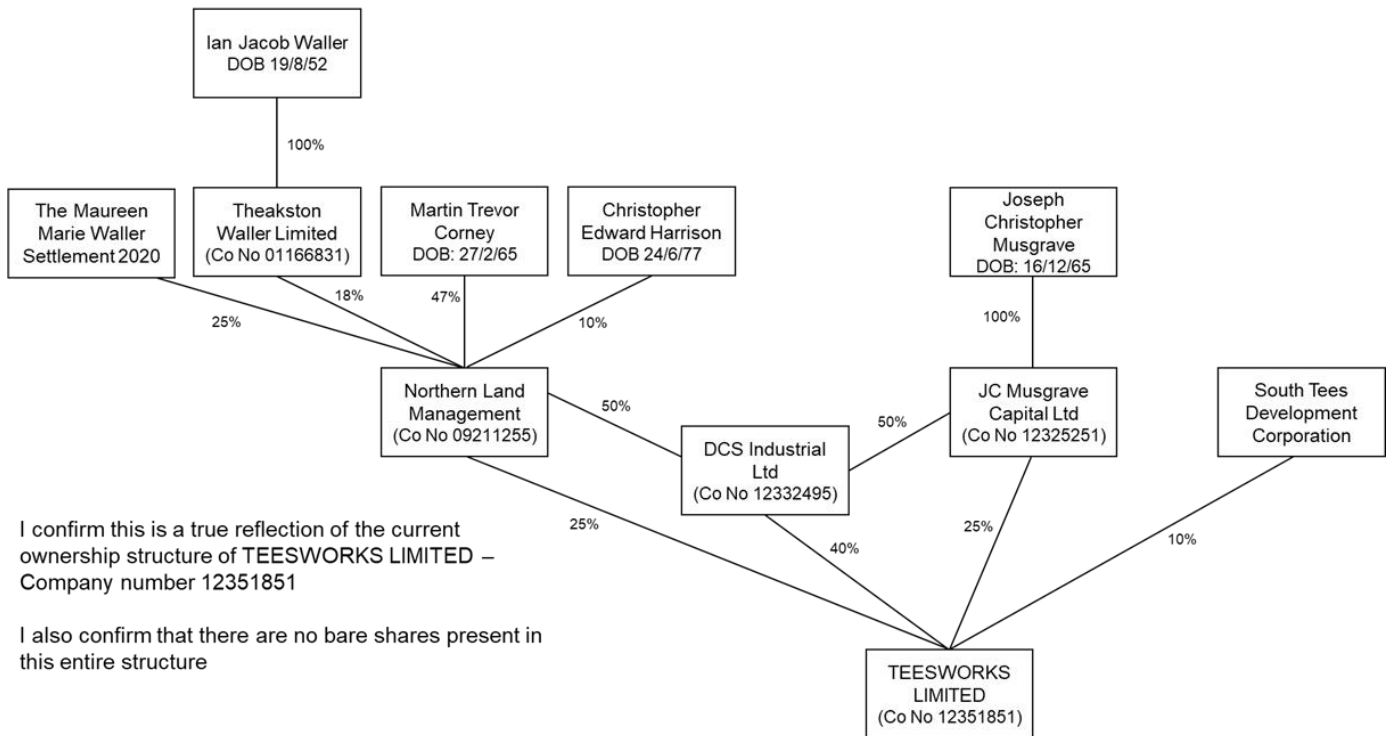
6.1. The Tees Valley Combined Authority Group is defined as set out in the structure below provided to the Panel by STDC/TVCA officers:

### Tees Valley Combined Authority Group



6.2. Behind Teesworks Limited (TWL) there is a further structure as provided by STDC/TVCA officers and sets out the entirety of the JV partnership. For the purposes of this report, the term JV partners is generally limited to Chris Musgrave and Martin Corney.

Teeswork Structure 26.11.2021



- 6.3. The group consists of three companies, TVCA; The Mayoral Development Corporation, STDC, which is responsible for the master plan, decontamination, and redevelopment of the former SSI site; and TWL the Joint Venture Partnership, set up by STDC "to enable the comprehensive regeneration of the South Tees Development Area"<sup>3</sup>.
- 6.4. STDC has two wholly owned companies. South Tees Developments Limited which holds the land secured through the CPO or negotiation and subject to the comprehensive regeneration, as well as South Tees Site Company which is responsible for discharging the site "keepsafe" requirements.
- 6.5. Following a decision of STDC Board on 10 February 2020 to create the 50/50 JV, subsequently amended to 90/10 in August 2021, TWL was recognised in July 2020 through amendments to the company formally known as South Teesworks Enterprise Limited (STEL or STE), incorporated and owned by the JV Partners in December 2019.
- 6.6. As an MDC, STDC brings the opportunity to secure private sector management, give confidence to investors and drive delivery through a commercial approach to the complex project that is the remediation and redevelopment of Teesworks. It has the added benefits of working outside some of the local government statutory framework, enabling a different appetite for risk and reward.
- 6.7. Notwithstanding the relative freedoms afforded to STDC as a development corporation, it is still a public authority and has the same audit requirements and value for money tests as a local authority. This requires a higher level of openness and transparency than may be present in a private sector company. Governance therefore needs to be pitched at an

<sup>3</sup> Report to TVCA Cabinet 13 March 2020

appropriate level to not compromise the pace of delivery or commercial consideration, whilst ensuring fundamental strategic decisions that impact on the risk and liabilities held by the public sector are balanced with the benefits secured. Decisions should also be subject to appropriate scrutiny.

6.8. In chapters 12 to 18 of the report we explore in some detail the legal structures that define the relationship between STDC and TVCA set alongside how they operate in practice. The legislation is a modification of the Localism Act 2011 and the mechanism by which it is applied to TVCA and the Mayor may have resulted in some confusion as to its interpretation.

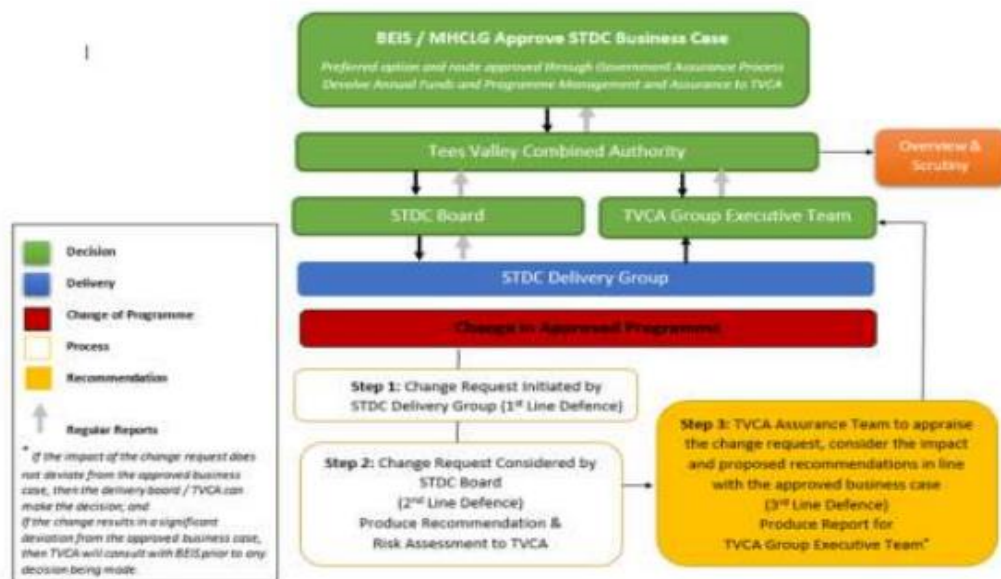
6.9. The legislation is clear however in its intent for TVCA to have an oversight/supervising function of STDC either directly or through the Mayor. It provides for TVCA to issue directions to STDC and sets out reserved matters requiring a Mayoral decision being:

- the disposal of land for less than best consideration,
- the formation of businesses and subsidiaries and the financing of them,
- the provision of financial assistance.

Where oversight is exercised by the Mayor this is complicated by the fact that he is also Chair of STDC and therefore this is not an independent function.

6.10. The final business case signed off by Government in July 2020 reinforces the need for TVCA oversight of STDC stating that "TVCA will effectively play the role of Government...." and latterly "The funding will flow from Government to TVCA as the lead accountable body for this programme." The business case also sets out the proposed assurance framework on decision making as follows:

**Figure 6.2: Extract from STDC Assurance Framework on Decision Making**



6.11. In practice, the current control exercised by TVCA over STDC is limited to a direction which requires the STDC Board to identify and refer "decisions or issues which results or may result in a significant risk of a financial liability, a statutory liability or an environmental or criminal liability"<sup>4</sup> for approval by TVCA Cabinet prior to implementation.

<sup>4</sup> TVCA constitution December 2022

- 6.12. The Panel have seen no evidence that any of the monitoring officers have advised TVCA that they can review their delegations and directions to STDC at any time. Nor have they reminded TVCA of their duty of oversight of STDC. Furthermore, a former monitoring officer advised TVCA Overview and Scrutiny Committee on 15<sup>th</sup> September 2021 that they had no jurisdiction to review STDC decisions.
- 6.13. The Group Executive have adopted a very narrow interpretation of the definition of a referral decision, which alongside the very clear steers from the former monitoring officer, means that TVCA have very little oversight of the actions and decisions of STDC. It is the view of the Panel that STDC should have referred more decisions to TVCA Cabinet and that TVCA Overview and Scrutiny Committee had a legitimate right to scrutinise STDC decisions. This is in relation to a relatively small number of significant decisions that have been taken which have fundamentally changed the delivery model proposed for STDC as signed off by TVCA. These referral decisions would have aligned with the supervision duty of TVCA and addressed the value for money test. STDC executive do not agree with the Panel's view.
- 6.14. While there is clarity in the legislation about TVCA duty of oversight of STDC, albeit directly or through the Mayor, there remains an issue of stranded (net) liabilities within STDC on which the legislation is silent. The Teesworks site is highly complex and, for some plots, there is no obvious viable commercial solution. It is accepted that this may change over time; however, the current construct of the JV, which allows the JV partners to choose which plots they develop and when, leaves a plausible scenario whereby STDC is left with stranded liabilities in addition to a number of ongoing site liabilities and debt servicing costs. While the STDC executive assure that these liabilities will only crystallise when the land is developed, the body or bodies that ultimately sit behind those liabilities would reasonably expect some influence and assurance on this point. In any case, it is the Panel's view that in the event of STDC being unable to service loans made by TVCA the debt servicing costs will automatically fall back on TVCA and be a charge on its revenues. In the 25 years during which TVCA will receive retained business rates it has a source of income to offset liabilities although STDC may also be dependent on some of the same monies. After 2046, TVCA and STDC will not have access to retained business rates.

## 7. Statutory Officers and the Scheme of Delegation

- 7.1. As public bodies, both TVCA and STDC are required to appoint three statutory officers. Since September 2020, these statutory officers have fulfilled their functions across the group of companies. For clarity, in this regard, the "group" does not include TWL which has its own arrangements. The three posts and postholders and the dates they took up their role jointly at STDCTVCA is set out below. Both the CEO and Acting Monitoring Officer were internal promotions so had longer experience with the organisations:
- Chief Executive (Head of Paid Service), Julie Gilhespie - appointed August 2019
  - Director of Finance and Resources (s 73 Finance Officer), Gary MacDonald - appointed September 2019
  - Acting Group Chief Legal Officer and Monitoring Officer, Emma Simson - appointed December 2022
- 7.2. In simple terms, the three officers between them have responsibility for ensuring the organisations are properly staffed to deliver their objectives and ambitions, that legal budgets are set and value for money obtained, that statutory obligations are fulfilled, and that appropriate codes of conduct are followed.

- 7.3. The group arrangement has the benefits of reducing costs and creates a clear line of sight across the group. However, we found evidence that it can lead to confusion outside of formal reporting arrangements whereby it is not always clear which body the officers are representing. Furthermore, conflicts of interest are not routinely recorded or articulated, particularly in the case of the Chief Executive and her role as a Director of TWL.
- 7.4. STDC Board members and constituent authority chief executives were relatively consistent in their confidence in the Group Chief Executive and the executive team who they felt were engaging, open and available. There is evidence however that the creation of group statutory officers is blurring boundaries and there is an opportunity to reconsider this practice for those statutory officer roles that are not in law required to be shared across TVCA and STDC. In any case consideration should be given to introducing strict protocols governing the conduct of these officers and bringing clarity to how they discharge their functions within, between and externally to both organisations.
- 7.5. The role and responsibilities of officers is determined by the scheme of delegation and financial regulations. These documents are designed to enable delivery by placing decision making at the right point in the organisation empowering officers to deliver at pace whilst giving senior executive, Board or political cover for those decisions that are significant, novel, or contentious.
- 7.6. The scheme of delegation is permissive. The Group Chief Executive has a very broad delegation<sup>5</sup>

*"To take all action which is necessary or required in relation to the exercise of any of the Combined Authority's functions or the functions of the Mayor....."*
- 7.7. The same delegation applies to her role within STDC and in both cases she can further delegate to other officers.
- 7.8. The scheme of delegation also includes the financial limits within which officers can operate. These appear, however, to be limited to procurement rules. Other than having regard to the budget there appears to be no constraint on legal and contractual matters that officers can determine.
- 7.9. Clearly it is important that officers are empowered to take decisions and deliver at pace. However, given the lack of oversight enacted by TVCA, the permissive scheme of delegation further dilutes the potential transparency of decision making and the protections afforded to officers.

## 8. Constituent Members

- 8.1. The 5 local authorities who make up the constituent members of TVCA are critically aware of the importance of the redevelopment opportunities of the site and the "halo effect" of the development. Jobs and income streams through increased tax base to support local services are welcomed and there are good examples of how the development, alongside the broader work within the TVCA ambit, is encouraging this. Local authority leaders clearly want these benefits to come forward as quickly as possible and at the same time

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<sup>5</sup> TVCA constitution 2023 v11



ensure the local impact is maximised, particularly to secure permanent, local jobs for local people.

- 8.2. The Leader of each constituent authority sits on TVCA Cabinet and will lead a portfolio on behalf of the Mayor. Furthermore, the Leader of R&C, and until recently Middlesborough, also sit on the STDC Board. Information is shared by way of formal committee structures and the aligned reporting arrangements as set out in the constitution. There are formal and informal briefing arrangements led by TVCA executive team. It is understood that Leaders and Chief Executives of the constituent authorities attend these meetings. We also understand that there are informal political meetings immediately ahead of Cabinet without officers present.
- 8.3. Between the constituent authorities, there is a mechanism to drive and shape the strategic and operational agenda for TVCA. This consists of monthly "management group" meetings of the 5 Development Directors together with TVCA, and the JV partners to discuss strategic development and regeneration including any recommendations for TVCA.
- 8.4. The 5 Chief Executives meet weekly for a telephone catch up and hold formal meetings monthly. The Chief Executive of TVCA/STDC attends these meetings and briefs Chief Executives on issues.
- 8.5. Evidence from the constituent authorities is that their Chief Executives, Finance Directors, and monitoring officers hold the view that they have a "firewall"<sup>6</sup> between them and STDC/TVCA. Even those that acknowledge they may ultimately bear any liabilities which fall back on TVCA believe that the risks have been "covered off"<sup>7</sup>. This sentiment was echoed by the Leaders that we spoke to.
- 8.6. In the absence of any real or perceived liabilities transferring from STDC to TVCA and TVCA to the constituent members, the Leaders and statutory officers within the constituent authorities appear to have a limited understanding of what is going on within STDC and little curiosity to explore and understand the decisions being made. Given the strategic opportunities for the TVCA area, the constituent authorities should take an active interest in shaping the agenda and decisions in the best interests of the TVCA area and its residents. They should approach this with an independent mind, seeking advice from their own officers, and offering a constructive check and challenge into the system. In conversation between the Panel and Authorities' Chief Finance Officers they were unaware of both the long-term loans advanced by TVCA to STDC and the detail of specific deals that involve TVCA.

## 9. Decisions and the STDC Board

- 9.1. A fundamental part of the governance and assurance frameworks is the advice given to decision makers. These are captured in the published reports and ideally should be available 5 clear working days ahead of the decision. We found the quality of reporting to be variable and in some instances, reports were late, sometimes published on the day, and decisions rushed. A clear example of this would be the decision to proceed with the CPO and form the JV 50/50 partnership. We also found evidence of reports containing

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<sup>6</sup> Interviews 24/08/23

<sup>7</sup> Interviews 23/08/23



incorrect and incomplete information, for example in respect of the landfill tax, and the SeAH income strip.

- 9.2. While the Panel accepts there may on occasion be good reason for lateness, the impact when these circumstances arise, is to impede a healthy check and challenge in the system as follows:
- The Board do not have access to good quality, considered advice.
  - The Board, who bring expertise and knowledge to the table, are unable to provide the Mayor with advice and guidance and help him to shape his decisions in the best interests of the residents of Tees Valley. Nor are they able to provide sufficient challenge and due diligence.
  - Local Authority Leaders who sit on the Board are unable to secure advice from their professional officers and discuss with them the strategic and local implications of proposals or provide a different perspective on the benefit and risk exposure.
  - The public are unable to see a clear rationale for the decisions taken.
- 9.3. STDC Board members, which include the Leader of R&C and until recently the Leader of Middlesborough, bring expertise and knowledge to the table. They help to shape strategy, provide constructive challenge to the executive, and support the Mayor in achieving his ambitions. Over time, the make up the board has reduced in number and moved away from industry experts to more local interest reflecting the shift from master planning and CPO preparations into delivery. It is entirely appropriate to change the Board to reflect the varying cycles within the Teesworks project and this intention was clearly set out in the final business case agreed by BEIS in June 2020.
- 9.4. A commercial Board is expected to support the Mayor and executive in their decision making including acting as a critical friend. This includes pertinent due diligence in terms of opportunity and risk of individual land transactions, as well as compatibility with strategy and delivery of outcomes. It is their responsibility to ensure they have sufficient and accurate advice and information to make the decisions being asked of the Board in support of the Mayor and STDC's objectives.
- 9.5. As STDC is a public authority, the Board, including associate members, also has a responsibility to ensure it is giving proper oversight to the management of the public assets and investments. They need to understand the risk and opportunities they are taking on behalf of taxpayers and how public resources are expected to flow through the system as a result of the decisions they take. The nature of reports to the Board are such that they do not always make this clear and while it may not have changed the decisions made, this is a key requirement to satisfy the value for money obligation.
- 9.6. As set out previously, the scheme of delegation may be an impediment to the Board being able to fulfil their functions and undertake appropriate due diligence. Examples of this include the two supplemental deeds to the JV 50/50 agreed under delegations by the executive in June and July 2020 which enabled TWL to remove minerals aggregates etc. for their "own benefit" and agreed the £15m compensation to SSI for the CPO.
- 9.7. In practice, given the degree of delegation and the reporting arrangements, information and oversight of the project sits with a small number of individuals, primarily the statutory officers and the Mayor. STDC Board members, TVCA Cabinet, both Audit committees as well as TVCA Scrutiny committee, together with the constituent authorities, are heavily reliant on those individuals to provide them with a full and accurate picture to enable decisions to be taken in the best interests of the public. This tight control of information

enhances the risk of misinformation and when aligned to late reports, a lack of detail and overt reliance on verbal reporting, this can undermine appropriate decision making.

- 9.8. Feedback from STDC Board members on the level of detail they receive ahead of decision making is understandably mixed; some believing it to be sufficient, others taking a contrary view. It is also clear to the Panel that for those Board members interviewed much of the information we shared around the sequence of the JV decisions and some land transactions was obviously new to them. In all cases in terms of the key decisions taken by the STDC Board, it is important to note that they were agreed unanimously; although some Board Members did caveat that they were sometimes rushed and they didn't have sufficient information or understanding.
- 9.9. The Panel is also aware<sup>8</sup>, that representatives of the JV Partners participate in STDC governance meetings on occasion to ensure that work is "joined up and effectively and efficiently delivered". We understand from Board member interviews<sup>9</sup> that this includes confidential STDC Board discussions. Of course partnership working requires the JV Partners or their representatives to be involved appropriately in operational discussions. The Panel believes it is wholly inappropriate for the JV Partners or their representatives to be included in any confidential Board discussions. In all meetings it is important that conflicts of interest are managed, declared and observed.
- 9.10. The Panel are united in their view that we have not seen sufficient evidence that decision makers were properly informed. We fully appreciate that this is a fast moving situation underpinned by many complex arrangements, but in terms of managing public assets all information around key decisions should be fully documented, including advice from internal professionals and external experts as appropriate. Failure to do this could compromise the decisions and where an expert Board has been convened, as in the case of STDC, this prevents them from providing good advice and guidance to the Mayor.

## 10. Joint Venture Partnership

- 10.1. The 50/50 JV partnership was agreed by STDC Board on 10 February 2020 following a private agenda item "Compulsory Purchase Order (CPO) update". At this juncture, the only substantive objection to the CPO, which would enable the outstanding plots of land to be acquired, was from SSI/the Thai Banks. The objection was deemed by external advisers to be a credible risk to the CPO as there was development potential. The 50/50 JV was critical to being able to reach agreement with the Thai Banks to remove their objections.
- 10.2. On 29<sup>th</sup> November 2019, the JV partners acquired an option on 70 acres of Redcar Bulk Terminal (RBT) land. The JV partners<sup>10</sup> advise that they approached the Managing Director of RBT to secure an option on the understanding RBT needed cash for the business which was "on the brink of collapse". Ultimately the sale of the option to the JV partners was a decision which British Steel signed off.
- 10.3. Having acquired the option, the JV partners were able to lever their position both with SSI and STDC, ultimately using this to secure SSI's agreement to withdraw their objection to the CPO in exchange for the 50/50 JV with STDC. These negotiations occurred between

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<sup>8</sup> evidence submitted by TVCA/STDC executive on 19 June 2023

<sup>9</sup> 11 & 12 September 2023

<sup>10</sup> Interview 03/10/23

December 2019 and February 2020. In the circumstances, removing the objection to the CPO was a clear rationale for STDC to enter into the JV agreement which can be summarised as follows:

- a 30-year option on all STDC owned land to the JV to draw down once remediated by STDC.
- JV to develop and market the site once remediated.
- a 50/50 share in the uplift on market value between the JV partners and STDC, and
- a deadlock company requiring shareholder approval on all material asset decisions.

10.4. The Group Chief Executive was STDC's nominated Director to the Board of the JV Company representing the shareholder. Directors have a legal duty to promote good governance of company affairs and act in the company's best interest.

10.5. The Panel understand that one of the risks explored by the Board in entering this agreement was the fact that there was no obligation on the JV partners to develop the land. The executive's advice was that this was mitigated by the commercial opportunity offered to the JV to proceed. In reality, under the JV, the JV partners bear no risk or liability if the site is not progressed, whilst STDC have a stated intent to secure the regeneration of the area and a local expectation that this will be delivered as soon as possible. Consequently, when the Freeport opportunity arose and there was a desire on behalf of the Mayor to accelerate delivery, there was very little leverage available to STDC in the subsequent negotiation. The land was already effectively under the control of the JV by virtue of the option and the deadlock arrangements which meant development could only progress with the partners' consent.

10.6. The Panel asked the JV Partners about the basis of the 50/50 JV negotiated<sup>8</sup> and reference was made to the 50/50 partnership at the airport. The Panel asked the group Chief Executive for sight of the process used to select and agree the airport partners and any due diligence undertaken. We were given to understand<sup>11</sup> that TVCA were not involved in this process and did not rely on it to develop the Teesworks JV.

10.7. However, the Panel are aware through an external stakeholder<sup>12</sup>, of a private agenda item "**Tees Valley International Airport Southside Business Park**" considered by TVCA Cabinet at its meeting of 20 December 2019 approving a commercial loan of £23.6m to Teesside International Airport and endorsing their plan to enter into a JV which involved the same JV Partners.

10.8. The 90/10 JV partnership was agreed by the STDC Board on 18 August 2021 following a private agenda item ""**Proposals for the delivery of site in light of Freeport Objectives**". This was a lengthy report setting out the implications and opportunities of Freeport status, the success of the existing JV arrangements, and proposals to amend the JV arrangements. The proposal was to:

*"transfer significant risk and rewards to incentivise the required pace of delivery to maximise the Freeport tax and customs benefits within a five year time period."*

And advised that

*"STDC has therefore negotiated an increase of 40% share capital in Teesworks to the private sector partners in exchange for Teesworks taking on the future development of*

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<sup>11</sup> Evidence provided by chief executive 6 October 2023

<sup>12</sup> Evidence received 17/10/23

*the site together with the estimated c£172m of net future liabilities in preparing the site for tenants."*

- 10.9. The report delegated to the group Chief Executive and Director of Finance and Resources, in consultation with the Mayor, the authority to execute the decision in line with the independent reports and advice.
- 10.10. The negotiation for the 90/10 JV was always going to be constrained by virtue of the existing arrangements where the balance of power sat with the JV partners. The potential to apply for Freeport status was public knowledge in January 2020, STDC submitted its bid in February 2021 and was advised of success in March 2021. It is unclear how these constraints were considered before applying for Freeport status which received formal designation by Government on 31<sup>st</sup> October 2021.
- 10.11. The JV agreement has evolved overtime with successive "supplemental deeds". The form of decision making, and the financial implications are set out later in the report. However, the incremental approach means that the impact on the obligations of each party is less clear, and these could be rationalised into a single agreement to bring clarity to the situation and explore any opportunity to renegotiate the deal.
- 10.12. The JV partners are clearly astute, commercial businessmen. They have a clear business model whereby they support distressed businesses and do not accept liabilities until they are satisfied they can hedge investment against secure income streams. They have put themselves in a position where they were able to negotiate favourable terms and progress that through the ongoing developments. While the Panel would argue that any commercial venture with the public sector should reflect the Nolan principles in terms of openness and transparency as well as value for money and public returns, essentially it is the responsibility of the public authority - STDC and TVCA - to ensure the appropriate checks and balances are in place.
- 10.13. At this juncture, the JV partners have put no direct cash into the project and have received nearly £45m in dividends and payments, and hold £63m of cash from the SeAH income strip in TWL accounts. They have contributed their intellectual capacity and human resource from their own companies at no cost to the JV and there is little doubt they have bought pace to delivery that would not have been achievable by STDC alone. The JV partners see no prospect of renegotiating a deal that rebalances their relative advantage over STDC.
- 10.14. To the best of our knowledge, there is no formal partnership agreement that sets out the obligations of the JV partners, although it is clear that the JV Partners are heavily influential within the operations of the Teesworks site. Martin Corney has an office on site and describes<sup>13</sup> that he "practically lives" there. The STDC executive describe the arrangements as follows<sup>14</sup>

*"The role of Teesworks in the day-to-day STDC operational governance is through the STDC Delivery Group which includes senior members of all workstreams [both] public and private sectors".*

- 10.15. This influence has clearly extended to recommendations in respect of a number of appointments and decisions that STDC made and which are set out later in this report

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<sup>13</sup> Interview 03/10/23

<sup>14</sup> Evidence submitted 19/06/23

under chapter 21. Whilst using known contacts may be acceptable practice within parts of the private sector, and can have its role within the public sector, for short term resourcing, this does not accord with the principles of openness and transparency. In the circumstances this represents poor judgement on behalf of the STDC executive team.

- 10.16. With such close integration and engagement within STDC operations the executive has considered operational risks including health and safety should there be an issue on site. They are comfortable that they are not exposed to any tenant, contractor or sub-contractor taking instructions from the JV Partners that may latterly give rise to STDC liabilities. The Panel strongly recommend they keep this situation under close review.
- 10.17. The transactions and decision making in respect of the JV arrangements are covered in more detail later in this report.

## 11. Information and Transparency

- 11.1. Consistently throughout the review the Panel received concerns about openness and transparency. This extended to external stakeholders and FOI requests. The Panel themselves experienced some of the challenges in terms of securing the necessary information in an accessible way that contextualised the story of Teesworks, much of which is a positive story.
- 11.2. The need for commercial confidentiality is a valid reason for non-disclosure however that must be balanced with the public interest test. The limited access to information is a key factor in driving the concerns about the decision making process.
- 11.3. Internal and external audit also have a role to play in providing assurance and challenge into the system including to taxpayers. The Panel noted the largely positive assurances provided by internal audit. We also noted that external audit had not signed off the accounts in respect of value for money, pending this report. It is the Panel's view that internal audit could be more alert to assessing the risk factors held within STDC and TVCA. In line with their responsibilities outlined in the Code of Audit Practice, External Audit will need to take account of the Panel's findings when reaching a view on each bodies' value for money arrangements . The Panel note that following a procurement exercise the internal audit provider has recently changed.

## 12. Decision making and governance

- 12.1. This section of the review is intended to focus on the theme of 'Governance' and in particular the manner in which the project was and is being managed, how decisions were made and how the interests of the taxpayer were protected. The Teesworks project has to date been funded from the public purse and the organisations at the heart of the project are properly characterised as exercising functions of a public nature, albeit that the ultimate objective is the enablement of private enterprise to develop new forms of industry and wealth creation for this strategically important part of the UK's industrial landscape.
- 12.2. There are several decision making entities associated with the Teesworks project and the primary focus of this review has been on the following:
  - The Mayor of Teesside
  - Tees Valley Combined Authority (TVCA) (Combined Authority)

- South Tees Development Corporation (STDC) (Mayoral Development Corporation)
- Teeswork Ltd. (TWL) a company limited by shares and owned by public and private entities.

## **The Mayor and Combined Authority**

12.3. TVCA and the Office of Teesside Mayor were established in 2016 as a result of a devolution deal and the first mayoral election was held in May 2017. The Mayor is the Chair of TVCA Cabinet and the Mayor's role is described in the TVCA Constitution<sup>15</sup> as:

*“....The Constitution therefore provides for the Mayor's role to be embedded in the Combined Authority's collective decision-making arrangements. The Mayor chairs a Cabinet made up of the Leaders of the five authorities, who together form the Combined Authority's collective decision-making forum.”*

## **The Teesworks Project**

- 12.4. The core aims of the Teesworks project are set out in 'Tees Valley Unlimited', the report authored by Lord Heseltine in 2016 which was the catalyst for the establishment of TVCA and the regeneration of the former Redcar Steelworks site and which was subsequently refined into a master plan for the Teesworks Project.
- 12.5. The project evolved over a number of years from 2017 through to the present day and during that time its structure evolved with the emergence of a Mayoral Development Corporation, STDC, designed to oversee the Teesworks project and subsequently the establishment of a public/private Joint Venture through TWL.
- 12.6. A key aspect of the review is the role played by STDC in the Compulsory Purchase of the land and the subsequent deployment of public money to remediate parts of the Teesworks site to enable its development into a major hub for modern industries such as wind power. Key events during the period from late 2019 to the present day include the grant of the CPO on the relevant land, the establishment of TWL between STDC and the JV Partners, the evolution of TWL and the associated underlying financial model.
- 12.7. The project is described as the largest regeneration project undertaken in the UK covering thousands of acres of land. The project is complex and the JV between the public and private sectors brings the inevitable cultural tensions between the desire to move at pace unencumbered by bureaucracy as opposed to the expectations of accountability and transparency due to the fact that it is the recipient of considerable amounts of public funding.
- 12.8. The project under consideration in this review is a hugely complex one. This is magnified by the dynamic nature of the evolving business relationship between STDC and the JV Partners which has repeatedly and significantly changed during the period from late 2019 through the present day. The detailed arrangements are captured in a range of legal documents and involving a number of legal entities. The arrangements were described by one of the lawyers involved as the most complex they'd seen in this type of arrangement. Appendix 3 contains a schedule of legal documents which were considered during the review, but it isn't an exhaustive list.

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<sup>15</sup> TVCA Constitution – P.3

- 12.9. It is noted that much of the detail was and continues to be treated as confidential on the basis of commercial sensitivity, and the absence of information appears to have fuelled the media speculation and generated adverse public comment.
- 12.10. Given the complexity of the project and the number of legal agreements etc, the absence of a detailed Joint Venture agreement, which clearly sets out the obligations of the parties to the JV, is significant and has given rise to some ambiguity from the external perspective as to the precise roles and responsibilities of TCVA, STDC and the JV Partners against which performance can be measured aligned to the rewards being provided.
- 12.11. The Localism Act 2011 provides a range of tools for TVCA to exercise oversight, influence, and control over STDC. TVCA and STDC also have in place comprehensive Constitutions which set out the governance requirements and processes. These are augmented by the Accountability Framework. On the face of it the combined effect of these controls would, if diligently followed, ensure appropriate accountability, scrutiny, and transparency.
- 12.12. However, discussions between the Panel members and TVCA/STDC officials revealed differing viewpoints on the interpretation of the provisions regarding the threshold at which the referral of decisions for TVCA approval was required. There were also differences of opinion regarding aspects of the legislative safeguards such as the extent of control/scrutiny TVCA was able to exert over STDC.
- 12.13. There was a lack of clarity as to whether and to what extent TVCA and the constituent local authorities were liable for the activities of the MDC which is the vehicle via which the Mayor is orchestrating the Teesworks project. A key question was whether, in the event that financial or other liabilities arose from STDC, the constituent authorities or ultimately HM Government would meet such losses. In any event TVCA has direct exposure to STDC and TWL through long term loans and SeAH income strip. At the STDC audit and governance committee in August 2022 the committee discussed the importance of the Going Concern assumption. The minute of the discussion incorrectly records that TVCA had provided a letter of support to STDC guaranteeing continued funding, in fact the letter related to STSC. It is not clear whether the Committee understood the accurate position regarding the Going Concern assumption.
- 12.14. In view of the mechanisms available for TVCA and the Mayor to exercise oversight and given the numerous significant decisions made during the years from 2020 to the present day, the almost complete absence of any referral decisions or evidence of any consents being sought is noteworthy. The underlying legislation is convoluted, and it may have been the case that there was a lack of awareness amongst TVCA members of the levers available to them and the range of STDC decisions which were subject to the requirement for TVCA/Mayoral consent.
- 12.15. As regards the quality and content of reports which were submitted to TCVA and to some extent STDC Board, the Panel noted the paucity of detail in some reports, the absence of the source of legal and other professional advice and the absence of full and clear explanations of the consequences arising from decisions. In addition, some of the more significant decisions were taken at short notice leaving little time for decision makers to fully digest matters. Although it isn't possible to conclude that any decisions would have been decided differently, it is appropriate to recognise the risk and highlight these areas of weak governance for future improvement.

- 12.16. The Panel members concluded that the level and nature of the transparency and accountability associated with this project hasn't always met the standard which they would consider appropriate for a publicly funded project of this scale and nature.

## **Relationship of STDC to TVCA and Role of Monitoring Officer**

- 12.17. The Panel members and STDC Senior Officers also differed regarding the nature of the requirement, set out in the Tees Valley Combined Authority (Functions) Order 2017<sup>16</sup>, that the TVCA Monitoring Officer should also fulfil the role of Monitoring Officer for STDC as if it were a committee of TVCA.
- 12.18. Whilst it is clear that STDC isn't a 'committee' of TVCA in the legal sense and is a separate legal entity, the provision requires the type of legal scrutiny and oversight in respect of STDC as would be the case in respect of TVCA or one of its committees. When combined with the other measures of control and influence available to the TVCA it is clearly not intended to be an entirely autonomous entity. Advice commissioned by the Chief Executive of STDC confirms this as follows<sup>17</sup>:

*"24. In summary a Mayoral development corporation is an independent legal body; it is not a committee of the Combined Authority. As a public authority it has a relationship with the Combined Authority that created it and exercises its functions within its aims and objects. Like other public bodies a corporation is reviewed and monitored by the Combined Authority and its monitoring officers. Despite having broad powers certain decisions are subject to consent (in effect supervision) by the Combined Authority. The corporation must also have regard to any guidance issued by the Combined Authority and must comply with any directions made by it."*

- 12.19. It was a matter of some concern that one of the former Monitoring Officers described their involvement as 'peripheral'. According to the legislation and TVCA/STDC constitutions the Monitoring Officer and other Statutory Officers had a key role to play in advising both TVCA and STDC members of the relevant legal and governance provisions.

## **Decision Makers and Potential for Conflict of Interest**

- 12.20. On the basis of interviews with key persons involved, including TVCA Officers and members of the STDC Board, the Panel gained the impression that there was a relatively small group of people who had full accessibility/awareness of information regarding the key business decisions being made in relation to the project. The core group of officers and the Mayor held senior appointments in a number of relevant corporate bodies which in some cases gave rise to potential conflicts of interest, in particular those between TVCA, The Office of Mayor, STDC/STDL and TWL. The restructuring of the joint venture, with the effect of dramatically reducing the STDC ownership and role, increased the potential for conflicts because the STDC Chief Executive remained a Director of TWL, (and shareholder representative for STDC) and continued to participate in decision making. When questioned about potential conflicts, the Chief Executive didn't acknowledge the potential and confirmed that they hadn't registered any interests in the accordance with the TVCA/STDC officer conflicts requirements.

## **Teesworks Ltd (TWL) – Governance**

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<sup>16</sup> Tees Valley Combined Authority (Functions) Order 2017 art. 6(7)

<sup>17</sup> Leo Charalambides 9<sup>th</sup> October 2023.



12.21. TWL, originally named South Tees Enterprise (STEL), is the company which was used as the vehicle for the 50/50 Joint Venture between STDC and the JV Partners and which continued as the 90/10 JV following changes in share ownership in 2021. It was acknowledged by senior TVCA officers that there is limited formal governance and decision making within TWL, which given the large sums of money arising from public investment which flow through and are controlled by TWL, much of which is necessary to meet obligations to STDC, is a concern. The Chief Executive for TVCA and STDC, has been a director of TWL since 2020. The interests of TWL haven't always been aligned with those of either TVCA or STDC, particularly after the re-distribution of share ownership and this gives rise to potential/perceived conflicts of interest which could be avoided by another TVCA, or an officer from a constituent authority, undertaking the TWL director role in place of the chief executive. The Panel was only made aware of two records of TWL meetings that were formal in the sense of being minuted.

## **Transparency vs Confidentiality**

12.22. The key officers and the Mayor hold the view that much of the information relating to the Teesworks project is commercially sensitive and warrants a relatively high level of confidentiality. Significant amounts of information remain confidential. Freedom of Information requests have regularly been refused by TVCA on the basis of commercial confidentiality and in some cases with weak public interest justification. FoI requests in respect of information concerning TWL have been refused on the basis that it is not wholly owned by a public authority. It is understood that recent changes to the FoI processes have been implemented by TVCA which may have brought the process into compliance but the Panel have not had the opportunity to assess that.

12.23. Members of TVCA Overview & Scrutiny Committee expressed frustration at the lack of information provided which they felt undermined their ability to scrutinise the activity of STDC and TWL. The Panel feel that this information vacuum serves to encourage the speculation and may create a distraction from the positive outcomes arising from the project. Members of the TVCA Audit Committee expressed similar concerns.

12.24. In the context of public private joint ventures, finding the right balance between the prevailing cultural norms relating to matters such as transparency, public accountability and governance is often a challenge and the Teesworks project isn't immune from that.

## **Significant Decisions**

12.25. The review has considered a large amount of information covering the period from the inception of TVCA in 2017 up to the present day. In reviewing the decision-making process, the following decision points have been of primary focus for the Panel because they have had a particular level of importance or impact upon the project:

- The decision of the Mayor and STDC in Feb 2020 to enter into a public/private 50/50 JV partnership between STDC and the JV Partners, which included granting options to the JV Partners over land comprising the entire Teeswork site as held by STDC/STDL.
- The Decision of the Mayor and STDC in March 2020 to agree a settlement with SSI and the Thai Banks regarding land subject to the CPO process whereby they would withdraw objections to the CPO in return for some of the CPO land being transferred and demolition works provided by TVCA/STDC.

- The subsequent decision of the Mayor/STDC officials in June 2020 to withdraw from the first settlement and enter a second settlement agreement (SA2) with the Thai banks regarding the CPO land which involved incurring costs of £16m for land purchase.
- The decision of the Mayor and STDC in Aug 2021 to alter the ownership and control of the JV Co from 50/50 to 90/10 in favour of the JV Partners and associated changes including amendment of the land options with the effect of reducing the cost of exercising the options.
- The decisions of the Mayor, STDC, TVCA and TWL relating to the GE/SeAH Wind Turbine Production Facility including the receipt by TWL of the proceeds of an 'income strip' valued at £93m.
- Decision of the Mayor and STDC regarding the funding and construction of and subsequent sale on deferred terms of the South Bank Quay Development including TVCA taking on a £106m loan from the UK Investment Bank. Whilst TVCA agreed the original business case there has been no further reference back regarding TVCA undertaking the borrowing or subsequent "sale".
- Decisions of STDC regarding the changed operating arrangements as a result of potential changes to landfill tax.

## 13. TVCA and STDC – Governance Architecture

### Tees Valley Combined Authority (TVCA)

- 13.1. Part 6 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") provides for the establishment of Combined Authorities. As a result of a Devolution Deal in 2015, Tees Valley Combined Authority (TVCA) was established by Order on 1<sup>st</sup> April 2016<sup>18</sup> (the TVCA Order). The role of Teesside Mayor was established by Order on 19 July 2016<sup>19</sup>.
- 13.2. Article 5 of the TVCA Order provides that the constituent councils, Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland, and Stockton-on-Tees, shall be responsible for meeting the costs of TVCA reasonably attributable to TVCA's exercise of its functions as set out in the Order. The order stipulates a scheme of apportionment of the costs which shall be followed in the absence of any agreement between the constituent councils.
- 13.3. On the 3<sup>rd</sup> March 2017 a further order came into force which made detailed provisions as to the specific functions conferred on TVCA<sup>20</sup>. It also contained a variety of other provisions including the following 'Incidental Provisions' which had the effect of imposing elements of the Local Authority regulatory framework in the context of Mayoral Development Corporations, for example:

*7. Section 5(25) of the 1989 Act (designation and reports of monitoring officer) shall apply in relation to the Combined Authority as if a Corporation were a committee of the Authority.*

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<sup>18</sup> The Tees Valley Combined Authority Order 2016 SI2016 No. 449

<sup>19</sup> The Tees Valley Combined Authority (Election of Mayor) Order 2016 No. 783

<sup>20</sup> The Tees Valley Combined Authority (Functions) Order 2017 SI 2017 No. 250

- 13.4. The second Order also provides that the constituent councils must meet the costs of the expenditure reasonably incurred by the Mayor in connection with the exercise of his functions. (Art 10(2)).
- 13.5. The underlying legislative architecture of TVCA and the Mayor is based upon the Greater London Assembly Mayoral model with a directly elected Mayor. The Order operates to transpose that legislation into the TVCA context with appropriate textual changes regarding references to the London Mayor and Greater London Assembly etc. The Governance arrangements for TVCA are contained in its Constitution and supplemented by the Tees Valley Assurance Framework 2019-29.
- 13.6. The Mayor is the Chairman of TVCA Cabinet which is comprised of the Council Leaders of each Constituent Authority. The Cabinet is a part of the democratic TVCA decision making mechanism and operates collectively with the Mayor although it should be noted that the Mayor is directly elected and has decision making powers in his own right.

## **Status of TVCA**

- 13.7. The legal status of TVCA is that of a principal local authority in most circumstances and consequently it must operate within the legal and regulatory regimes and guidance applicable in that context. Of particular relevance to this review are the obligations on transparency of decision making and accountability for ensuring best value is achieved as regards the expenditure of public funds. The Nolan principles of conduct in public office apply and are contained as a preamble to the TVCA Councillors Code of Conduct at Appendix VII of the TVCA Constitution.
- 13.8. The Order confers a range of functions on TVCA<sup>21</sup> many of which are deemed to be general functions ‘exercisable only by the Mayor’<sup>22</sup>
- 13.9. S.73 of the Local Government Act 1985 provides the requirement that an officer be designated to make arrangements for the proper administration of TVCA financial affairs. TVCA must also designate a Scrutiny Officer, Monitoring Officer and Head of Paid service and these roles carry the relevant statutory obligations.
- 13.10. All meetings of TVCA are subject to the access to information rules under Schedule 12A of the Local Government Act 1972.

## **Overview & Scrutiny Committee**

- 13.11. TVCA is obliged to establish an Overview and Scrutiny Committee<sup>23</sup> whose members must be empowered to review and scrutinise decisions and or actions of TVCA or the Mayor.
- 13.12. The TVCA Overview and Scrutiny (O&S) Committee is composed of 15 councillors (3 from each of the Constituent Authorities), reflecting the political balance across all 5 Constituent Authorities. The purpose of the O&S Committee is set out in the TVCA Constitution (Appendix II para 2.1) as follows:

*“...in order to scrutinise and support the decision-making of the Combined Authority Cabinet (“the Cabinet”) and the Tees Valley Mayor (“the Mayor”).”*

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<sup>21</sup> Article 3(1) Tees Valley Combined Authority (Functions) Order 2017

<sup>22</sup> Article 5(1) Tees Valley Combined Authority (Functions) Order 2017

<sup>23</sup> Local Democracy, Economic Development & Construction Act 2009 Schedule 5A

13.13. This is generally acknowledged to include the right to access documents in the possession or control of the Mayor or TVCA and which relates to any decision of TVCA or the Mayor.

13.14. The Panel aren't aware of any of the significant decisions under review having been shared with the TVCA O&S Committee for review or potential Call-in. In fact the former Monitoring Officer had, in a report dated 15<sup>th</sup> September 2021, provided written advice to the O&S Committee to the effect that the Committee's reach didn't extend to bodies such as the STDC.

13.15. The following is an extract from Schedule 5A to the Local Democracy, Economic Development and Construction Act 2009

9.

*"1. (1) A combined authority must arrange for the appointment by the authority of one or more committees of the authority (referred to in this Schedule as overview and scrutiny committees).*

*(2) The arrangements must ensure that the combined authority's overview and scrutiny committee has power (or its overview and scrutiny committees have power between them)—*

*(a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the authority;*

*(b) to make reports or recommendations to the authority with respect to the discharge of any functions that are the responsibility of the authority;*

*(c) to make reports or recommendations to the authority on matters that affect the authority's area or the inhabitants of the area.*

*(3) If the combined authority is a mayoral combined authority, the arrangements must also ensure that the combined authority's overview and scrutiny committee has power (or its overview and scrutiny committees have power between them)—*

*(a) to review or scrutinise decisions made, or other action taken, in connection with the discharge by the mayor of any general functions;*

*(b) to make reports or recommendations to the mayor with respect to the discharge of any general functions;*

*(c) to make reports or recommendations to the mayor on matters that affect the authority's area or the inhabitants of the area.*

.....

*(8) Any reference in this schedule to the discharges of any functions includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of those functions."*

13.16. Subsequent regulations made in 2017 have reiterated the role of the Overview and scrutiny functions within the context of a combined authority<sup>24</sup>.

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<sup>24</sup> The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017

13.17. STDC is a public authority created and wholly owned by TVCA, albeit a separate legal entity, and which has been established as a vehicle for delivering the objectives of TVCA i.e. STDC operates in connection with the discharge of TVCA functions and or its existence/role is calculated to facilitate, or is conducive or incidental to, the discharge of TVCA functions. As such, the activities of STDC would fall within the remit of the TVCA Overview and Scrutiny Committee.

13.18. However, the approach adopted by TVCA on advice from its Monitoring Officer, limited the remit of the O&S Committee by excluding the activity of STDC and TWL. The following is an extract from a report authored by the TVCA Monitoring Officer dated 15<sup>th</sup> September 2021. It was submitted to the TVCA O&S Committee to provide guidance on the extent of the committee's remit.

*5. It is also important to consider the scope of the remit of the O&SC in the context of the role, in relation to the decision making of the Combined Authority. Whilst the remit extends to the decisions of the Combined Authority including the decisions in relation to funding given by the Combined Authority and its role the Combined Authority takes to funding given by the Combined Authority and its role the Combined Authority takes in monitoring those investments, the O&SC's reach ends with the Combined Authority's decisions and does not extend inside some of the principal funding recipients such as the South Tees Development Corporation and Teesside International Airport.*

*15. Whilst the remit of the Committee is not constrained to Key Decisions, it is constrained to examining only the decisions of the Combined Authority. The role of the Committee does not extend to the decisions of other bodies, even when they are significantly funded or closely related to the Authority. As such, it is legitimate for the Committee to examine TVCA's decisions in relation to its funding and the monitoring of its funding of those organisations. However, these organisations have their own organisation and governance, and the remit of the Committee does not extend beyond the decisions of the Combined Authority.*

13.19. It is noteworthy that TVCA has provided over £200m of long-term loans to STDC including from UKIB for the construction of the Quay, together with access to business rates income. As such the finances of STDC are fully reliant on continued financial support from TVCA and these arrangements alone should merit review by both TVCA overview and scrutiny and audit and governance committees.

13.20. This advice is at odds with the provisions of the TVCA Constitution and legislation as set out above which describes the remit as extending to any action or decisions made in connection with the discharge of any functions that are the responsibility of the authority.

13.21. STDC is itself directly undertaking functions of TVCA, and TWL is also a key element in delivering against those functions and at the time the advice was provided, was 50% owned by STDC. Attempts were made to explore the basis for the advice, but the former Monitoring Officer refused to have any contact with the Panel or contribute to the review stating that their professional duties barred them from this despite receiving assurances from TVCA that they had no objection.

13.22. Another important mechanism for overview and scrutiny is Call-In under paragraph (4).  
*(4) The power of an overview and scrutiny committee under sub-paragraph (2)(a) and(3)(a) to review or scrutinise a decision made but not implemented includes—*

- (a) power to direct that a decision is not to be implemented while it is under review or scrutiny by the overview and scrutiny committee, and
- (b) power to recommend that the decision be reconsidered.

13.23. These provisions are reflected in Paragraph 72 of the TVCA constitution and in Appendix II of the procedure rules.

13.24. The following is the definition of 'Key Decisions' which are required to be included in the TVCA's Forward Plan copies of which are required to be circulated to the Members of O&S in order that they are enabled to 'Call-In' decisions.

13.25. Paragraph 18.2 TVCA Constitution

*18.2 (b) For the purposes of the Forward Plan, a "key decision" means a decision of a decision maker, which in the view of the Combined Authority's Overview and Scrutiny Committee, is likely to:*

- *result in the Combined Authority or the Mayor incurring significant expenditure, or making significant savings, having regard to the Combined Authority's budget for the service or function to which the decision relates; or to be*

- *significant in terms of its effects on persons living or working in an area comprising two or more electoral wards or divisions in the Combined Authority's area.*

13.26. However, it is understood that many of the decisions which have been taken by STDC or TVCA haven't been recorded as Key Decisions because they were deemed to fall outside of the definition or were considered to be confidential due to commercial sensitivity. This combined with the Monitoring Officer's overly restrictive interpretation of the O&S remit has fundamentally undermined the ability of the O&S committee to exercise its functions in respect of decisions relating to the Teesworks Project. The Panel would also question whether confidentiality is a valid reason for decisions not to be seen as Key as they should still be open to scrutiny albeit confidentially.

## **Audit & Governance Committee**

13.27. Paragraph 84 of the TVCA Constitution provides for an Audit and Governance Committee:

*"..for the purposes of assuring sound governance, effective internal control and financial management of the CA, and that the CA observes high standards of conduct in public office."*

13.28. The Panel noted that the TVCA Audit and Governance Committee had, on a number of occasions, requested regular assurance reports be brought relating to STDC but the reports seen on agendas were more information giving rather than assurance. It was also noted that the Committee meetings do not follow a regular cycle with sometimes lengthy gaps of 6 months or more between meetings. At its July 2023 meeting the Committee recognised that it needed an additional meeting each year and to adopt a regular cycle.

## **Office of Tees Valley Mayor**

13.29. TVCA held its first mayoral election in May 2017 at which Ben Houchen was elected as its first Tees Valley Mayor. He was subsequently re-elected Mayor on 6<sup>th</sup> May 6, 2021, for a further 3-year term. The mayoral model is based on that of the Mayor of London Mayor and Greater London Assembly but with some fundamental differences.

## South Tees Development Corporation (STDC)

- 13.30. The legislation establishing Mayoral Development Corporations is found in Chapter 2 of the Localism Act 2011<sup>25</sup> (as amended/modified the Tees Valley Combined Authority (Functions) Order 2017) and was originally drafted for application to the Mayor of London. The adaption of the legislation is achieved in a convoluted way which requires that the original text is, in places, read so as to substitute different text. For example, 'TVCA' is substituted for 'Mayor of London' and 'Development Corporations' (DC's), are read as 'Mayoral Development Corporations'<sup>26</sup>.
- 13.31. This approach isn't user friendly and includes an additional convolution in Article 5 of the 2017 Order which lists functions of TVCA which are '**exercisable only by the Mayor**'.
- 13.32. Development Corporations are established under S.198 Localism Act 2011 (LA 2011) which requires that the Secretary of State must establish a DC if they receive notification of designation from a Combined Authority Mayor under S.197(1) (LA). The STDC (Establishment) Order came into force on 1<sup>st</sup> August 2017.
- 13.33. The object and powers of a DC are found in S.201 LA 2011 and include:
- 1) The object of a DC is to secure the regeneration of its area.
  - 2) The DC may do anything it considers appropriate for the purposes of its object or for purposes incidental to those purposes.
- 13.34. DCs are used by CAs as vehicles to deliver projects initiated by the Mayor and CA associated with specific geographical areas. DLUHC officials advise that it was never the intention of the legislation that the Mayor would Chair the MDC but acknowledge that the legislation does not preclude this.
- 13.35. Amongst other things, DCs may:
- Acquire, develop, or regenerate land. S.206 LA 2011
  - Provide infrastructure or buildings. S.205 LA 2011
  - Take on the role of the planning authority for the area that it covers. S.202 LA 2011 (The function is that of the CA but reserved to the Mayor)
  - Adopt private roads
  - Make compulsory purchase orders. S.207 LA 2011 (with consent from the Secretary of State and the CA)
  - Carry on any business or acquire interests in bodies corporate. S.212 LA 2011 (with consent of CA)
  - Provide financial assistance to any person. S.213 LA 2011 (with consent of the CA)

## STDC Governance Provisions Including Relationship with TVCA

- 13.36. The governance arrangements of STDC are derived from a number of sources including statute, regulations and in both TVCA and STDC Constitutions; there is some duplication of references. Collectively, they provide a comprehensive framework but in places it lacks clarity and is subject to different interpretations. The STDC is a corporation but doesn't

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<sup>25</sup> Localism Act 2011 S.198.

<sup>26</sup> See Article 4 and Schedule - Tees Valley Combined Authority (Functions) Order 2017

fall within the category of bodies to which the TVCA may delegate its functions under S.101 Local Government Act 1972

## Statutory Officers

- 13.37. According to Addleshaw Goddard advice<sup>27</sup>, it is the requirement that STDC appoint a Group Chief Executive and the TVCA Director of Finance shall fulfil the role of STDC Director of Finance and Resources, although the Panel note this is not common practice in all CAs. The designation of Monitoring Officer for the TVCA shall apply as if STDC were a Committee of TVCA<sup>28</sup>. It is noteworthy that although STDC isn't a 'committee' of TVCA the statutory provision requires that the TVCA's Monitoring Officer shall act as though the STDC was a committee of TVCA and accordingly have the same powers and obligations as would be applicable in the context of a Local Authority, i.e., oversight of decision making to ensure legality and the promotion of ethical conduct.

## STDC Board Membership

- 13.38. The Chair, Vice Chair and Board of STDC shall be appointed by TVCA following a proposal by the Mayor. (STDC Constitution para 10)
- 13.39. Board members shall be appointed following an open and transparent process in accordance with best practice in public appointments. (STDC Constitution Para 12).
- 13.40. Paragraph 97 of the TVCA Constitution provides that the Mayor shall make proposals to TVCA Cabinet to appoint the Chair and Members of DCs. Amendments to the STDC Constitution must be approved by TVCA Cabinet. (para 98 TVCA Constitution).

## Statutory Powers of Oversight

- 13.41. S.202-221 LA 2011 and Schedule 21 of the LA 2011 set out various powers/functions which STDC may potentially exercise, some of which are subject to the requirement for '**consent**'. The legislation was originally drafted for application in the context of the Mayor of London but it is 'modified' by the TVCA (Functions) Order 2017 for application in the context of the TVCA, its Mayor and the STDC. There has been some confusion as to whether the 'consents' required under S.209, 212 and 213, should be granted by the TVCA or the Mayor and this may have arisen from the mechanism by which the original legislation is modified by the Order to apply to TVCA and Mayor.

In 2018 STDC received advice from Addleshaw Goddard on the nature of these powers and the requisite 'consents' confirming that the TVCA was the relevant 'consenting' body. (N.B. In Oct 2023 STDC sought counsel's advice on the extent to which STDC's autonomy was limited by the oversight of the TVCA and amongst other things this advice reiterated the view of Addleshaw Goddard i.e. the power of 'consent' in this context lay with the TVCA).

However, at different points during the passage of decision-making it appears that TVCA/STDC have adopted different interpretations of the 'consent' provisions. For example, in respect of the JV 50/50 decision, the following extract from the report to the TVCA Cabinet states that the TVCA is the body which is empowered to grant consent.

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<sup>27</sup> Project Herrington – Addleshaw Goddard Advice 24 August 2018 Michael O'Connor Partner

<sup>28</sup> STDC Constitution Para 24-26 and s.7 of the Tees Valley Combined Authority (Functions) Order 2017.



*“The Schedule to the Tees Valley Combined Authority (Functions) Order 2017 modified the provisions of the Localism Act for STDC, as the Act was originally drafted to provide powers to the London Mayor. Paragraph 1(3) of the Schedule provides that whenever the Localism Act states “the Mayor”, for STDC it should read “the Combined Authority.*

*These provisions mean that when, for example, STDC wants to form a body corporate or grant financial assistance “..with the consent of the Mayor..”, for STDC it means consent of the Combined Authority to do so.”*

## **Report to TVCA Cabinet 13<sup>th</sup> March 2020**

Whereas in contrast, the decision in 2021 to restructure the JV into a 90/10 configuration appears to adopt the alternative interpretation that the Mayor is the relevant body empowered to give ‘consent’. The following extract from the decision notice dated 30-11-21 confirms the alternative interpretation.

### ***Decision 2: Mayoral decision to dispose of CPO land***

*Localism Act 2011 prescribes certain restrictions in the disposal of land by a Mayoral Development Corporation. Specifically, Section 209(3) may not dispose of compulsorily purchased land without the express consent of the Mayor. Accordingly, the Mayor’s consent is specifically requested to allow the transaction to proceed.*

### ***Decision 3: Mayoral decision to dispose of land at an undervalue (if applicable)***

*Localism Act 2011 prescribes certain restrictions in the disposal of land by a Mayoral Development Corporation. Specifically, Section 209(1) may not dispose of land for less than best consideration which can reasonably be obtained unless the Mayor consents. The Mayor will note the valuation set out at Annex A.*

## **Delegated decision No. STDC04-2021 30-11-21**

The Panel note that there have been different interpretations of this important legislation and whilst the Panel does not purport to provide legal advice, it has formed the view that the Mayor and TVCA should reassure themselves that their interpretation in this regard is legally sound and consistently applied. The Panel also concluded there would be a benefit from the issue by DLUHC of guidance as to its interpretation.

- 13.42. The following are the key provisions relating to "Relevant Consents" for specific types of decisions:
- S.219(1) LA 2011, imposes a requirement of ‘consent’ for disposing of land at less than best consideration.
  - S.212(2)(b) LA 2011, requires consent to acquire interests in a company.
  - S.213(1) LA 2011, requires consent to give financial assistance to any person.
- 13.43. A TVCA Officer with delegated authority via the scheme of delegation would in appropriate circumstances be able to give ‘consent’ on behalf of the Mayor.
- 13.44. The purpose of the consent provisions is to provide some oversight on the actions of STDC. However, in the context of TVCA, due to the fact that the same officers occupy the

senior roles in both TVCA and STDC and the Mayor is the Chair of the TVCA and STDC Board, the Mayor may find themselves in the position of providing consent for their own proposals.

13.45. The Panel have found only limited evidence of formal adherence to the consent requirements, as there is generally no audit trail of consents having been given.

13.46. The view of the Statutory Officers is that STDC had a high degree of autonomy from TVCA and for the large part there was no requirement to seek approval from the TVCA. There were also concerns expressed about the wider dissemination of information which was regarded as commercially sensitive.

## **Provision for the Oversight of STDC by TVCA**

13.47. The following is an extract from advice received by STDC/TVCA from Addleshaw Goddard solicitors in August 2018<sup>29</sup> which advises on powers available to the Mayor and STDC but also the extent by which the powers are intended to be 'curtailed' by the oversight of TVCA and the provisions in TVCA and STDC Constitutions.

*4.6 All of STDC's powers are subject to:*

*a) the provisions of its constitution, including the overriding objectives contained therein, which are:*

*(i) to further the economic development and regeneration of the South Tees area, so that it becomes a major contributor to the Tees Valley economy and the delivery of the Tees Valley's Strategic Economic Plan;*

*(ii) to attract private sector investment and secure new, additional, good quality jobs, accessible to the people of the Tees Valley;*

*(iii) to transform and improve the working environment of the Corporation area, providing good quality, safe conditions for the workforce and wider community; and*

*(iv) to contribute to the delivery of the UK Industrial Strategy, by supporting the growth of internationally competitive industries with access to global markets, taking a comprehensive approach to redevelopment at a scale that enables the realisation of an international-level investment opportunity; and*

*(b) any directions to STDC as to the exercise of its functions issued by TVCA (see section 220 of the Amended Localism Act). STDC must comply with any such directions for the time being in force. We understand that there are no such directions currently in force.*

*4.7 Under section 219 of the Amended Localism Act, TVCA may also issue guidance to STDC on the exercise of its functions. STDC must, in exercising its functions, have regard to any such guidance for the time being in force. We understand that there is no such guidance currently in force.*

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*4.19 The Finance Director of TVCA must also fulfil the role of Finance Director of STDC (as such, see provisions relating to the Finance Director as set out above).*

*4.20 The responsibilities of the Finance Director include:*

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<sup>29</sup> Project Herrington – Addleshaw Goddard Advice 24 August 2018 Michael O'Connor Partner

*(a) overseeing the interface between the financial responsibilities of TVCA and STDC, to ensure the financial integrity of both organisations;*

## **8 Discussion**

*8.1 The governance regime and framework relating to TVCA and STDC is comprehensive and highly regulated. The powers of TVCA, the Mayor and STDC are wide ranging and, in the case of STDC, contain specific powers designed to support STDC's key objective of securing the regeneration of the South Tees area.*

*However, the exercise of STDC's powers, are curtailed by the requirement for referrals to TVCA in respect of any matter which:*

*(a) involves a CPO;*

*(b) involves acquiring an interest in or forming a body corporate (this would include the acquisition of the Shares); or*

*(c) may result in a significant risk of:*

*(i) a financial liability;*

*(ii) a statutory liability; or*

*(iii) an environmental or criminal liability to TVCA or its constituent authorities.*

*Most of the options referred to in this Report would involve some element which would require TVCA consent and/or referral before STDC could make a final decision.*

13.48. The advice confirms that the consent requirements also apply to a number of other actions including the provision of 'financial assistance' and the disposal of land at less than best consideration.

13.49. The advice confirms that, although STDC is a distinct legal entity, the legislative framework within which it operates provides that it should be subject to close oversight by TVCA through a variety of controls.

## **Annual Reporting**

13.50. Legislation<sup>30</sup> also imposes a requirement on STDC to produce an annual report on how it has exercised its functions during the year including an audited statement of accounts, to be provided to TVCA. In order that TVCA can properly undertake its oversight function this report should include all the key decisions undertaken in order that TVCA members are fully and formally informed about the detailed activities of STDC. However, the reports as reviewed by Panel members give only general information as to progress and do not identify key decisions.

### **TVCA Constitution -**

#### **Matters to be Referred Back to TVCA Cabinet<sup>31</sup>**

The TVCA Constitution includes specific requirements relating to financial implications for the TVCA arising from an STDC proposal:-

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<sup>30</sup> Localism Act 2011 Schedule 21 S.10(1)

<sup>31</sup> Para 93 TVCA Constitution December 2020/para 85 TVCA Constitution September 2023

*“Any financial implications for the TVCA arising from a DC decision shall require Cabinet agreement through the arrangements for financial decision-making set out in the TVCA constitution.”*

In addition<sup>32</sup>, it further provides:-

*“Referral Decisions by the Development Corporation (defined as any decision or issue at the Development Corporation which may result in a significant risk of a financial, statutory, environmental or criminal liability to the Combined Authority or to any or all of its Constituent Authorities) shall require approval by the Cabinet prior to the implementation of any such decision by the Development Corporation.”*

### **STDC Constitution<sup>33</sup>**

#### **Paragraph 34**

The STDC Constitution provides as follows:-

*“The Combined Authority may give the Corporation general or specific directions or guidance in relation to the exercise of any of the Corporations functions. The Corporation must comply with any directions given by the Combined Authority that are in force (s220 Localism Act 2011) and must have regard to any guidance issued (s219 Localism Act 2011).”*

There is no evidence that TVCA members were informed of or otherwise aware of this provision which could, in theory, enable TVCA to require more detailed information about the activities of STDC.

#### **Paragraphs 30-38 – Referral Decisions**

The following extract from the STDC Constitution reflects the TVCA Constitution by implementing a requirement that any proposed decision of STDC which gives rise to potential liability for TVCA or any of its constituent authorities must be referred to TVCA for consideration.

*“30. The STDC Board shall be responsible for identifying any decision or issue which may result in a significant risk of:*  
*a. A financial liability; or*  
*b. A statutory liability; or*  
*c. An environmental or criminal liability*  
*to the Combined Authority or to any or all of its Constituent Authorities (“a Referral Decision”) and shall refer such decisions or issues to the Combined Authority for agreement before such liabilities arise, and prior to the implementation of any such decision.”*

The decision to refer is one for STDC Board members but the statutory officers are obliged to advise STDC Board as to when a Referral Decision may be required. From discussions with the Chief Executive and the Monitoring Officer it was apparent that there was a difference of opinion between Panel Members and TVCA Officers as to the circumstances which would warrant referral to TVCA for approval. The decision to change the 50/50 JV to 90/10 provides an example. The Decision Notice records that the “Statutory Officers” advised that it didn’t meet the threshold for Referral. The Panel reached a different conclusion. N.B. The decision notice wasn’t signed off by the

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<sup>32</sup> Para 99 TVCA Constitution December 2020/para 91 TVCA Constitution September 2023

<sup>33</sup> V9 September 2023

Monitoring Officer and instead the letters “N/A” were printed in the relevant signature box.

## **Tees Valley Assurance Framework (TVAF)**

- 13.51. The TVAF is an overarching document produced by TVCA which provides additional detail about the governance arrangements for TVCA and amongst other provisions, includes the following:

*“The Constitution therefore provides for the Mayor’s role to be embedded in the Combined Authority collective decision-making arrangements.” (TVAF Para 3.10)*

*“The Processes and procedures will:-*

- Ensure an appropriate separation between project development and project appraisal.

- ..... “

(TVAF Para 4.1)

- 13.52. The TVAF sets out a rigorous and disciplined approach to the assessment of proposals by requiring business cases to be provided for each proposal and in a set format. (See TVAF Paras 4.14 – 4.23).

*“4.29 The key objective of the TVAF is to support the Combined Authority to make judgements about the VFM of potential investments and to accept or reject investments accordingly.” (TVAF para 4.29)*

- 13.53. The Tees Valley Management Group comprises the TVCA Senior Leadership Team (Chief Executive and Directors) and the Directors of Economic Growth/Regeneration of the Constituent Authorities. The group meets twice a month and has an oversight role of the work of TVCA. It is unclear whether the initial JV or subsequent 90/10 proposal was shared with this group.

## **English Devolution and Accountability Framework 16 Mar 2023**

- 13.54. The Devolution and Accountability Framework was published by DLUHC in March 2023 sets out how mayoral combined authorities will be scrutinised and held to account by the UK Government, local politicians, business leaders and by the residents of their area. It provides a clear steer on the importance of openness and transparency in the context of Mayoral Combined Authorities and reiterates the requirement for effective Overview and Scrutiny Committees. It is a benchmark against which TVCA, The Mayor and STDC should assess themselves. The following extracts provide an indication of the aspirations contained within.

### ***“Foreword***

*The accountability system described in this framework acts as a safeguard against unethical behaviour, inadequate performance and poor value for money for the local taxpayer by placing a focus on transparency and scrutiny. It will ensure that local councillors are empowered to provide effective scrutiny through a new Scrutiny Protocol. And that local media and residents are able to hold leaders and institutions to account with accessible information about their role and performance of the leaders through plain English guidance and published outcomes showing the progress areas have made. It will improve the decision-making process and allow greater progress in delivering levelling up to all areas that have agreed devolution deals.”*

*"The English Devolution Accountability Framework is structured around the 3 key forms of accountability:*

- *local scrutiny and checks and balances*
- *accountability to the public*
- *accountability to the UK government"*

#### ***"Providing Appropriate Scrutiny***

*"2.20. The Scrutiny Protocol will focus on ensuring that each institution has a sustained culture of scrutiny. Membership on committees should be prized and competed for. Retention of members for several years should be common. Members should be able to devote the time to the role. And the committees should have the profile and cachet to ensure that their findings are brought to the attention of the public wherever necessary.*

*2.21. Committees should have easy access to relevant data to support their role. They should be supported by a well-resourced team of clerks, regular training opportunities and access to research and analysis capability."*

## **Confidentiality**

- 13.55. An extract from the Local Government Transparency Code 2015 which is cited in the Tees Valley Assurance Framework.

#### ***"Commercial confidentiality***

*20. The Government has not seen any evidence that publishing details about contracts entered into by local authorities would prejudice procurement exercises or the interests of commercial organisations, or breach commercial confidentiality unless specific confidentiality clauses are included in contracts. Local authorities should expect to publish details of contracts newly entered into – commercial confidentiality should not, in itself, be a reason for local authorities to not follow the provisions of this Code. Therefore, local authorities should consider inserting clauses in new contracts allowing for the disclosure of data in compliance with this Code."*

## **TVCA Scheme of Delegation to Officers**

- 13.56. As with other organisations it is essential for local authorities to provide for the exercise by its officers of decisions on behalf of the authority and schemes of delegation are the instrument through which this is recorded. They form a key part of the governance architecture and usually provide broad delegations to the most senior officers but set limits by way of reservations, requirements to consult and/or financial thresholds. Due to the nature of local authority functions it is also common to find reservations on the basis of potential impact upon local communities or likelihood of political controversy.
- 13.57. TVCA's scheme of delegation for officers is found at Appendix iii of the TVCA Constitution and contains much that is familiar in this context including broad delegations to senior such as the following to the CEO:

*"HPS4: To take all action which is necessary or required in relation to the exercise of any of the Combined Authority's functions or the functions of the Mayor (other than those functions which by law can be exercised only by the Combined Authority or by the Mayor), having regard to the Combined Authority's or Mayor's approved plans, policies or strategies and the Combined Authority's budget, and all enabling legislation."*

13.58. However, there is an absence of financial thresholds or reservations for politically sensitive or controversial matters. Although this may facilitate agility/ease of decision-making it risks undermining the necessary and appropriate political oversight/accountability for decisions. There is a risk that officers will, for reasons of expediency, be tempted to use the permissive delegations to the full extent whereby scrutiny of decisions would be significantly reduced. When combined with a culture of unwarranted levels of confidentiality, transparency and therefore accountability, will be impaired.

## **Consideration whether the governance provisions met in reality**

13.59. As confirmed by Addleshaw Goddard and Counsel, the combination of the legislative requirements and the provisions arising from TVCA and STDC Constitutions makes it clear that the intention is for TVCA and the Mayor to have close oversight of STDC and its activities with the ability to issue mandatory guidance and/or directions to STDC and requirements that STDC shall seek the Mayor's (or TVCA's) consent before acting.

13.60. The expectation of such levels of governance and accountability is understandable given the large sums of public money being put at the disposal of STDC and the risk profile of its activities. Any liability arising from STDC is, in default, likely to sit with TVCA which is another reason why access to information for TVCA members is an important democratic safeguard and this is certainly the case if STDC is unable to repay the long term loans advanced by TVCA.

13.61. At the time of the 50/50 JV and 90/10 JV decisions the legal advice under which STDC was operating identified the requirement for TVCA consent for specified actions by STDC. In the event TVCA consent wasn't specifically sought for the 50/50 JV nor for the move to 90/10. The need to enable wider democratic scrutiny of the actions it was proposing to take. This is particularly important given the small group of senior officers and the Mayor, who were required to wear several hats due to their multiple appointments. This gives rise to a risk of 'group think' due to the absence of challenge. The Panel members formed the opinion that the practice of decision-making around the significant decisions fell short of what was envisaged in the governance framework and what would be considered best practice in the context of this project.

13.62. TVCA/STDC Officials commissioned legal advice in respect of the above matters and the related issue of where ultimate liability rests. The following are some extracts from that advice<sup>34</sup>.

*15. A Mayoral development corporation is a public authority.*

*16. A corporation is given a very broad power to do anything it considers appropriate for the purposes of its object (the regeneration of its area) or for purposes incidental to these purposes (s 201). Specific powers of a corporation are in ss 206 – 210 of the 2011 Act. The specific powers are also to be exercised for the purposes of its object and for purposes incidental to its purposes. Some specific powers are qualified and need in certain circumstances, the consent of the Combined Authority. For example, disposal of land for less than best consideration (s 209(1)), formation of business and subsidiaries and the financing thereof (s 212) and the provision of financial assistance (s 213). Consent by the Combined Authority may be given unconditionally or subject*

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<sup>34</sup> **Leo Charalambides** Counsel - 9<sup>th</sup> Oct 2023

*to conditions and may be given generally or specifically (s 221(1)) and may be varied or revoked (s 221(2)).*

*18. ....I am of the view that the effect of these amendments is to support and enhance the review and guidance of the Corporation by the Combined Authority and assist in the reporting of the actions of the Corporation to the Combined Authority. (The statutory monitoring is bolstered by the Constitutional arrangements for a Referral Decision (see below)).*

*23. In summary a Combined Authority creates a Mayoral development corporation; it keeps the existence of the corporation under review and ensures that the corporation is assigned a monitoring officer who reports thereon. The Combined Authority has a supervisory function in that certain functions of the corporation need the consent of the Combined Authority. The Combined Authority gives guidance and may issue directions which must be followed. The Corporation is monitored by the Monitoring Officer of the Combined Authority.*

*24. In summary a Mayoral development corporation is an independent legal body; it is not a committee of the Combined Authority. As a public authority it has a relationship with the Combined Authority that created it and exercises its functions within its aims and objects. Like other public bodies a corporation is reviewed and monitored by the Combined Authority and its monitoring officers. Despite having broad powers certain decisions are subject to consent (in effect supervision) by the Combined Authority. The corporation must also have regard to any guidance issued by the Combined Authority and must comply with any directions made by it.*

*36. There is significant overlap between the members of the TVCA and the board of the STDC; the STDC constitution requires collaboration and co-operation between it, the TVCA and its constituent members. There is evidently scope for a blurring of boundaries where persons and bodies overlap. It is, therefore, essential, that the clear legal independence of the STDC is clearly understood and observed.*

- 13.63. During the evidence gathering the Panel members have sought to compare the governance framework as envisaged with the reality of what happens in practice. There is little evidence of STDC referring to or seeking consent from TVCA Cabinet on matters that would appear to fall within the relevant categories or due to their nature might reasonably be regarded as of legitimate interest to TVCA members.
- 13.64. This was reflected in concerns raised by some interviewees as to what they perceived as the lack of information made available to them regarding the detailed activities of STDC and TWL. There was no evidence of advice having been provided to TVCA members regarding the extensive powers available to TVCA to compel STDC to share information. In contrast the evidence indicates a lack of information being shared with TVCA and a collective view that STDC may act largely independently of TVCA and without public accountability. There was a view amongst officers and Councillors of the constituent authorities that there was no risk of liability to them and as such the level of scrutiny afforded was aligned with the perceived risk.
- 13.65. An example of what appears to be a persisting theme or culture of excessive confidentiality/lack of transparency is highlighted by the stances adopted with the Overview and Scrutiny Committee which was advised by the Monitoring Officer in 2021 that the committee's remit didn't extend to STDC. The examples of declined Fol requests has also provided further evidence of a tendency towards unwarranted levels of



confidentiality. We also understand that scrutiny members do not have access to confidential cabinet reports so are unaware of when cabinet is taking decisions relating either to TVCA itself or STDC.

## 14. Decision making in respect of the JV

### Summary of the initial proposed JV Deal between STDC and the JV Partners

- 14.1. The JV Partners proposed a deal with the Mayor whereby in return for STDC entering into a 50/50 JV agreement with the JV Partners (involving a 50% stake in the value to be derived from the subsequent re-generation/development of the Teesworks site and the grant to JV Partners of options over the land), the JV Partners would use their RBT Option as leverage to negotiate a Settlement Agreement with SSI whereby it would withdraw its objection to the Compulsory Purchase Order in return for 300 acres of its land and surrender of the RBT Option.
- 14.2. Although not specifically obliged to do so, the JV Partners also offered their knowledge and expertise in support of the project.
- 14.3. The potential benefit/value for the JV Partners was to be derived from the following sources:-

- i) The increase in the value of the land resulting from demolition and remediation and identifying potential tenants – i.e. the difference in the cost of STDC acquiring the land and the sale price/income stream of the land when sold/leased. Under the Option Agreement TWL were granted options to purchase covering all the land within the site.

N.B. The mechanism for distributing this value to the Partners initially involved a Commission Agreement which provided for the payment of a fee to the partners via a separate company amounting to 50% of the uplift in land value from the 'Base Value' to the 'Market Value' at point of exercise of their option. TWL would then realise its profit through onward sale of the land the payment for which would constitute a profit. As part of the change to the JV 90/10 arrangement, (August 2021), this mechanism was changed in that the Commission Fee Agreement was removed but the land was transferred to the Partners at Nominal value, i.e. £1, thereby enabling the transfer of the uplift but at a minimal transaction value. Counsel had advised that the Commission fee payment as drafted was a breach of Subsidy Control requirements because part of the uplift arose from public sector investment in remediation and demolition and this should be discounted in any Commission fee calculation.

- ii) The value of recyclable materials on the land, (e.g. steel, aggregates estimated at £120m)

N.B. It should be noted that the establishment of new industrial premises on the regenerated land would also give rise to Business Rate income to the public purse.

14.4. TWL, (originally named South Tees Enterprise Ltd STEL) was the corporate vehicle to be used to encapsulate the JV between STDC and the JV partners. Initially, the risk/reward mechanism was a 50/50 division of shares.

14.5. The functional purpose of TWL is described as follows:-

*“The role of STEL/Teesworks is to direct the deliverability of the land, to accelerate the process whereby the land becomes development and market ready rather than unsaleable as at present and to drive up the realisable value of the land from what are low or nominal base values.”*

*(Para 1.7 Lytollis)*

## **Establishment of Joint Venture between STDC and the JV Partners**

### **JV Arrangement**

14.6. As regards the JV Partners engagement on the Teesworks project, there was no formal procurement process, the rationale being that the JV Partners were in a unique position due to their having an option over the RBT Land. Both the Mayor and the Chief Executive explained that there was no negotiation as the JV Partners proposal was ‘take it or leave it’.

14.7. The JV partners were already parties to an existing joint venture with TVCA which related to the development of the land surrounding the Teesside Airport. It is understood that the process of selection and appointment as JV partner for the Airport project was similar in that it didn’t utilise a public procurement methodology or process.

14.8. The structure of the Teesworks JV arrangement was straightforward in that it involved the use of a company owned by the JV Partners, South Tees Enterprise Ltd (STEL), which issued and transferred shares to STDC in order to create a 50/50 shareholding between STDC and the JV Partners. A shareholder agreement between the JV Partners and STDC was entered into which amongst other things noted that the business of the JV Company was<sup>35</sup>:-

*2.1 The business of the JVC is the development and commercial exploitation of land south of the River Tees broadly contiguous with the South Tees Development Corporation boundary.*

*2.2 Each party shall use its reasonable endeavours to promote and develop the business to the best advantage of the JVC.*

14.9. For completeness, it is noted that in 2019 the Mayor/STDC had been approached by another developer with a joint venture proposal, Able Ports Limited - a large land-owner with interests in ports along the North Coast. The offer was considered by the STDC board on several occasions on one of which KPMG presented a summary of Able Ports financial robustness as part of the STDC process of due diligence. However, ultimately, the STDC board rejected the proposal because they weren’t convinced that Able Ports had access to sufficient finance to deliver a project of this nature. The Panel is not aware that TVCA

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<sup>35</sup> Extract from Shareholder Agreement 2020-03-13

were at any stage made aware of this alternative proposal or advised of the decision not to pursue.

- 14.10. The Mayor considered the proposal and weighed up the options of pursuing the CPO or negotiated settlement with SSI, facilitated by the leverage of the JV Partners' Option. The Mayor took account of the following factors:-
- The risk that CPO would be unsuccessful in whole or part.
  - If the CPO was successful the valuations may prove unaffordable for TVCA.
  - The CPO process might take too long to enable maximum exploitation of the available public funds or concessions.
- 14.11. Against that there were the following factors arising with the JV:-
- Loss of control by TVCA/STDC.
  - Reduction in financial reward for TVCA/STDC which would offset the significant amount of public money spent to make the site viable and attractive.
  - Loss of potential long term income stream from tenants.
- 14.12. In light of the above, the Mayor concluded that the balance of risk fell in favour of the 50/50 JV and related Settlement Agreement approach. The proposal was considered by the STDC Board at a meeting on 10<sup>th</sup> February 2020 which gave approval for the Chief Executive to conclude both the JV and the Settlement arrangement. These were separate agreements signed off at different times during February and March 2020.

## 15. Settlement Agreement between STDC and SSI/Thai Banks SA1 & SA2

- 15.1. As a result of negotiations in late 2019 and early 2020 between the Mayor, STDC Officers, JV Partners and SSI, the basis of a settlement was formulated whereby SSI would withdraw its objections to the CPO in return for STDC transferring to it 330 acres of the CPO land and the JV Partners RBT Option land to enable it to pursue development of the Redcar Bulk Terminal. The agreement, referred to as SA1 was prepared and signed on 20<sup>th</sup> February 2020.
- 15.2. SA1 didn't come to fruition because the Thai Banks, SSI's creditors, didn't agree to the deal. In its place a second agreement (SA2), was hastily negotiated and completed on 14<sup>th</sup> July 2020. This was a more straightforward settlement which didn't involve the JV Partners RBT Option and provided for the transfer of all of SSI's land to STDC at the cost of £15m.
- 15.3. The key differences between SA1 and SA2 were as follows<sup>36</sup>:-

"(1) The consideration for the SSI land under the SA1 is a nominal amount whereas STDC pays to the Thai Banks £15m under SA2.

(2) Under the SA1, SSI PCL has options to purchase the Plot 1b and Lackenby land each for the sum of £1. There are no such option agreements under the SA2. This means that under the SA2, STDC receives 100% of the uplift in the Market Value of Plot 1b and the

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<sup>36</sup> (Lytollis para 3.50)

Lackenby land which together aggregate to 177 hectares (437.8 acres). DCS is paid the 50% commission.

(3) Under the SA1, STDC undertakes to complete the ground remediation and restoration works of Plot 1b at a cost to STDC of £24m. There is no such obligation under the SA2 and whilst it will still fall upon STDC to remediate Plot 1b the Corporation will receive 50% of the uplift in the Market Value of 133.5 hectares (330 acres) of land for which it would otherwise have received a nominal £1 under the SA."

## **Decision Making – Joint Venture Arrangement and Settlement Agreement 1 (SA1)**

- 15.4. The proposed CPO of Tata and SSI land and its regeneration for development had emerged in 2017 and on the 25<sup>th</sup> July 2018 the STDC Board had resolved to make one or more CPO for this purpose.
- 15.5. On 24<sup>th</sup> January 2019 the TVCA Cabinet approved £56m funding for land acquisition and investment plan support for STDC.
- 15.6. On 29 January 2020 the Chief Executive verbally reported that an alternative approach had emerged which might mitigate some of the risks identified in respect of the CPO process such as the potential for delay and objections such as that raised by SSI/Thai Banks.
- 15.7. The new approach had arisen following a proposal from Chris Musgrave and Martin Corney to the Mayor and the Chief Executive, suggesting that they may have commercial leverage over SSI which would enable a mutually agreeable settlement to be reached.

## **16. STDC Board Decision Regarding JV Agreement and First Settlement (Agreement SA1)**

- 16.1. On 10<sup>th</sup> February 2020 the STDC Board considered a written report and purported to grant its approval to the following recommendations:-
  - Approves the CPO Compromise Agreement proposed with Sahaviriya Steel Industries UK Limited (in liquidation) and Sahaviriya Steel Industries Public Company Limited and DCS Industrial Limited and DCS Industrial (South) Limited and [Redcar Bulk Terminal Limited]
  - Approves the Shareholder and Subscription Agreement for South Tees Enterprise Limited ("the Joint venture" or "STE") and the associated purchase by South Tees Development Corporation of 50% equity stake in STE and approves all necessary related documents that give effect to the operation of the Joint Venture;
  - Approves the Shareholder and Subscription Agreement for DCS industrial (South) Limited (DCSIS) and the associated purchase by South Tees Development Corporation of 100% equity (this entity will hold the former SSI land/assets) and approve all necessary related documents that give effect to the operation of this acquisition;
  - Approves the option agreements in respect of all STDC owned land in favour of STE;

- Approves the land transfer of all freehold land interest currently within South Tees Developments Limited (former Tata Steel Land) to STE;
- Approves the move towards transition and local ownership of the STSC once the financial details of the relevant business cases are finalised and subject to the confirmation from the Secretary of State that BEIS will retain responsibility for funding the decontamination project that removes the Top Tier COMAH status from the site;
- Approves the entering into the Management Agreement with STSC in substantially the same form at the current Agreement;
- Approves the initial development costs up to £2.3m in respect of South Bank Wharf to conduct the preparatory work to support obtaining the necessary consents, permissions and approvals from external parties to develop quay facilities and associated land requirements. Any further proposals on the financing of the Quay and associated Business Case would be brought back to Board for consideration and approval; and
- Delegates authority to the Chief Executive Officer, Director of Finance and Resources and the Chair of the Board to complete all the necessary approvals to give effect to the transactions set out in this report.

16.2. In this context there are a number of concerns regarding the content of the report and the nature of the proposed approach to the decision-making process. The approvals being sought from STDC concern the settlement agreement SA1 and the Joint Venture arrangements which between them have significant implications for STDC, its future revenue streams and land it holds as a public authority for public benefit. These agreements require the transfer of ownership of CPO land and the acquisition by STDC of company shares.

16.3. The report itself, which is comprised of 14 pages including appendices, didn't include any specific legal advice regarding the proposed arrangement and in particular the potential for State Aid and the implication of the Public Contract Regulations which were binding on STDC as a public body. The potential for these issues had been raised by the then current legal advisors to STDC. The report noted that legal agreements were in the process of being drafted and would be made available to STDC Board Members if requested.

16.4. As the extract from minutes of the meeting record show, the STDC Board purported to have 'Approved' both of these transactions.

*"RESOLVED that: The Board agreed unanimously to the Compromise Agreement, Joint Venture and related documents and delegated authority to the Chief Executive, Director of Finance and Resources and Chair of the Board to finalise negotiations of these agreements and enact them as required."*

16.5. In 2018 Addleshaw Goddard advised STDC that, in respect of certain types of decision, including acquiring an interest in a company, its powers were conditional on obtaining the consent of the TVCA. (See para 13.46 above). This view was reiterated by Leo Charalambides, counsel who advised STDC in October 2023. The relevant part of his advice is found at paragraph 16, (09-10-23), as follows

*"Some specific powers are qualified and need in certain circumstances, the consent of the Combined Authority. For example, disposal of land for less than best consideration*

*(s 209(1)), formation of business and subsidiaries and the financing thereof (s 212) and the provision of financial assistance (s 213). Consent by the Combined Authority may be given unconditionally or subject to conditions and may be given generally or specifically (s 221(1)) and may be varied or revoked (s 221(2)).”*

- 16.6. The effect of the advice is that, without the consent of the TVCA, the STDC Board itself, doesn't have the power/authority to agree the SA1 settlement agreement or the Shareholder Agreement and associated documents. As such the Board's purported decision on the 10<sup>th</sup> February 2020 was only provisional in nature.
- 16.7. As explored more fully below, at its meeting on 13<sup>th</sup> March the TVCA Cabinet was asked to consider a report relating to the issues mentioned above. The Officer recommendation was for the TVCA to relinquish its power of 'consent' by delegating it to the STDC in respect of the acquisition of shares by STDC.
- 16.8. However, there is a further development in this aspect of the review which arose late in the day due to clarification being sought by the Panel from DLUHC as to its interpretation of the relevant 'consent' provisions arising from the 'modified' Localism Act 2011. On 7<sup>th</sup> December 2023 DLUHC officials confirmed the department's view that it was in fact the Mayor who held the power of 'consent' and not TVCA. There was agreement that the method by which the legislative framework for this Mayor and Combined Authority is created by 'modifying' legislation on which the Mayor of London is founded, is convoluted and prone to differing interpretations, as to which the present circumstances attest. It is far from user friendly and would benefit from revision to improve its clarity.
- 16.9. As regards the content of the report to STDC Board there is no mention of the alternative offer from Able Ports although discussions with them had been ongoing for some months. Nor does it contain any analysis of the estimated value that will be transferred to the JV Partners as a result of the establishment of the JV. There is no reference to the potential value of scrap and other recyclables on the land which have subsequently yielded over £100m of value to date. There was no reworking of the financial model to recognise the impact of the JV.
- 16.10. The explanation of the JV omits to cover important details such as the absence of any obligation on the part of the JV partners to input any funding or deliver any outcomes. There is no Partnership Agreement setting out the obligations of the partners.
- 16.11. There is no explanation of the land options to be granted to the JV Company (TWL) as part of the Joint Venture arrangement. These are of fundamental importance for the deal because they grant an exclusive right for the JV partners to acquire all or parts of the site over a 30 year period. The Options were granted at nominal cost and as originally drafted were exercisable at market value. These options are significant in their extent and effect. The intended outcome was that any uplift in value of the land would be shared 50/50 between STDC and the JV Partners.
- 16.12. Entering a Joint Venture Deal of this nature and potential value was a very significant step for STDC which would have long term financial implications due to the fact that 50% of any value to arise from the project would be diverted from STDC to the JV and/or the JV Partners separately. Remediation work would still be funded by STDC and as such TWL would benefit from the substantial amounts of publicly funded assistance which would be deployed to clear and remediate the site and make it more developable and therefore more valuable.

- 16.13. This is not to say that there weren't credible reasons for taking such a course of action but in a situation where there is such a significant change in plan at a relatively short notice it would have been appropriate to provide a more detailed explanation/analysis of the impacts and assurance in the form of clear and full legal and financial advice as to the risks and safeguards. The report notes that the legal documents were being prepared and copies could be made available in due course if requested.

## **TVCA Cabinet**

- 16.14. On 13<sup>th</sup> March 2020, the Director of Finance and Resources, submitted a report to the TVCA Cabinet described as a 'Compulsory Purchase Order and Joint Venture Partnership for South Tees Development Corporation'. In contrast to the report on a similar subject submitted to the STDC Board on 10<sup>th</sup> February, the report to the TVCA Cabinet occupies just two sides of A4 and states that it has been produced to 'update' the TVCA Cabinet notwithstanding that this was the first time the TVCA had formally been made aware of this proposal.
- 16.15. The recommendations on page 2 of the TVCA report as set out below seek approval for STDC to enter the JV by subscribing to shares of the JV Company and secondly recommends that TVCA delegate to STDC, its 'consent' powers under the Localism Act 2011, in respect of STDC. As noted above the accepted interpretation at that time was that TVCA held the power to consent. As such this was a counterintuitive approach because if agreed, STDC would have the power of consenting to its own proposals and this would have had the effect of limiting TVCA oversight of STDC. However, under the recently shared DLUHC interpretation the power of consent sits with the Mayor and as such it is the Mayor who should have formally consented to the STDC's acquisition of shares and other aspects of the JV 50/50 arrangements such as disposal of CPO land via grant of options and granting financial assistance to TWL via sale of scrap.
- 16.16. The recommendations were that Cabinet approves as follows:-
- i. Cabinet hereby grants approval to STDC to subscribe to shares to give effect to the Joint Venture arrangements designed to enable the comprehensive regeneration of the South Tees Development Area. This shall include consent to exercise the relevant necessary powers within Part 8, Chapter 2 of the Localism Act 2011, including but not limited to the power to provide financial assistance under s213 of the Localism Act 2011, and any other associated necessary actions under s201(2) general powers.*
  - ii. Cabinet is requested to note that there are no financial implications to TVCA as a result of this deal.*

Paragraphs 2 and 3 state:

*"An agreement has been reached involving multiple parties that sees some of the land being purchased through a pre-agreed value at CPO and other parts through direct agreement. This will allow acquisition of the land to come forward much more quickly than through a standard CPO process, reduce the risk of challenge and ensure the acquisition price at a level well within the budget allocated to STDC.*

*Consequently, this is not a referral decision by STDC and there are no financial implications to TVCA in the deal."*

- 16.17. Due to the nature of the joint venture arrangements, it is hard to see how the conclusion that these decisions didn't fall within the referral criteria was arrived at. Entering into the 50/50 JV arrangements had a number of significant implications not least of which was the fact that future financial returns to STDC from the site would be reduced by 50% with the other 50% going to the JV and JV Partners and partly paid as tax. In addition, options to purchase all or any of the land comprised in the site were granted to TWL and the JV Partners were entitled to 50% of any land value uplift.
- 16.18. Under the 'Consultation & Communication' section of the report it states that;  
*"7. This report provides the consultation and communication with TVCA to support the delivery vehicle aspects of the CPO decision."*
- 16.19. The overall tenor of the report implies that the shift to a JV/settlement model, as opposed to CPO/Settlement, isn't significant but merely part and parcel of the envisaged regeneration project. Given the significant and material impacts arising from the move to a JV/Settlement approach, including that of financial impact due to the sharing of value with external partners, the Panel members were surprised that the report contains so little detailed explanation and implies that there aren't any material implications directly arising from this change in approach.
- 16.20. The report contains no reference to legal or financial advice and no detailed explanation as to the mechanism by which the JV arrangement/vehicle would operate or how this will affect governance of the project and the distribution of value between the JV Partners.
- 16.21. A key practical result of entering into the JV is that two or three privately owned companies would likely receive significant financial returns arising from uplift in land value and income from the sale of recyclable materials both of which are directly enabled by publicly funded remediation works. The report would have been more useful in governance terms if it had set out the basis on which the 50/50 surplus share was deemed to constitute value for money and provided a clear statement of the obligations being undertaken by the JV partners in return for their likely financial rewards. It would also have been appropriate to include consideration of any potential State Aid/subsidy control implications.
- 16.22. The Mayor and senior officers argue that it was a commercially advantageous and astute arrangement which ultimately benefited the public but, in terms of openness, transparency and informed decision-making the process fell short of what would reasonably be expected in the context of local authority decision making and significant public expenditure. The lack of transparency and scrutiny of this nature may have a corrosive effect on public trust which lead to less robust decision making.
- 16.23. The recommendation as recorded in the minutes and the decision notice is different to that in the report. It purports to provide an extensive delegation of powers to STDC which effectively removes the checks and balances which were understood to be provided by the legislative framework. It isn't clear from the minutes if the changes arose from an amendment but there is a note confirming that the Monitoring Officer proposed an amendment which appears to be seeking to narrow the extent of delegation from TVCA. The result is an ambiguous record which lacks clarity as to the precise extent of the delegation. Additionally, there is doubt as to whether the TVCA was lawfully able to 'delegate' powers to STDC as set out in the minute of the TVCA meeting.
- 16.24. Approving a recommendation of such significance without any written legal, governance and financial advice isn't good practice because it isn't clear that the decision-makers were properly informed of the consequences of their decision. The Monitoring Officer and



other statutory officers should have intervened with a view to ensuring that the decision was clarified and the decision makers properly informed.

- 16.25. Turning to the TVCA's other checks and balances which included the Overview and Scrutiny Committee, there is no evidence of any scrutiny of this material change in approach by the Overview and Scrutiny Committee. This is at odds with what would be expected for a decision of this nature and scale.

## **Decision Making – Second Settlement Agreement SA2**

- 16.26. It transpired that the Thai Banks didn't conclude the first settlement agreement SA1 and on 15<sup>th</sup> May 2020 STDC served a notice of termination.
- 16.27. In its place a second settlement agreement (SA2) was prepared which was simpler in that it involved a single payment of £15m to SSI/Thai banks to transfer their remaining land holding. The option over RBT land held by the JV Partners became obsolete at this point because SSI/Thai banks no longer had any plan to develop the RBT land and the CPO had been granted.
- 16.28. The SA2 deal which involved new expenditure of £15m was agreed by written resolution on the basis of a 3-page report circulated to STDC Board Members on 14 July 2020. The second settlement agreement was signed the same day. During interviews, it was apparent that there was a lack of awareness of the second agreement and at least one STDC Board member confirmed they were unaware of a second settlement agreement.
- 16.29. The Chief Executive's report to the STDC Board held on the 3<sup>rd</sup> June 2020 makes no mention of the default and termination of SA1 nor the negotiation of and signing of SA2 which had a number of key differences to SA1 including the £15m cost of land purchase.
- 16.30. The Chief Executive and the Mayor were asked whether any consideration was given to reviewing the 50/50 JV at that point, but they indicated there was no appetite to review. There is no evidence of any discussion or review either formal or otherwise amongst the wider STDC Board Members or TVCA members.

## **Supplemental Deed V3**

- 16.31. On the 11<sup>th</sup> June 2020 a Deed entitled 'Supplemental Deed' was signed by the STDC Chief Executive and the JV Partners. The innocuous title and diminutive page count contrasts with the practical impact of this legal document which amends the three option agreements signed in March 2020 which granted options to the TWL over the entire Teesworks site.
- 16.32. The amendments added wording which provided express permission for the TWL to enter any of the option land and to remove all minerals, aggregates, metals and, equipment and structures and that title to such items passes to TWL on removal from the Property. The effect of this was to transfer to the JV Partners 50% of the value of the recyclable materials.
- 16.33. The significance of this change isn't fully apparent until the full value of the recyclable materials is known. The indications from the cash flows moving through the TWL which it is understood arise from the sales of the recyclable materials, show the value is in excess of £100m. This is considered to be a conservative estimate of the full value but precise figures haven't been available. Estimates within STDC documents have indicated the full

value to be £150m, which means that the Deed had the effect of transferring £75m to the JV Partners.

- 16.34. In addition, amendments provide that the 'Owner' (STDC) shall not remove from the property or dispose of any of the recyclable materials without the prior consent of the TWL or as directed by the TWL. This is a notable provision because it has the effect of preventing the land-owner (STDC), from removing their own recyclable material from their land without first obtaining the consent of the TWL. On the face of it such a clause is at odds with the spirit of a 50/50 Joint Venture.
- 16.35. The impact is magnified by the changes to the beneficial ownership of TWL which were set in train in August 2021 and which resulted in STDC transferring 80% of its shares to the JV Partners leaving the ownership as follows STDC: 10% - JV Partners: 90%.
- 16.36. There is no evidence of any formal decision-making process regarding the signing of the Supplemental Deed and given its financial impact alone (£75m) it should have been taken to the STDC Board for consideration and decision. It is arguable that a referral back to TVCA under the referral mechanism or for consent as Financial Assistance pursuant to S.213(1) LA 2011, was appropriate.

## 17. Decision-Making re JV 2

- 17.1. During the summer of 2021, the Chief Executive brought forward a proposal to the STDC board initially by a presentation followed by a report shortly after. In summary, it was proposed to change the ownership of the TWL from 50/50 deadlock company to a 90/10 division of shares in favour of the private sector partners. This proposal, if implemented, would result in a significant change in the JV arrangement to such an extent that it must be characterised as a new arrangement.
- 17.2. The 50/50 joint venture status was fundamentally altered with STDC relinquishing 80% of its stake in TWL with corresponding reduction in the financial benefits both in terms of revenue and asset value. STDC lost all meaningful control over the running of TWL as it could be outvoted by the JV Partners on all decisions within TWL. The proposed 90/10 model cannot reasonably be characterised as a JV Company in the same sense as the initial JV arrangement.
- 17.3. Conversely, the proposal resulted in a significant improvement in the financial outcome for the JV partners and they also achieved effectively absolute control of the company to the extent that the JV partners would be able to take almost any decision without the necessity of obtaining the agreement of STDC.
- 17.4. In addition to the change in ownership and control, the revised model included a change to the valuation of land in the land options granted to TWL in 2020. As originally drafted and agreed, the options provided for a land value based on market value formula. The amended options substituted the market value for a fixed value of £1. On the face of it this has the potential to significantly increase the financial returns available to TWL and the JV Partners and conversely reduce the proceeds realised by STDC on sale of the land to the JV Partners.
- 17.5. Due to the variations in the value of parts of the Teesworks sites this fixed valuation is likely to result in sales at less than best consideration. This is acknowledged in the STDC Decision notice dated 26<sup>th</sup> November 2021 which records that the Mayor provided

approval pursuant to S.209(1) LA 2011, for disposal at less than best consideration. However, the legal advice previously received by STDC<sup>37</sup> advised that the TVCA was the consenting body for such transactions for such disposals. As mentioned above, on 7<sup>th</sup> December 2023 DLUHC confirmed their view that the power of consent for such transactions rests with the Mayor. The question remains as to whether the proposed decision was entered on the TVCA forward plan and whether a decision notice was issued to enable the Overview and Scrutiny Committee to review and potentially exercise Call-In.

- 17.6. Other related changes include the Commercial Deed re Land Value dated 26<sup>th</sup> November 2021 which amongst other things provides for the payment to DCS (a JV Partners company), of a fee for unspecified 'marketing services' of up to 50% of the net land value of the GE site. This is to be paid within 7 days of the receipt of the net land value.
- 17.7. The Commercial Deed re Land Value also provides that in the event TWL undertakes, prior to disposal, any works to make the GE site Development Ready, the Disposal payment shall be reduced by the amount which TWL incurred. This would have the effect of reducing the value paid to STDC for the sale of remediated land to TWL.
- 17.8. Taken as a whole, the combined changes which comprise what we refer to as JV2 were wide ranging and significantly improved the position of the JV Partners to the detriment of STDC. Because of the obvious potential for this to become a controversial decision it is the Panel's view that in the interests of good governance, transparency and accountability TVCA should have been involved to a greater extent in scrutinising this decision to assess whether it constituted value for money.
- 17.9. The proposal had been brought to the STDC Board as a presentation on 12<sup>th</sup> August 2021 and as a report for approval at an extraordinary meeting of the STDC Board on 18<sup>th</sup> August 2021. The key reason given as the driver for JV2 was the stated need to accelerate the remediation process in order to more fully exploit the tax concessions associated with the Freeport status which had been announced in March 2021. In turn the consequence of acceleration would be a faster depletion of the available public funds for regeneration and, due to the finite nature of public funding, the only source of further funding would be from the private sector.
- 17.10. The report<sup>38</sup> is based on the assumption that continuing with the existing approach isn't an option and focuses solely on the need to accelerate and transfer to private sector partners option as the following extract demonstrates.

*"25. It is clear, therefore that to move the site forward, equity rather than debt capital is required and consequently discussions have been had with the JV partners as to their appetite to either bring in new equity partners or move the site on themselves. Any such decision can only be made with their agreement and their preference is to take the site forward themselves as they believe that they have the skills to do so, and our experience with them to date supports that view."*

- 17.11. There is little by way of substantive evidence to support the necessity for changing the structure or for the extent to which it is amended. The result of the changes significantly benefits the JV Partners and there is little in the way of contractual obligations impacting

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<sup>37</sup> Addleshaw Goddard LLP 2018

<sup>38</sup> Report to STDC Board dated 18<sup>th</sup> Aug 2021 para 25

on the JV Partners in consideration of the additional shareholding and future revenue stream.

- 17.12. The counsel's opinion attached to the report is based on the 50/50 JV which is materially different from the 90/10 JV particularly in the context of applying the "market economy investor" principle. A further opinion was subsequently obtained in October 2021 which, subject to the caveat that Counsel hadn't been provided with any financial modelling, advised that a court would be more likely than not to find that the arrangements didn't constitute unlawful state aid<sup>39</sup>. Counsel's opinion was also based on the premise that the whole site was to be transferred to the JV whereas, the reality TWL is able to drawdown individual plots (minimum 1 acre) and under no obligation to draw down any particular plot. This enables TWL to "cherry pick" the sites which impacts on the valuation of the land and may, depending upon site drawdown, give rise to a positive valuation.
- 17.13. In terms of wider scrutiny of the decision to re-negotiate the TWL JV from 50/50 to 90/10, it appears that, notwithstanding the significant financial implications arising to both TVCA and STDC from this decision, it wasn't regarded as warranting any referral back to TVCA either for consent, referral or for their information. There is no evidence of any formal referral to Overview & Scrutiny or Audit & Governance committee.

*N.B. Para 93 of the TVCA Constitution states;*

*"Any financial implications for the Combined Authority arising from a Mayoral Development Corporation shall require Cabinet Agreement through the arrangements for financial decision-making set out in this Constitution."*

- 17.14. The Panel felt that when other key details of the change are considered A decision of such magnitude warranted wider scrutiny. For instance, one of the related changes was to re-value the option land at £1. This was explained to be in return for the commitment of TWL to undertake future remediation and development activity. However, the legal documentation doesn't impose any such obligation on TWL to undertake remediation and there is no evidence that TWL has yet done so.
- 17.15. It is noteworthy that at the point when the JV 90/10 was enacted and up to the present day, it is understood that the JV Partners have yet to introduce any equity or loan funding into TWL. They have received at least £45m from the sale of recyclables. TWL has received £93m from the sale of an Income Strip investment relating to the SeAH wind farm facility. TWL has made payments to TVCA and STDC as well as HMRC for tax due. £63m is retained to fund development works and future commercial obligations.
- 17.16. The Monitoring Officer has a key role to play in advising as to the legal/constitutional requirements for proposed decisions and whether they should be regarded as 'Referral Decisions'. The decision notice contains a box for the signature of the Monitoring Officer but there is no signature and in its place are the letters 'N/A'. Given the significance and complexity of this decision it would have been appropriate for the Monitoring Officer to sign this off.
- 17.17. A significant amount of remediation work had already been undertaken funded by the public purse and this had undoubtedly improved the value of the site and more particularly some individual plots within the whole. The absence of any contractual requirement for TWL to undertake further remediation/development on any particular plot gives rise to the

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<sup>39</sup> Opinion of Hugh Mercer QC - Essex Court Chambers – 26<sup>th</sup> October 2021 -

risk that they might cherry pick the readily developable sites and neglect the others. This risk isn't mentioned in the report.

N.B. Para 3.8 of TVCA Financial Regulations App III of the TVCA Constitution;

*“3.8 The Director of Finance and Resources shall also be responsible for overseeing and identifying any risks to the Combined Authorities finances which may arise from the creation or operation of Mayoral Development Corporations. This responsibility shall be reflected in the constitution and financial arrangements of any Mayoral Development Corporation.”*

- 17.18. Throughout the period during which this proposal was being considered, its existence and nature was confidential and there was apparently no formal consultation within TVCA Cabinet. This level of confidentiality regarding a decision with such significant consequences both in terms of public finances and wider control of the Teesworks project, appears at odds with the Constitution, legislation and guidance and with the benefit of hindsight may be seen as an omission which has exacerbated the extent of public scepticism about the value for money of the project.
- 17.19. As a final point on the JV2 decision making it is noted that the Delegated Decision Notice contains a section headed 'Actual or Perceived Conflict of Interest by any of the Decision Makers'. The decision makers were:
- Julie Gilhespie – Chief Executive of STDC and TVCA and Director of TWL
  - Gary Macdonald – Finance Director and resources of STDC and TVCA
  - Mayor Ben Houchen – Chair of TVCA and Chair of STDC.
- 17.20. In the case of the Chief Executive, their Directorships of TVCA and STDC and TWL give rise to a perception of conflict due to the fact that the decision involves the significant benefit to TWL to the detriment of STDC and by extension TVCA. This should at least be recorded to demonstrate awareness of that potential conflict. However, when asked about this, the Chief Executive confirmed that she hadn't recorded any potential conflict because she didn't recognise there was any. The Panel were of the opinion that amongst other things, the Nolan Principles would require the acknowledgement of such potential conflicts.

## 18. Proposed Amendments to the Relationship Between STDC and TWL

- 18.1. Following requests for legal advice provided to STDC regarding the Teesworks Project an opinion of Hugh Mercer KC emerged. The advice is dated 20th October 23 and concerns proposed new contractual arrangements or amendments which may have a significant financial impact on STDC and indirectly on TVCA.
- 18.2. The proposals relate to the following:
- i) **Remediation Amendment**  
An amendment to the process by which land remediation is carried out in respect of parcels over which TWL enjoys an option to purchase. In simple terms, the parties wish to take the benefit of new legislation (not yet in force) that will provide certain tax incentives for public authorities to remediate contaminated land (“**the Remediation Amendment**”).

**ii) The Infrastructure Amendment**

TWL has stated that it will not exercise its option to call off the trunk roads, bridges and other major access infrastructure within the Site. It wishes to amend the agreements between the parties to provide that responsibility for maintaining that infrastructure will lie with STDC and to make provision for how STDC will fund the necessary works (“**the Infrastructure Amendment**”).

**iii) The Quay Operating Facility Amendment**

TWL and STDC have already entered into an agreement relating to a quay at the Site. That agreement omitted to make express provision for the construction of a Quay Operating Facility. The parties now wish to amend the terms of their agreement to include the construction and delivery of a Quay Operating Facility before transfer to TWL is completed (“**the Quay Operating Facility Amendment**”).

**iv) The ongoing Contamination Amendment**

TWL have proposed that STDC take responsibility in the future for the economic (and other) consequences of any contamination on plots of land that after they have been called off and purchased by TWL (“**the Ongoing Contamination Amendment**”).

- 18.3. Due to the likely financial liabilities and the proposed risk transfer, these proposals are likely to trigger consent requirements and/or the referral requirement and it is recommended that STDC officials seek guidance from appropriately qualified/experienced advisors as to the appropriate mechanisms to use to ensure engagement of the TVCA Cabinet in the decision-making process.
- 18.4. The advice itself indicates that some of the proposed amendments may constitute a breach of the Subsidy Control provisions and other comments suggest that they may not represent Best Value for the taxpayer due to the risk distribution as between STDC and the JV Partners.
- 18.5. The Panel are advised by the executive that these were exploratory conversations and are not now being pursued. This is positive, however we were surprised to learn that the Board or Mayor had not been made aware of these discussions. It may have been helpful to get a steer from the Board before pursuing the matter in detail.

## 19. Financial transaction and cash flows

### JV 50/50

- 19.1. At the time the JV was considered a degree of due diligence was done regarding the JV partners’ other companies, but it has been confirmed that none of the standard checks relating to proof and source of funds, credit rating and money laundering were carried out. The lack of proof of funds for investment contrasts with the Board having previously had in depth discussions as to the ability of Able Ports to fund a development on the site, ultimately not being persuaded as to their ability to do this.
- 19.2. The report to STDC Board in February 2020 proposing the CPO and the JV arrangement as a new delivery model had an inadequate description of the financial consequences, particularly in relation to the need for separate financial modeling for STDC itself and the JV company, subsequently established as TWL.

- 19.3. So far as STDC was concerned, in addition to public sector funding, they would receive capital sums from the sale of land at market value and this would be their main source of 'commercial income' together with any dividends from TWL which were not known or secure. In turn they would be required to pay 'commission payments' to a third party (DCS Ltd. – a company jointly owned by the JV partners) and it isn't clear whether advice had been taken as to whether this would have been a revenue or capital payment. If the former, STDC would not have had resources available to make such payments until any dividends had been received.
- 19.4. The removal of 300 acres of land to be retained by SSI would equally have an impact on future income and whilst there would be avoided costs of remediation, the agreement committed STDC to £24m to demolish the Redcar Coke ovens.
- 19.5. The arrangement required TWL to fund the purchase of land from STDC post remediation and then fund development prior to receiving any income from leases. The STDC board report assumed TWL could lever the rental streams to fund development. However, this was unlikely to be available as a source of initial funding at least in the early stages, given TWL would have no credit history. This proved to be the case as subsequent investors required public sector covenants for lease wraps as evidenced with GE/SeAH developments.
- 19.6. The Panel has seen legal advice from STDC external lawyers suggesting that TWL would likely need to fund the land acquisitions by borrowing from STDC itself. Income received by TWL would be subject to taxation thereby further reducing any retained revenues and payments of any dividends would likewise lead to 'leakage' of monies available to TWL to fund developments.
- 19.7. Whilst the Panel has questions about the subsequent 'scrap agreement', we understand that at this early-stage scrap income on an annual basis was assumed to be low and wouldn't have significantly impacted either STDC or TWL financial models at that time.
- 19.8. It is the Panel's view that remodeling of the finances of both STDC and TWL at this stage would have shown the increased financial risk to the redevelopment of the site plus the need for either capital injections by the JV partners which they were not committed to (alongside equivalent contributions from STDC) or effective funding of TWL activities through loans from STDC itself which would have represented additional public sector borrowing at risk. Whilst the Panel acknowledges that there was limited time to undertake sophisticated modeling in the run up to the Board decision, it is clear that a full description of the significant change in the financial structure and increased risks should have been given. At least one STDC Board member reflected that inadequate financial information had been made available to the Board at the time the 50/50 JV was agreed.
- 19.9. The Panel understand that at no stage has there been any financial modeling of TWL nor any updated model for STDC in the JV scenario.
- 19.10. The Shareholder agreement signed on 13<sup>th</sup> March 2020 provided that TWL should be financed, as far as practicable, from external funding sources with any security provided, as far as possible by TWL. It provided that there was no obligation on the parties to provide extra funding, but it referenced that the first approach for external funding should be to TVCA.
- 19.11. The scrap and aggregates agreement was not reported to STDC Board at the time it was entered into, and some Board members only became aware of the significance of scrap

income at the time of the 90/10 JV. In the subsequent counsel's advice sought by STDC on the ownership of scrap and aggregates by the JV, the instruction did not identify that the existence of scrap largely flowed from estimated spend of £142m on demolition and an unquantified spend on initial remediation entirely funded by the public sector. Whilst the Panel have received an explanation that ownership of scrap and aggregates was vested in the TWL, by virtue of their option, we have seen no legal advice on this. The advice subsequently received only dealt with it being reasonable in Subsidy Control terms.

- 19.12. Despite the scrap agreement being in place the Panel understand that the subsequent tender for demolition contractors asked them to consider how scrap should be dealt with.
- 19.13. In March 2020 when the Commission Agreement with the JV Partners was entered into, it reflected a 50/50 share of the uplifted market value compared to the baseline valuation being £1 per acre apart from the ex-Tata Steel land at £7536 per acre. The subsequent legal opinion obtained by STDC referenced that, to avoid Subsidy Control concerns, the uplifted value should exclude the uplift arising from public sector funded remediation and demolition. This latter also became a condition required by BEIS as part of signing off the Final Business case for additional Government Funding and was restated in subsequent MoUs agreed between Government and STDC, including the 2022/23 agreement signed in November 2022. A subsequent Counsel's opinion referenced that STDC was intending to disregard the BEIS requirement and indicated that they should notify BEIS. The Panel is not aware that this was ever drawn to the attention of BEIS.
- 19.14. The initial proposal for the GE investment land transaction identified a market value of £30m and proposed a commission payment to the JV Partners of £15m. This was outside of the advice and BEIS requirement, and we are given to understand that the JV Partners would not accept either the Subsidy Control requirement or the base value adjustment (ex-Tata land) although we do not know whether they were aware of the detailed Subsidy Control /BEIS position. Whilst the GE proposal fell away, the 50/50 split of the GE site value was reflected in the 90/10 JV agreement and the subsequent SeAH land transaction.
- 19.15. At the STDC Board on 29<sup>th</sup> July 2020, a transition update was presented including STDC's business case to take STSC land into local control and secure £71m of Government funding. The BEIS full business case incorporated financial models which continued to reflect the same basis as in the original CPO model although including different scenarios based on different levels of Government funding. In particular it ignored that Commission payments would be made to the JV partners (outside of TWL), JV taxation and potential JV dividends were not referenced as 'leakages' from the model, nor the fact that the overall finances needed to be restated to cover STDC and TWL separately. The narrative continued to describe the position where STDC would receive lease income and borrow against these income streams which was clearly incorrect as lease income would accrue to TWL.
- 19.16. At the TVCA meeting on 11<sup>th</sup> September 2020, the proposal to take STSC land to local control and receive £71m of new Government funding was accompanied by a very detailed report including financial and operational due diligence by KPMG. However, the narrative of the report continued to promote the CPO financial model unamended with STDC as remediating the site and securing leasehold income with strong covenants. The report said "STDC will obtain value through income strips or accessing secured borrowing". It also assumed that all non-Government/non-TVCA funding would be obtained through borrowing and referenced that TVCA borrowing limits as set out in a private appendix included sufficient headroom.



- 19.17. Under the risks section of the report, the role of TWL in commercialising regeneration sites and negotiating lease finance arrangements is included, but it didn't explain the TWL finance arrangements which introduced a new risk. The report did recognise that there would be private sector investment, but it isn't explicit whether this is the JV partners or other investors linked to commercial developments.
- 19.18. The report also refers to the original business case utilising the TVCA 50% split of business rates, and this has been taken by STDC as sufficient approval to proceed to utilise those monies without further reference back regarding individual proposals as to how the flow of funds would be deployed. There has been no specific TVCA Cabinet resolution to give effect to this substantial future flow of funds from TVCA to STDC. TVCA and STDC should agree, and keep under review, the future split of Business rates which each might use for the benefit of the Red Line area including retained risks both pre and post the ending of the Business Rates retention period.

## **JV 90/10**

- 19.19. The move to the JV 90/10 had significant financial implications. In the interviews with some STDC Board members about the move, there were concerns about the speed with which decisions had been required and the lack of understanding of both the structure and the consequences. These latter points are exemplified by the following examples about the treatment of specific projects in flight at the time of the transfer to the JV90/10.

The GE transaction was to be 'novated' into the 90/10 JV. Under these arrangements, STDC were now due to receive £15m for the land rather than the JV partners. In turn, STDC now had obligations to remediate the land for the GE inward investment and in one part of the report it extends this obligation to providing enabling infrastructure. The figure quoted for GE and the Energy Recovery Facility (ERF) remediation including infrastructure was over £40m and formed part of the overall public sector funding committed in the 90/10 JV model. The model also included an ongoing obligation for TVCA to provide a "lease wrap<sup>40</sup>" agreement to enable TWL to provide the headlease to GE. The detail of the various transactions is unclear, not least how TWL would obtain value from the transaction given the lease wrap covered the GE funders development costs rather than provide a payment (ongoing or capital) to TWL. The Supplemental deed signed to give effect to the potential GE deal under the 90/10 JV had TVCA as a party although there was no referral decision to TVCA at that time to authorise this.

- 19.20. The Quay – the report detailed ongoing obligations on STDC including the appointment of the Quay operator, to maintain the Quay. It is suggested that all revenue flows from the £450m Quay are to flow to STDC. There is no clear approval to enter into any form of deferred purchase of the Quay to TWL or to give them access to the full operating profits (subject to there being sufficient operating profits paying to STDC the tonnage amounts linked to the costs of borrowings taken out for its construction) although that is now what has occurred. In the briefing provided to Board members in the previous week it referenced that the Quay would remain in 100% public ownership although it did reference that TWL would have an option to purchase at market value providing the debt could be repaid.

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<sup>40</sup> A lease wrap is a contract whereby a third party (TVCA) buys the asset to be leased and then leases it back to the leasing company (TWL) who then leases it on to the user (GE).

- 19.21. Future liabilities - the land valuation included in the report quotes £172m of net future liabilities in preparing the site for tenants and is explicitly based on the full site passing to TWL, including responsibility for infrastructure and service charge incurred until plots were let. A 50% discount had also been reflected in the valuation by virtue of the transfer being of such a significant scale that the market would demand such a discount. This was the basis of the Board report although it was clear it was never the intention for the whole site to be drawn down by TWL in that way.
- 19.22. A separate valuation report based on the ability to draw down individual plots and not taking responsibility for infrastructure gave a positive valuation of £23m.
- 19.23. Counsel's opinion sought at the time regarding the land disposal was based on transfer of the whole site and was silent on benefit obtained by TWL from GE or Southbank Quay.
- 19.24. Scrap - the arrangements for sharing scrap income continued to mirror the 50/50 JV with the payment to STDC of up to £60m (their expected income under the 50/50 JV) in the form of a service fee rather than dividend. This is effectively a cash flow process, enabling STDC to benefit from the expected cash flows under JV50/50 and has been treated as an advance of their 10% dividend in term of future profit shares.
- 19.25. The Panel are aware that a question was asked by the BEIS representative at Board as to whether value for money and appropriate risk transfer were being achieved. The Panel have not been provided with any written notes which underpin the S73 officer's assurance and given that there continued to be no obligation on the JV partners to draw down land and invest their own funds (which was clear to the Board), the degree to which risk transfer and value for money could be achieved could only be justified by future developments being progressed at risk by the JV.

## **GE Deal**

- 19.26. As part of the Teesworks Offshore Manufacturing Centre (TOMC) development the STDC Board on 29<sup>th</sup> July 2021 approved a long leasehold interest to GE (BDL) as anchor tenant. The report provided a detailed explanation of the proposal including:
- The site in question covered initial 65 acres option for further 47 acres and preemption of 55 acres*
- 19.27. There were obligations on STDC to provide site capabilities. At this stage it was a public sector transaction with a £15m commission payment to JV partners under the JV50/50 arrangement. As referenced previously, it is evident that the calculation of the Commission payment ignored the baseline price of the (ex-Tata) land and the Subsidy Control/BEIS requirement that part of the uplift arising from public sector spend should not be part of the Commission calculation. The land valuation of £30.7m was in respect of the initial 65 acre area and the option agreements were to be the subject to independent report. The enabling infrastructure was estimated at this stage to be £26m.
- 19.28. Apart from payment of the Commission to DCS, the scheme was a wholly public sector scheme.
- 19.29. A full report to the TVCA Cabinet on 2<sup>nd</sup> July 2021 set out the 'requirement for TVCA to enter into headlease'. It fully exposes the risks of GE break clauses and addresses the value for money in quantifying the retained rental monies. It also considers whether PWLB might be a viable funding route. Whilst the report records that TWL have an option to draw

down the site there is no other mention as to how TWL's interest affects the transaction. The reported margin to TVCA is 15% of the gross lease payment, namely £1.1m pa over a 35-year period and it was proposed to set this aside to manage future void risk. The report makes it clear that the involvement of TVCA in providing the headlease was essential to securing the anchor tenant as the funder required a public sector covenant given GE's lease allowed several break points.

19.30. The resolution of TVCA specifically covers taking the headlease from STDL. It is the Panel's view that the recommendations were specific to the GE transaction and were not a general delegation to officers to enter further lease wraps. The report makes it clear that this is a wholly public sector undertaking with ownership of the site reverting to TVCA at the end of the lease.

19.31. The Executive have confirmed that the TVCA Cabinet received a briefing on the transaction a week ahead of the meeting which would have given cabinet members the opportunity to seek advice from their own and/or STDC officers had they had any questions.

### **SeAH deal**

19.32. At the STDC Board on 7<sup>th</sup> July 2022, under the JV 90/10, information on a proposed transaction with SeAH Wind Investments was considered. The GE deal had not progressed as planned and the site had been offered to other prospective tenants.

19.33. The arrangements for the SeAH transaction were that there would be a sale by STDC of the freehold to TWL for £15m "as per previous valuation and commercial agreement". The appropriateness of this description of the disposal is unclear given the site had a valuation of £30m excluding the added value of the enabling infrastructure.

19.34. It was reported that STDC obligations were largely the same as the proposed GE transaction, including site remediation and provision of utilities. However, the total bill had increased from £26m to over £60m including £15m of additional costs specifically associated with SeAH. There was no suggested revision to the land value or other recompense to STDC for the substantial increase in costs falling on the public sector. It has been explained that the £60m cost was an obligation on STDC in preparing the anchor site and whilst this may be a reasonable interpretation of the JV 90/10 obligations for the 60 acres for GE it isn't clear why that logic would extend to the SeAH increased site acreage or specific cost increases linked to SeAH specific requirements. The Panel is not aware that legal advice covering subsidy control has been sought on the overall transaction.

19.35. The report didn't reference what the commercial arrangements were with SeAH, the return TWL would make from the transaction nor suggest that TVCA would be involved in a subsequent lease wrap. The minutes record that the SeAH deal was to be signed immediately after the meeting.

19.36. At the TVCA Cabinet on 28 October 2022, the Treasury Management mid-year update report sought approval for the change from GE to SeAH as anchor tenants at Teesworks.

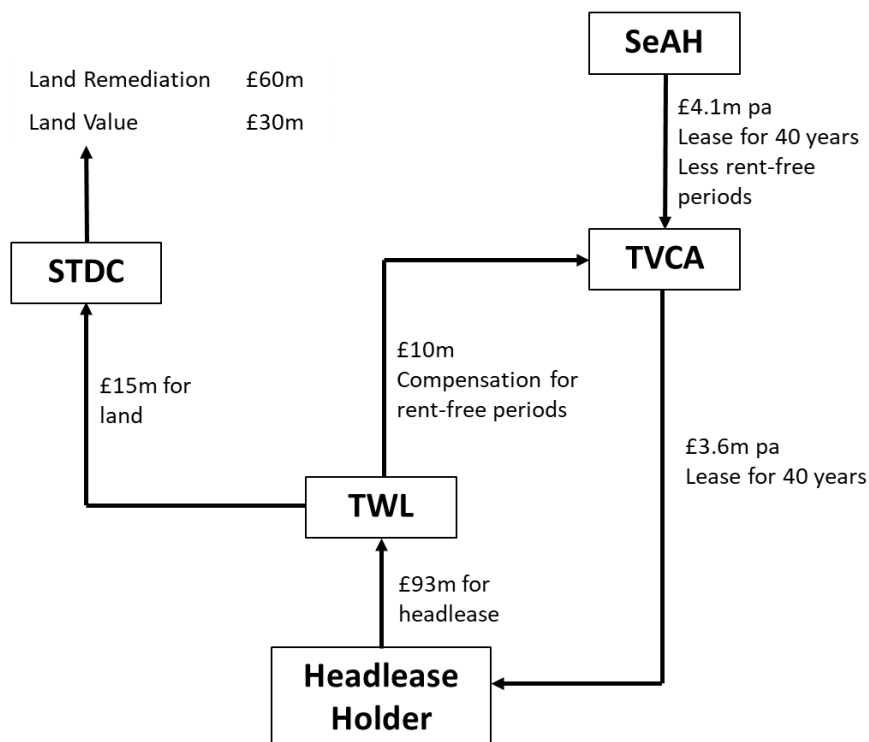
19.37. The text of the report gave no details but stated that borrowing limits in January 2022 included amounts to provide a headlease for an offshore wind anchor tenant. It also reported that other headleases may be required within the total cap agreed by Cabinet and within the risk profile agree. It is unclear why this approval was sought as the STDC

report in July 2022 didn't reference any TVCA involvement, and the Teesworks/SeAH deal had assumedly been signed in July. There was insufficient detail of the changed structure between GE and SeAH and no explanation why TVCA involvement was necessary to warrant the decision. The March 23 report (see below) concerning SeAH included reference to Cabinet at the October meeting approving further leases subject to the financial envelope and risk allocation agreed for GE but there was no such authority minuted and the body of the report itself only referenced that other headleases may be required.

- 19.38. In January 2022, the TVCA Cabinet received a report on the Treasury Strategy. The Strategy states "PWLB loans are no longer available to local authorities planning to buy investment assets primarily for yield; the Authority intends to avoid this activity in order to retain its access to PWLB loans."
- 19.39. It wasn't possible to identify in the report what allowance had been made for entering headleases as the detailed Treasury indicators were not broken down into that level of detail.
- 19.40. On 17<sup>th</sup> March 2023, an urgent report was presented to the TVCA Cabinet on the SeAH Headlease, and it is not clear whether the report was presented at or very shortly before the meeting. It has been confirmed that Cabinet received no prior briefings.
- 19.41. The stated reason for the urgency was that a Third Party was investing in the SeAH income stream and had requested specific approval for the SeAH headlease. This suggests that officers might otherwise have relied on perceived delegations from earlier report rather than seeking specific Cabinet approval. The report leads on from the previous approval to provide the GE headlease on 2<sup>nd</sup> July 2021 and "incorporated a 'headlease' wrap by TVCA for the GE lease to support the anchor tenancy coming to Teesworks". It recommended "Approves granting of SeAH Headlease".
- 19.42. The report advised that the STDC board had received detailed proposals on 7<sup>th</sup> July 2022 and that TVCA had approved the switch to SeAH in the October 2022 Treasury Management report. However as set out above, there was no adequate explanation given to either meeting as to the need for TVCA involvement.
- 19.43. There is some indication in the report that the nature of the SeAH lease wrap is different and would generate a capital receipt for TWL and notes that they are not obliged to invest it. The scale of the capital receipt to TWL, in excess of £90m is not explicitly reported but could be seen in the attached Colliers report which is a technical valuation paper and Cabinet members would not easily have seen the detail. The report states that there are no financial implications outside of those agreed in previous cabinet decisions, but this is incorrect. The scale of retained income from the lease wrap is reduced by over £0.5m pa as the overall size of lease payments are roughly 50% of GE and the lease from TVCA to SeAH provides for rent free periods which, on enquiry, are covered by a 'reverse premium' from TWL to TVCA of over £10m but are not referenced or explained in the report or the attached Colliers technical paper.
- 19.44. The legal implications are also stated as no different, but the rationale for the headlease had changed from being crucial to delivering the anchor tenant where the funders required a public sector wrap to a purely funding transaction taking place several months after the agreement had been signed. The proposed headlease was designed to give TVCA an income stream in return for accepting the SeAH covenant risk and, more significantly, a substantial capital sum to TWL.

- 19.45. The report states that previous cabinet decisions delegated authority to officers to progress with SeAH but it is hard to conclude that such a delegation existed and relying on the October 2022 Treasury Management report, in which no relevant information was provided, is unsound.
- 19.46. The legal justification for entering the headlease is unclear in the Cabinet report and arguably could be read as an investment solely or mainly for profit which is contrary to CIPFAs Prudential guidelines and TVCA’s own Treasury Strategy. The fact that the Investor had required £50m of the proceeds received by TWL to be set aside for future investment in TWL was not referenced in the report despite the fact that it might have provided a legal basis for TVCA entering into the arrangements. However, when the Panel discussed with the JV Partners why TVCA needed to provide its covenant strength, they felt that the JV would have been in a place to undertake such a transaction once construction of the SeAH facility had been completed and that TVCA’s early provision of the facility was to generate income for itself to replace that assumed under the GE lease wrap.
- 19.47. The transaction is complex and the flow of funding is represented below alongside the overall financial dimensions of the transaction from a public and private sector perspective, as the Panel understands it.:

### SeAH Transaction



	£m	Comment
<b>Investment by public sector</b>		
Land Valuation	30	
Site remediation and provision of enabling works & Utilities	60	
<b>Total Expenditure</b>	<b>90</b>	
Net receipt by TVCA of lease wrap margin/TWL compensation	-24	Annual net receipt of £0.6m pa for 40 years (indexed)
Receipt by STDC re land	-15	
<b>Total Income</b>	<b>-39</b>	
<b>Net Contribution/(receipt)</b>	<b>51</b>	
<b>Investment by TWL</b>		
Land payment to STDC	15	
Compensation to TVCA for rent free periods on lease	10	
<b>Total Expenditure</b>	<b>25</b>	
Sale of Lease wrap to Investor	-93	
<b>Total Income</b>	<b>-93</b>	
<b>Net Contribution/(receipt)</b>	<b>-68</b>	

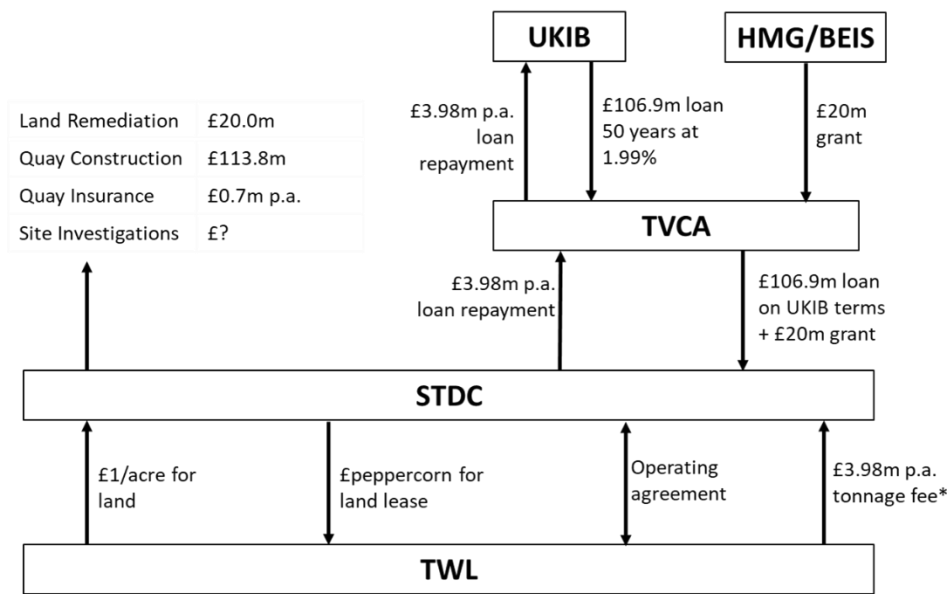
## South Bank Quay

- 19.48. The business case seeking £20m of Government funding for South Bank Quay was approved by TVCA Cabinet on 2 July 2021. It was based on public sector funding and operation, with the revenues, after operating costs, being used to repay the debt. Likewise the initial report to STDC to progress the scheme was a solely public sector proposal. Initial borrowing by TVCA for £106m was undertaken from PWLB on or about 1<sup>st</sup> November 2021 but this was subsequently novated to UK Infrastructure Bank (UKIB). TVCA then entered into an equivalent loan agreement with STDC to allow the latter to fund the construction of the Quay. The terms of the loan from TVCA to STDC signed 1<sup>st</sup> November 2021 recognised that the repayment profile may be modified due to operational performance and the repayment period may be extended. There is provision for premature repayment, and STDC indemnifies TVCA for any costs arising.
- 19.49. After the 90/10 JV approval by STDC Board, an agreement was entered into with TWL to sell the Quay on deferred purchase terms with payments on an annual and cumulative basis capped at the capital cost plus interest calculated as per the UKIB loan. On an interim basis, STDC are bearing the capital financing costs estimated as £2m in STDC's 2023/24 budget. The payments from TWL are linked to the tonnage throughput at fixed rates and if this is lower than the specified level then the balance rolls forward to be paid in subsequent years.
- 19.50. A supplementary agreement dated 16 December 2022 included a possible deduction from the tonnage payments in respect of operating profits not being sufficient. All operating profits, after the tonnage linked payments, accrue to TWL. Documentation suggests that STDC retain responsibility for insuring the Quay and this could amount to £700k pa initially but will change as replacement value varies and insurance rates fluctuate. Likewise, the position as to who bears the annual service charge isn't clear. In the event that any

insurance and service charge costs fall on STDC it would represent a subsidy to TWL as would the benefit of public sector borrowing rate. This would need to be considered as part of the Subsidy Control position as well as reflected in ongoing liabilities of STDC. It is apparent that £20m of Government grant has been received to support the development of the Quay and associated facilities, and there is an obligation linked to the grant that it should not benefit any particular private sector body. The precise use and beneficiaries of the grant are not clear to the Panel but given TWL are to receive all operating income from the Quay and all value leases on adjoining land it is likely that they are the direct beneficiaries.

- 19.51. The agreement between STDC and TWL provides that TWL may make earlier repayment of the debt but doesn't provide that they would meet any breakage costs. As the UKIB loan can only be used for the purposes of the Quay and requires TVCA to notify UKIB of any disposal or potential disposal it would likely trigger a premature repayment to UKIB with any breakage costs falling on STDC. In the event that premature repayment was not required by UKIB, TVCA might be left with monies it couldn't utilise elsewhere.
- 19.52. The UKIB loan to STDC via TVCA has a predetermined repayment schedule and interest is at a fixed rate over its life. This matches the tonnage-based payments from TWL to STDC, but this is dependent on the utilisation of the Quay reaching specified levels and a possible reduction linked to sufficient profitability in accordance with the supplementary agreement. As a result of the supplementary agreement there has been no financial risk transfer to the JV and TWL will accrue operating profits which exceed the financing payments to STDC whilst STDC are providing direct financial benefits to TWL through meeting insurance costs and site maintenance obligations. The Panel recognise that TWL has commercial obligations and incentives to make the operation of the Quay a success.
- 19.53. Access to public sector borrowings is fixed at 1.99% for 50 years. Both the 50-year loan life and fixed interest rate represent terms that would not have been available to TWL. Indeed it is clear that TWL would have been unable to obtain any finance for the project given the uncertainties surrounding its commercial success.
- 19.54. The Panel is aware that recent Counsel's advice questions whether the deferred purchase by TWL on the terms agreed represent a commercial decision. This situation is exacerbated as counsel was apparently unaware of the short-term financing costs and ongoing insurances falling on STDC.
- 19.55. Given that TVCA approved the business plan representing public sector ownership and full operational income flowing to STDC, the deferred sale and transfer of all operating profits after financing costs to TWL should have been recognised as a Referral Decision. Whilst Cabinet agreed the business plan, it isn't clear that they appreciated TVCA would be undertaking the borrowing in the first instance and the District Chief Finance Officers the Panel spoke to were not aware of the situation.

19.56. This is an incredibly complex deal and we set out below a funds flow diagram of the deal as we understand it.



\*tonnage fee of £3.98m p.a. is a maximum, subject to volume change and available profit.

## Landfill Tax and NZT

19.57. Whilst discussions have taken place with Government about the landfill tax trap and whether a solution will be forthcoming, the March 2023 budget did not provide this nor any timescale within which proposals would be brought forward but did record that it was under consideration.

19.58. The March 2023 STDC board was scheduled for the day after the Budget and considered a report to review the implications of the tax and the need for a different delivery model for NZT and other future deals. The report presented advised that there was a proposal in the Finance Bill, which turned out not to be the case. It is clear from the minutes that the Board were made aware that the detailed proposals and legislation were still outstanding.

19.59. The proposal regarding changed operating methodology was based on the understanding that a remediation scheme undertaken by the public sector would be eligible to access the landfill tax grant if the scheme was not viable without it. From discussions, given the environmental license available to STDC for the NZT scheme, landfill tax was not a material factor in its viability although the need for TWL to acquire its own environmental license if undertaking the works directly would be an additional risk. However, the STDC Board report relied on the landfill tax rationale to explain the change in operating approach both for NZT and future schemes and there was no reference to the favorable environmental license which the NZT scheme held.

19.60. The essence of the change in methodology whereby STDC would undertake the work and be reimbursed by TWL leads to a number of costs and risks which should have been addressed. The effective lending of monies to TWL carries with it a high level of credit risk as the rating given by STDC's Treasury advisers was equivalent to Moody's Ba3 which is not investment grade, considered speculative and are therefore subject to high credit risk. It sits one grade above junk bond status. This rating was assessed based on full security being maintained on the land. Whilst this was reflected in the margin being applied to the



loan it was a material factor that should have been reported to the Board in making any decision.

- 19.61. The contracted interest rate is to be applied on a 'simple interest' basis and tied to a margin over a 10-year gilt as of March 23 which was 3.5%. Gilt yields increased thereafter and as at the date of signature had increased to 3.76%. Likewise accruing interest on a simple interest basis is not consistent with referencing a margin over gilts as the latter have twice annual interest dates. To mirror a normal commercial agreement interest should be compounded on a semiannual basis. The NZT agreement also applies a shorter longstop date which is unlikely to be 10 years from signature date which makes reference to a 10-year gilt rate questionable. Linking the appropriate margin to a loan rate at the time of each drawdown would seem more appropriate given the volatility in rates at the current time and the length of time over which monies would be advanced.
- 19.62. It is also noted that the NZT agreement leaves STDC responsible for the service charge on the land until drawdown by TWL and this should have been included in the costs to be recovered as this represents a direct cost to STDC in undertaking the work which they should be recovering alongside the agreement to recover incidental costs. Likewise, the agreement leaves STDC responsible for any landfill costs incurred.
- 19.63. The report to STDC Board includes no commercial detail including the possible up-front funding by BP and the extent to which the scheme might qualify for landfill tax support (which it is understood is not likely given the environmental permit in place) and hence any likely landfill costs to be met by STDC, the scale of the investment and assessment of TWL's credit worthiness. It was also noted that STDC was committed to carrying out Phase 2 if required by TWL.
- 19.64. The provision of a Park and Ride facility is a contractual requirement for NZT to be delivered by STDC at a cost of £20m. At that stage funding via TVCA Transport funding hadn't been agreed and the obligation wasn't referenced in the STDC Board paper nor to TVCA as a referral decision.
- 19.65. A substantive consideration to any commercial lending agreement is understanding the means by which the lender will repay the loan, and this wasn't addressed in the Board report. Clearly if the NZT lease had been finalised and the JV able to securitise the lease payments, this would have provided a route but in the absence of this, STDC would need to rely on the £50m income received from the Investor retained by TWL, assuming this had been achieved and not committed to other projects. It was noted that the TVCA decision to enter into the transaction was after STDC decision on NZT and hence that source of income couldn't be relied upon at the time of agreeing the revised operational approach for NZT.

## **Summary financial position of STDC and TWL**

- 19.66. Planned public sector investment in Teesworks up to end 2024/5 (excluding keepsafe) will have amounted to circa £500m. As at 31/3/23 substantial financial liabilities exist for STDC (£257m of prudential borrowing undertaken of which £206m has been borrowed long term

from TVCA). This latter is held as loans by TVCA from external lenders along with liability assessed in the accounts as £103m under the SeAH lease agreement.

£m	Pre 20/21	20/21	21/2	21/3	21/4	21/5	Total
Operating costs		3.2	4.3	10.7	0.9	0	19.1
Demolition		2.1	41	83.5	17.4	0	144
Site preparation and infrastructure		30.5	58.7	34.7	52.1	6.3	182.3
Enabling studies			7.9	1.9	2.7		12.5
South Bank Quay			23.2	65.7	22.9	1	112.8
PROJECT EXPENDITURE		32.6	130.9	185.8	95	7.3	451.6
LAND ACQUISITION COSTS	11.2	15.9	1.3	0.2			28.6
KEEPSAFE ex SSI		14.9	28.3	17.1	1.8		62.1
<b>TOTAL EXPENDITURE</b>	<b>11.2</b>	65.6	164.7	213.8	97.7	7.3	560.3
<b>FUNDED BY</b>							
Beis RDEL		11.4	34.2	16.8			62.4
Beis CDEL		5.4	11.7	5			22.1
MHCLG CDEL		4.2	36.8				41
MHCLG Prairie		10					10
TVCA Investment Plan		30.8					30.8
Beis WiIND			20				20
Quay Borrowing			33	64.3	9.5		106.8
Other	11.2	3.9	29.1	127.7	88.2	7.3	267.4
							560.5
Other will include balance of £56.6m Investment Fund, Scrap circa £60m, GE land sale £15m							
Prudential borrowing included in "other" derived from CFR statement	11.2	25	44	70.7			

19.67. From the above analysis it is apparent that STDC has substantial treasury transactions, including borrowing £206m from TVCA as at 31/3/23. The STDC constitution requires that the Board receive an annual Treasury Management Strategy (which would include Minimum Revenue Provision (MRP) policy) together with mid-year review and Annual Report. To date the Panel have been unable to identify any such reports over the period from 2020. Such reports would have highlighted that STDC has undertaken £247m of prudential borrowings of which £96m relates to the Quay development. Whilst the Quay borrowing might arguably be seen as approved by TVCA, when it approved the Quay business case to Government there is no evidence that the remainder has been approved by TVCA and it appears to be merged within 'other funding' in the periodic financial updates provided to STDC Board such they are unlikely to be aware of the scale. Whilst it is reported in the draft Annual accounts for 2022/23, these have not yet been reported to the STDC Audit and Governance Committee nor to the Board although they are published on the TVCA web site. Studying the draft accounts would also identify that there are unexplained differences in the cumulative funding statement presented to the STDC Board in July 2023 (table at above) and the draft annual accounts.

19.68. TVCA receives the required Treasury Strategy reports which identify loans to subsidiaries in total but does not give further detail. Apart from the possible agreement to lend monies to STDC for the construction of the Quay, it is not apparent that any other specific approval

for on-lending has been agreed by Cabinet nor that Districts are aware of the overall exposure to STDC. The Panel note that the constituent authorities receive copies of the various Treasury Management reports and that they are publicly available, however there does not seem to be any recognition of such Treasury activity. The TVCA Audit Committee do not receive the various Treasury Management reports, although they are publicly available, and do not provide any scrutiny of TVCA lending to STDC. Whilst an astute reader of the accounts would identify such lending activity it seems unlikely that most Committee members would scrutinise in that level of detail.

19.69. To date the JV partners have received circa £45m through TWL with a further £63m held as cash in TWL. There has been no direct financial investment by the JV partners in TWL and nonapparent in the near future given the new operating model agreed.

	31/07/23	Comment
	£m	
<b>Income</b>		
Scrap	98.3	
Land deals	97.5	
Interest	1.0	
	<u>196.8</u>	
<b>Expenditure</b>		
TVCA reverse premium (SeAH)	10.0	Reverse premium payment re SeAH transaction
Overheads	4.7	
Tax	29.3	
STDC	44.8	Includes £5m for GE land Transaction + £39.8m scrap
JV Partners	44.6	
	<u>133.4</u>	
<b>Cash at Bank</b>	<u>63.4</u>	
Liabilities	10.0	Due to STDC re GE land Transaction
Assets	39.8	Due from STDC through dividend deferral as part of the £60m advance on scrap

## 20. STDC Retained Liabilities

20.1. The Panel has sought to identify the liabilities currently sitting with STDC through review of the financial plans and other documents provided to it. It will, inevitably, not be a comprehensive list and some of the values allocated to individual items will be 'best estimates' which STDC may be able provide more accurate assessments for. The Panel are aware of the report to the April STDC Board covering some aspects of ongoing site liabilities, but this did not cover the full range of liabilities for STDC over the short, medium and longer term.

### Outstanding Debt

20.2. As at 31<sup>st</sup> March 2023 STDC had utilised Prudential borrowings to the tune of £247m, which included £206m of long-term external borrowing from TVCA. The remainder may be funded from shorter term loans from TVCA or STDC's own cash flows.

- 20.3. The STDC financial plans for 2023/4 to 2024/5 show further funding required to complete the capital programs. This amounts to £105m and will undoubtedly include further borrowings as scrap income has been fully utilised.
- 20.4. Capital financing costs budgeted in 2023/24 amount to £7m and this figure will increase as more borrowings are undertaken and MRP starts to be charged on later years capital spend. Income from the South Bank Quay agreement with TWL will be planned to cover the Quay financing costs but financing costs of £135 to 200m of borrowings will fall to be met from other income sources. In the absence of STDC Treasury Management annual policies including MRP, it is not possible to determine the periods over which MRP is to be applied.

### **Estate Management costs**

- 20.5. The 2023/24 budget includes net costs of £4.9m and whilst this would be expected to diminish as TWL draw down individual plots there will be a remaining profile of unrecovered costs. Under the proposed new operating methodology STDC would continue to bear site costs for plots being developed under direction from TWL until such plots are drawn down.

### **Quay residual costs**

- 20.6. The Quay agreement provides that STDC is responsible for insuring the Quay and, based on figures included in STDC documents this could initially amount to £0.7m pa. It is unclear whether STDC continues to bear related estate management costs.

### **High Tip and SLEMS**

- 20.7. These sites are unlikely to be developed in the short term and ongoing site maintenance and estate management costs will continue. Should the areas be brought forward for remediation, costs of up to £50m might be incurred and it is unlikely these would represent commercial propositions at the present time.

### **Proposed Infrastructure Amendment**

- 20.8. Panel are aware that Counsel's advice has been sought on a proposal for STDC to take responsibility for Roads, Electricity apparatus associated with roads, foul water mains, gas appliances and amenity areas. Under the amendment TWL would serve notice on STDC to construct, upgrade, repair and maintain these to specified standards and to solely use business rates income from the site for this purpose. Panel have seen no estimate of the capital costs of such investment by STDC nor the ongoing cost of meeting ongoing obligations. Counsel's initial opinion is that this could be a breach of Subsidy Control regime.

### **Business Rates**

- 20.9. The Regulations provide for TVCA to receive 50% of the business rates uplift from the designated areas to support TVCA medium term financial strategy and the Business Plan as approved by BEIS in 2020. The Regulations specify the time period being 25 years from 1 April 2021. Both the Regulations and the signed MoU with R&C are with TVCA as the accountable body. Although STDC have assumed they have sufficient approval to access the full amount of business rates, TVCA should review the liabilities which would

potentially fall to them. Subsequently TVCA should explicitly agree the amount and usage of Business Rate income to pass to STDC and receive assurance from STDC as to their application in line with the Business plan.

## **Park and Ride**

- 20.10. Under the NZT agreement STDC are required to provide a Park and Ride facility at a capital cost of £20m and to maintain thereafter at its own cost. It is understood that the capital cost will be met by TVCA Transport allocation, although in theory it could be met from retained business rates.

## **Conclusion**

- 20.11. STDC retain substantial liabilities on the site which are largely unquantified. Whilst it is no doubt the intention to utilise business rates income to cover these costs, that income source has a finite life whilst many of the obligations extend beyond that period. Should the Infrastructure Amendment, in its suggested form, be agreed it would remove from STDC any flexibility to meet costs other than those specified in the Agreement from business rates income. STDC should model financial flows which should extend beyond the life of the Business Rates Regulations to better understand its net liabilities.

## **21. Specific issues**

- 21.1. There have been a number of specific allegations that have been in the media. These have been put to the Statutory officers and they advise as follows:

### **The appointment of Teesworks Operations Manager**

- 21.2. The Teesworks Operations Manager is employed by STDC and commenced work on 1<sup>st</sup> September 2020.
- 21.3. The post holder was approached directly by the Chief Executive for the role, following discussions between her, the Director of Finance and Resources, and the JV partners.
- 21.4. The post holder was approached due to his "very unique experience with both ports and Teeside" as he was known to be available and an expert in ports.
- 21.5. The post holder was formerly the Managing Director of Redcar Bulk Terminal and involved in selling the land option to the JV Partners which was pivotal to the 50/50 JV arrangements.

### **The appointment of Teesworks Site Development Manager**

- 21.6. The Teesworks Site Development Manager is employed by STDC and commenced work on 7<sup>th</sup> December 2020
- 21.7. The post holder was recommended by the JV Partners and interviewed by The Director of Finance and Resources and the Teesworks Operations Manager. There was no advert or competition for the role as the detail required "a known and trusted person".
- 21.8. The post holder is the son in law of one of the JV Partners.

## **The resignation of Former Group Chief Legal Officer**

- 21.9. The post holder was employed as Group Chief Legal Officer from 3<sup>rd</sup> September 2020 to 25<sup>th</sup> November 2022.
- 21.10. The post holder resigned to take up a new position and served his contractual notice period.

## **The procurement of NE Security Limited**

- 21.11. NE Security Limited were appointed through an open OJEU process to deliver Teesworks core security. The contract commenced on 13<sup>th</sup> December 2021.
- 21.12. There were 7 bids received of which 2 were compliant. The evaluation was scored by the Head of Security and his deputy and overseen by the Procurement Manager. It included a pass/fail question requiring bids to be within the financial envelope set by STDC.
- 21.13. CRB checks whilst a standard term in STDC procurement were not taken up as the individuals involved in the contract have to be SIA (Security Industry Association) licensed and the bidders made the appropriate disclosures in this regard<sup>41</sup>.
- 21.14. No interviews took place, in line with standard practice, and no references were taken. There was no assessment of the credibility of costings where the financial envelope appeared to be met despite a fully detailed pricing schedule being a requirement.
- 21.15. NE Security Limited provide services to one of the JV Partners.

## **The role of TCC Plant Limited**

- 21.16. STDC have no contracts with TCC. TCC have not tendered for any STDC opportunities.
- 21.17. TCC may have a presence on site through sub-contracts with STDC direct contractors. TCC hire plant to SeAH.
- 21.18. TCC is owned by the son of one of the JV Partners.

## **Withholding monies from Redcar & Cleveland BC**

- 21.19. There has been significant coverage and speculation about the withholding of monies from R&C pending the movement of the South Road roundabout which it is said encroaches on preserved rights over land held by PD Ports and subject to current court proceedings.
- 21.20. Early in the review, third parties shared copy correspondence, with redactions, on this matter. The main e-mails are sequenced and summarised below. The final document, a text, was not made available until 3<sup>rd</sup> October 2023:

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<sup>41</sup> JG e-mail 30/10/23

Date/time	From	To	Commentary
06/03/23	Julie Gilhespie	John Sampson	<b>Roundabout</b> Referenced conversation Friday (3/3/23) Asked if R&C can subcontract the roundabout project. Reference sub-contractor already on site who can do it quickly and easily Offer to fund if a constraint
06/03/23	John Sampson	R&C staff	<b>TVCA Funding - Redcar Town Deal</b> Referenced conversation with JG Friday (3/3/23) JG has confirmed Mayor has "...put hold on a range of funds coming to us – the TVCA contribution is one such sum" Discussed unlocking log jam Asked if funding delayed until May, would cause a problem
06/03/23	R&C staff	John Sampson	<b>TVCA Funding - Redcar Town Deal (RTD)</b> Confirms funding delay will have a big impact on a few projects Need RTD money by 20 March or £100k cost exposure Other project funding at risk as listed
09/03/23	John Sampson	Julie Gilhespie	<b>Roundabout</b> Hold on funding – RTD assurance statement to Government due 20 March. Need position by then so scheme not derailed.
16/03/23	Julie Gilhespie	John Sampson	"Ben will release town deal Money as soon as he has confirmation that you have instructed the contractor on the roundabout"

21.21. John Sampson, Managing Director, Redcar and Cleveland BC (R&C) was interviewed on 23<sup>rd</sup> August 2023. He was asked about TVCA or STDC putting the council under pressure to undertake highways works or make planning applications; the so called "blackmail e-mail". John confirmed there was no such e-mail. There was discussion about the South Bank roundabout progress and reluctance on the part of developers (STDC) to progress planning permission considering the land dispute. R&C used their highways development rights to change the location.

21.22. At the same time, R&C were "chasing some funding" from TVCA in respect of a costal scheme. This was a separate issue and they required confirmation of funding. The confirmation was not received, and the council placed orders at risk. They have subsequently received permission for some £600,000 from TVCA. John advised that the two issues had "entangled themselves" with some internal e-mails putting the two issues together. They were not blackmailed, he felt people had "put two and two together and come up with three...".

- 21.23. On 12<sup>th</sup> September 2023 the Panel received two e-mails. The first from the Leader of R&C advising that John Sampson had "... disclosed to me that he would be sharing with your investigation a WhatsApp message from Julie Gillespie directly to him stating that Ben had indeed threatened to withhold funds until the roundabout issue had been resolved.". The second was from The Chair of the Regulatory Committee of R&C stating, "You have been sent evidence of Houchen using Gillespie to blackmail Redcar and Cleveland Council."
- 21.24. John Sampson was interviewed again on the 2<sup>nd</sup> November 2023, where it was put to him that there was evidence that monies had been withheld from R&C. John confirmed that he did believe this to be the case, although this was not included in any email. The genesis was conversations with Julie Gilhespie and the Mayor. John advised that there was a text that linked the two and arranged for a copy to be shared with the Panel. He had not previously shared it as the Panel had asked about e-mails and he had treated the request in the same way as an FoI, which in his view entitled him to exclude the text.
- 21.25. We met with the Mayor on 3<sup>rd</sup> November 2023 and asked him about the allegations of withholding funds. He set out a position whereby STDC had agreed to assist and even pay for the roundabout, whilst separately R&C had sought additional funds from TVCA for the Town Fund project. The two items had been misrepresented. In any case the roundabout was, in the end, never delivered.
- 21.26. In conversation with Julie Gilhespie on 10<sup>th</sup> October 2023, she was advised that we had seen her text and asked if the Mayor was aware. She had a different perspective that R&C Leader had told officers not to proceed with the roundabout, on the back of a view that R&C were receiving less than their fair share. This arose from the "deal" in July 2022 to secure 2 further Development Corporations (DC) in Hartlepool and Middlesborough. Each new DC was to receive £10m from TVCA and in order to secure agreement from the TVCA Cabinet a further £10m was set aside for non-DC areas, being split £6m for Stockton and £4m for Darlington.
- 21.27. The former leader of R&C, Mary Lanigan, was interviewed on 3<sup>rd</sup> November 2023. She too referred to the deal with Stockton and Darlington, in the context of TVCA cabinet being asked to agree to borrow £20m for the Airport at short notice and with no supporting paperwork.
- 21.28. There are clearly different perspectives on this issue and equally some consistencies. What is clear is that based on the text from Julie Gilhespie of 16<sup>th</sup> March 2023 R&C would have good reason to conclude that the release of monies by TVCA for the Town Deal was dependent on them contracting the works on the roundabout. Ultimately though, the monies were released, and the roundabout did not progress.
- 21.29. This is an example of how unhelpful relationships across the region are impeding the delivery of significant regeneration in Tees Valley that go beyond the boundaries of the Teeswork site.

## 22. Conclusions

- 22.1. Teesworks and the regeneration of the former Redcar Steelworks is a vast and complex project. The area desperately needs, and welcomes, the opportunities the site can offer and much has been achieved in a relatively short space of time. We do not underestimate the challenges posed by the site and the circumstances within which much of the current



work has taken place. These include a worldwide pandemic, a number of geopolitical shocks and economic instability.

22.2. The Panel have not been able to follow every single lead provided or answer every question posed by stakeholders and interested parties. We have however secured sufficient, consistent evidence to support our conclusions. We have found no evidence of corruption or illegality. We have identified a need to strengthen governance and increase transparency which can be done with limited impact on pace of delivery.

22.3. In terms of the specific questions set out in the terms of reference our summary responses are set out below:

**1. An assessment of the governance arrangements at the STDC, including how decisions are made and the transparency of those decisions.**

STDC Board members and constituent authority chief executives expressed confidence in the current group executives. The Board largely feel engaged and make unanimous decisions. The quality and timing of reports is mixed and often supplemented by informal briefings, although the Panel has not always seen the content of these. Much of the detail is delegated to the executive and we found evidence of inaccuracies and omissions in reports which undermines decisions. The high degree of confidential reporting and opacity in report titles compromise transparency. We did not see sufficient information provided to Board to allow them to provide effective challenge and undertake the level of due diligence expected of a commercial Board.

**2. An assessment of the arrangements through which the Tees Valley Combined Authority (TVCA) meets its responsibilities for effective and appropriate oversight of the activity of STDC (the Mayoral Development Corporation responsible for the Teesworks site) and the Teesworks Joint Venture (the public-private partnership between STDC and its partners).**

TVCA effectively has no oversight of STDC Board or TWL. The Cabinet receive routine updates from the Chief Executive, however they are not sighted on or engaged in significant decisions. The former monitoring officer advised TVCA oversight and Scrutiny Committee they had no remit to scrutinise STDC decisions. Since then, despite concerns being raised, there has been no advice to TVCA that they can issue or revoke directions, including referral decisions, that STDC must follow. They can also amend delegations issued. The executive has been robust in applying a narrow definition to referrals.

TVCA seems unaware of the direct liabilities it faces as a result of its interface with STDC and it is questionable whether there has been substantive approval to the degree of long-term lending to STDC or their access to business rates income.

There is no oversight of TWL, despite requests from various TVCA members and Committees. It is the responsibility of STDC as the public authority to ensure that appropriate conditions and oversight of TWL is in place.

**3. An assessment of the processes, systems and delivery mechanism in place to deliver the expected value and benefits of the Teesworks Joint Venture?**

Operations of TWL are not visible beyond the published accounts at Companies House. While TWL is a private sector company, albeit one where STDC had a controlling influence at one time, it would have been the Panel's expectation that STDC would have set some conditions aligned to managing public funds on how the public assets and resources were defrayed once drawn down.

Whilst the JV Partners have undoubtedly brought their skills and experience to bear on the project and have been critical to progressing at pace, there has been no private finance invested to date whilst over £560m of public funds have been spent or committed. The JV Partners and TWL have received substantial income as a result of the public sector investment.

A further £238m investment including £40m for Net Zero Teeside, is potentially to be incurred by STDC utilising prudential borrowing, to be repaid over the next 50 years from a combination of retained business rates, Teesworks Limited (TWL) profits from operating the Quay, and contractual commitments from TWL.

Outcomes are reported quarterly to Government (BEIS/BAT) in line with the agreed criteria. However, these do not record the cumulative position on either costs or benefits, nor do they compare the current overall position in respect of costs and benefits with those set out in the approved business case.

- 4. An assessment of the arrangements and capacity in place to ensure that decision making across the TVCA, including STDC and Teesworks Ltd (the Joint Venture vehicle), is evidence-based (where practical), takes full consideration of value for money, and reflects an appropriate balance of risk and reward between the public and private sector.**

The risk and reward between the public and private sector was set out in principle to the STDC Board at the agreement of the JV 50/50. Detail was left to statutory officers and developed over time, including 2 supplemental agreements that were not notified to the Board. The JV 90/10 equally was discussed at the principal level. Each land transaction shifts the balance of risks and rewards, and these have never been discussed holistically.

TVCA has no sight of these decisions other than specific deals where they may act to provide financial covenants or instruments.

The quality and timing of reports are variable. In many instances the reports omit much of the detail and on occasion have been incorrect e.g., advising that Government had agreed a solution to the Landfill tax legislation. While external specialist advice is sought, often the advice is narrow e.g., subsidy control advice was limited to the commission payments with the JV partners, not the overall deal, and instructions are often limited and on occasion incorrect. The lack of challenge from the Board and wider professional officers within TVCA constituent authorities mean that there is ineffective check and challenge in the system.

The absence of detailed commercial financial advice on all but one transaction (transfer of STDC to local control) is notable and undoubtedly would have led to a fuller understanding of financial consequences to inform major decisions.

**5. An assessment of the level of confidence by which the Government have that key decisions to date in relation to the Teesworks Joint Venture have been evidence based and taken appropriate consideration of value for money.**

The lack of transparency in the decision making and the very permissive scheme of delegation undermines the confidence Government can place on the evidence base and systems to secure value for money. The evidence base is constrained with risks not being fully understood and value for money cannot be assured without the checks and balances in the system. There appears to be significant verbal briefing of decision makers but the detail of this is not available as evidence. Given the tight control of information, the relatively small number of officers involved and breadth of experience of decision makers, this limits the added value Board members are able to bring to the decisions in respect of the JV arrangements.

The confidence in statutory officers is good but conversely reduces the curiosity of those in positions of influence, who take reports and briefings at face value without providing an independent check and challenge.

**6. An assessment of the robustness of local systems and operations in place to guard against any alleged wrongdoing, in particular in relation to:**

- a. **The sale of the site now occupied by SeAH Wind**
- b. **The change in the Teesworks ownership structure in August 2021 from 50% public to 90% private**
- c. **The extent to which correct procurement rules have been followed in relation to the site and any disposal of publicly owned land or assets**
- d. **The sale of land at the site to private sector partners**
- e. **Potential conflicts of interest between various parties, and contractors carrying out remediation or other works at the site**
- f. **The evidence of investment from private sector partners in the context of significant public investment in remediation of the site**
- g. **The adequacy of transparency and accountability underpinning key decisions, including ongoing engagement with, and reporting to HMG.**

While there is much that does follow due process, the ceding of control by TVCA, under the oversight of successive former monitoring officers and the permissive scheme of delegations within STDC and TVCA mean that most decisions are vested in a small number of individuals. This together with the limited reporting means that there is not a robustness within the system. Inappropriate decisions and a lack of transparency which fail to guard against allegations of wrongdoing are occurring, and the principles of spending public money are not being consistently observed. Examples of this would be the appointments of officers without an open and transparent process, and the agreement of transactions that may breach subsidy control requirements.

Conflicts of interest are not observed. The appointment of group statutory officers, some of which is a legal requirement, causes confusion and many stakeholders do not know in what capacity the statutory officers are advising. While there is an implicit role in formal meetings, beyond this it can be unclear.

We are pleased to see that the group Chief Executive has updated her register of interests to record her role as a Director of TWL and other bodies. Better control needs to be enacted to ensure representatives of the JV partners do not attend private meetings of the STDC Board.

**7. An assessment of the effectiveness of arrangements for external scrutiny of STDC and Teesworks Joint Venture (including Teesworks Ltd), including independent audit, and of the relevant parties' response to any findings or recommendations from the process**

There is no independent scrutiny of TWL by STDC or TVCA. Internal audit do however talk in positive terms about their audit findings in relation to STDC. External audits are awaiting the outcome of this report before comment. The Panel's view is that independent scrutiny through the audit process could have been stronger in identifying governance weaknesses in support of the Mayor and executive team in meeting their statutory duties.

It is the Panel's view that audit could have raised some of the issues identified in the report. External audit now need to finalise their audits for 2021/22 onwards, including their work on value for money arrangements, making any necessary adjustments to their risk assessments and work programmes moving forward.

**As part of that process, the review will focus on the following themes, reflecting the Government's existing approach for assurance reviews of local authorities and general principles of economy, efficiency, and effectiveness:**

- **Governance - e.g., sense of strategic vision and direction; adequate internal processes and scrutiny; key senior posts filled with permanent appointments; effectiveness and transparency of decision making and external scrutiny arrangements (including independent audit); relationships between organisational leadership and officers; openness to challenge; focus on improvement**
- **Finance - e.g., quality and robustness of financial management and accounting, arrangements, ability to deliver value for money with public money; effective management of financial and commercial risks.**

Based on the evidence from the review the governance and financial management arrangements are not of themselves sufficiently robust or transparent to evidence value for money.

## 23. Glossary

**Able** – Port operator. Potential development partner, not being pursued.

**BEIS** – Department for Business, Energy and Industrial Strategy

**CA** - Combined Authority. TVCA is a combined authority.

**CEO/Chief Executive/Head of Paid Service** – statutory responsible for proper coordination of all functions as well as organising staff and appointing appropriate management.

**Constituent authorities** – the 5 local authorities that make up the Tees Valley geographical area of the combined authority.

**Constituent members** – the Leaders of the 5 local authorities that make up the Tees Valley geographical area of the combined authority.

**CPO** – Compulsory Purchase Order

**DC** – Development Corporation

**DCS/DCS Ltd.** – DCS Industrial Ltd. a company jointly owned by the JV Partners. Holds 40% shares in TWL

**DLUHC** – Department for Levelling Up, Homes and Communities

**ERF** – Energy Recovery Facility

**FoI** – Freedom of Information

**GE** – General Electric. A potential leaseholder, no longer in active discussion.

**JV** – Joint Venture

**LA 2011** – Localism Act 2011

**MDA** – Mayoral Development Areas

**MDC** – Mayoral Development Corporation. STDC is an MDC

**Monitoring Officer** – statutory officer responsible for the operation of the

constitution, matters of legality and the conduct of councillors and officers

**MoU** – Memorandum of Understanding

**MRP** – Minimum Revenue Provision. Monies set aside to repay debt.

**NES** – North East Securities. a service provider.

**NLM** – Northern Land Management Limited. Company owned in part by one of the JV Partners and holds 25% shares in TWL.

**NZT** – Net Zero Teesside Power. Leaseholder - proposed combined cycle gas turbine electricity generating station.

**O&S** - Overview and Scrutiny

**RBT** – Redcar Bulk Terminal – owner of land and operator within the Teesworks site. Subject to CPO.

**R&C** – Redcar and Cleveland Borough Council

**RTD** – Redcar Town Deal

**SA1** – Basis of a settlement between the Mayor, STDC Officers, JV Partners and SSI whereby SSI would withdraw its objections to the CPO in return for STDC transferring to it 330 acres of the CPO land and the JV Partners RBT Option land to enable it to pursue development of the Redcar Bulk Terminal. The agreement, referred to as SA1 was prepared and signed on 20th February 2020.

**SA2** - The subsequent decision of the Mayor/STDC officials in June 2020 to withdraw from the first settlement and enter a second settlement agreement with the Thai banks regarding the CPO land which involved incurring costs of £16m for land purchase.

**SeAH** – SeAH Steel Holdings. A leaseholder on the Teesworks site.

**SIA** – Security Industry Association

**South Bank Quay** - a plot of land on the Teesworks site to be developed and operated as a port

**SSI** – Sahaviriya Steel Industries. Landholder on Teesworks site, subject to CPO.

**Statutory Officers** - the officers a local authority/public body is required to have in law

**STDC** – South Tees Development Corporation

**STEL/STE** – South Teesworks Enterprise Limited. The company owned by the JV Partners that later became TWL.

**STSC** – South Tees Site Company. The company now owned by STDC and responsible for the keepsafe of the Teesworks site.

**S73 Officer/Finance Officer** – statutory officer responsible for the arrangements for the proper administration of financial affairs.

**TCC** – TCC Plant Limited. A provider of services.

**Teesworks** – the generic term that represents the project to remediate and redevelop the former Redcar steelworks following the liquidation of the then steelworks owner SSI (Sahaviriya Steel Industries UK Ltd)

**The Executive** – refers to the three statutory officers.

**The JV Partnership** – refers to structure of individuals and companies that sit behind TWL.

**The JV Partners** – Joint venture partners Chris Musgrave and Martin Corney

**TVAF** – Tees Valley Assurance Framework

**TVCA** – Tees Valley Combined Authority

**TWL** – Teesworks Limited. The JV Partnership between STDC and the JV Partners.

**VFM** - Value for Money

**UKIB** – UK Infrastructure Bank. Has loaned monies to TVCA.

## 24. Appendix

### Appendix 1

#### **Terms of reference: Independent Review into the Tees Valley Combined Authority's oversight of the South Tees Development Corporation and Teesworks Joint Venture**

On 24 May 2023, the Secretary of State for Levelling Up, Housing and Communities wrote to Ben Houchen, Tees Valley Mayor, to confirm that he had taken the exceptional decision to support the commissioning of an independent review of the South Tees Development Corporation (STDC) and Teesworks Joint Venture. This followed allegations of corruption, wrongdoing and illegality around the operations of Teesworks and a letter from Mayor Houchen to the Secretary of State on 16 May seeking an independent review of the matter by a 'relevant body', reflecting the Mayor's concern that continued allegations would undermine confidence in the site.

The department has seen no evidence of corruption, wrongdoing, or illegality, but recognises that the continued allegations pose a risk to the governments and the combined authority's shared ambitions to deliver jobs and economic growth in Teesside. The review will include consideration of these specific allegations made in relation to the Joint Venture, and ascertaining the facts is the primary basis for the Secretary of State seeking this independent review.

As part of that process, the review will focus on the following themes, reflecting the government's existing approach for assurance reviews of local authorities and general principles of economy, efficiency and effectiveness:

- Governance - e.g. sense of strategic vision and direction; adequate internal processes and scrutiny; key senior posts filled with permanent appointments; effectiveness and transparency of decision making and external scrutiny arrangements (including independent audit); relationships between organisational leadership and officers; openness to challenge; focus on improvement.
- Finance - e.g. quality and robustness of financial management and accounting, arrangements, ability to deliver value for money with public money; effective management of financial and commercial risks.

In view of the serious allegations of corruption, wrongdoing and illegality that have been made in relation to the Teesworks Joint Venture, the government has asked the review to specifically to respond on that issue. The following specific questions/issues have been identified for the review to explore:

1. An assessment of the governance arrangements at the STDC, including how decisions are made and the transparency of those decisions.
2. An assessment of the arrangements through which the Tees Valley Combined Authority (TVCA) meets its responsibilities for effective and appropriate oversight of the activity of the STDC (the Mayoral Development Corporation responsible for the Teesworks site) and the Teesworks Joint Venture (the public-private partnership between the STDC and its partners).
3. An assessment of the processes, systems and delivery mechanism in place to deliver the expected value and benefits of the Teesworks Joint Venture.

4. An assessment of the arrangements and capacity in place to ensure that decision making across the TVCA, including STDC and Teesworks Ltd (the Joint Venture vehicle), is evidence-based (where practical), takes full consideration of value for money, and reflects an appropriate balance of risk and reward between the public and private sector.

5. An assessment of the level of confidence by which the government have that key decisions to date in relation to the Teesworks Joint Venture have been evidence-based and taken appropriate consideration of value for money.

6. An assessment of the robustness of local systems and operations in place to guard against any alleged wrongdoing, in particular in relation to:

- The sale of the site now occupied by SeAH Wind.
- The change in the Teesworks ownership structure in August 2021 from 50% public to 90% private.
- The extent to which correct procurement rules have been followed in relation to the site and any disposal of publicly owned land or assets.
- The sale of land at the site to private sector partners.
- Potential conflicts of interest between various parties, and contractors carrying out remediation or other works at the site.
- The evidence of investment from private sector partners in the context of significant public investment in remediation of the site.
- The adequacy of transparency and accountability underpinning key decisions, including ongoing engagement with and reporting to His Majesty's Government (HMG).

7. An assessment of the effectiveness of arrangements for external scrutiny of the STDC and Teesworks Joint Venture (including Teesworks Ltd), including independent audit, and of the relevant parties' response to any findings or recommendations from that process.



## Appendix 2

A list of individuals who submitted written evidence and/or attended interviews is below:

Name	Role	Organisation	Submitted Evidence – E Interviewed - I
Julie Gilhespie	Group Chief Executive	TVCA	E + I
Gary MacDonald	Group Director of Finance and Resources	TVCA	E + I
Emma Simson	Acting Group Legal Officer and Monitoring Officer	TVCA	E + I
Ben Houchen	Mayor	TVCA	E + I
Neil Schneider	Board Member Former Chief Executive	STDC Stockton on Tees Council	E + I
John Sampson	Managing Director  Board Member (associate)	Redcar & Cleveland Council STDC	E + I
Sue Jeffrey	Board Member Cabinet Member Overview & Scrutiny Audit Committee Leader	STDC TVCA TVCA STDC Redcar & Cleveland Council	E + I
Simon Clarke MP	Member of Parliament	Middlesbrough & South East Cleveland	E + I
Andy McDonald MP	Member of Parliament	Middlesbrough	E + I
Graham Robb	Board Member	STDC	E + I
Margaret O'Donoghue	Overview & Scrutiny Councillor	TVCA Redcar & Cleveland Council	E + I
Jonathan Munby	Audit Committee	TVCA	E + I
Chris Cooke	Cabinet	TVCA	E + I
David Smith	Board Member	STDC	E + I
Paul Booth	Board Member Audit Committee Former Acting Chief Executive	STDC STDC STDC	E + I
Cllr Bob Cook	Cabinet Leader	TVCA Stockton on Tees Council	I
Chris Musgrave	Joint Venture Partner		E + I
Martin Corney	Joint Venture Partner		E + I
Steve Gibson	Board Member Audit Committee	STDC STDC	I

<b>Name</b>	<b>Role</b>	<b>Organisation</b>	<b>Submitted Evidence – E Interviewed - I</b>
Mary Lanigan	Board Member Cabinet Former Leader	STDC TVCA Redcar & Cleveland	I
Vicky Davis		National Audit Office	I
Cath Andrews	External Audit	Mazars	I
Cameron Waddell	External Audit	Mazars	I
Tim Cares	Partner	Ward Hadaway Solicitors	I
Victoria Pescod	Lawyer (Observer)	TVCA	I
Dr Tom Smyth	Board (associate) Deputy Head, Yorkshire, Humber & Northeast Areas Directorate	STDC BEIS	E + I
Ian Williams	Chief Executive	Darlington Council	I
Mike Greene	Chief Executive	Stockton on Tees Council	I
Paul Rowsell	Head of Governance Reform and Democracy Unit	DLUHC	I
Matthew Storey	Audit Committee Overview & Scrutiny Deputy Leader	TVCA TVCA Middlesbrough Council	I
Lord Heseltine			I
Elizabeth Davison	S151 Officer	Darlington Council	I
John Baker	Board Member Audit Committee	STDC STDC	E + I
Phil Winstanley	S151 Officer	Redcar & Cleveland Council	I
Richard Brooks	Reporter	Private Eye	E + I
Garry Cummings	S151 Officer	Stockton on Tees Council	I
Denise McGuckin	Managing Director	Hartlepool Borough Council	I
Andrew Nixon	Monitoring Officer	TCVA & STDC 2017 – Sep 2020 Redcar & Cleveland Council	I
Charlotte Benjamin	Monitoring Officer	Middlesborough Council	I
Robert Cuffe	Board Member	STDC	E
Jacob Young MP	Board Member Member of Parliament	STDC Redcar	E
Councillor Tony Riordan	Councillor	Stockton on Tees Council	E
Iain Robson	Group Finance Director	ADL Developments Ltd	E

Dave Budd	Mayor of Middlesbrough Board member	TVCA and STDC	E
Reverend Paul Cawthorne	Specialist Researcher		E
Sally Bunce	Councillor	Loftus Town Council	E
Leigh Jones	Investigative Reporter	Yorkshire Post	E
Scott Hunter	Reporter	Tees Valley Monitor Ltd	E
Tristan Learoyd	Councillor & Chair of R&D Regulatory Committee	Redcar and Cleveland Council	E

## Appendix 3

### Timeline of Key Events

<b>Date</b>	<b>Activity</b>
September 2015	The Sahaviriya Steel Industries (SSI) Steelworks in Redcar closed with the loss of more than 3,100 jobs.
April & June 2016	Devolution Deal agreed to establish TCVA and Mayor
June 2016	Lord Heseltine's report Tees Valley: Opportunity Unlimited is published
October 2016	STSC established to manage and keep safe the SSI land
February 2017	Discussions commence with major landowners
March 2017	Tees Valley Combined Authority (Functions) Order comes into effect
April 2017	Formal Without Prejudice offer of 'gain share' delivery proposal made to Thai Banks
May 2017	Ben Houchen Is elected as the first Mayor of the Tees Valley Combined Authority (TVCA).
May 2017	Thai Banks reject gain share proposal due to timing uncertainties
August 2017	STDC formally established
September 2017	STDC Board resolved to begin preparations for the making of a CPO pursuant to sections 201 and 207 of the Localism Act 2011 and the Acquisition of Land Act 1981
November 2017	STDC Board updated on progress with private treaty negotiations and preparations for making a CPO and resolved to appoint land referencing agents to confirm land interests
February 2018	STDC proposed an in-principal resolution to make a CPO
May 2018	STDC Supplementary Planning Document approved with R&C
July 2018	STDC resolved to proceed to make one or more CPOs and to refer the consent to TVCA to submit the CPO(s), once made, to the Secretary of State for confirmation
September 2018	STDC endorsed the land area required for development
January 2019	TVCA Cabinet approved the funding for the land acquisition and Investment Plan support STDC (£56.5m);

March 2019	TVCA Cabinet and STDC Board consented to the submission of the CPO
Late 2019	Three Thai Banks (Siam Commercial Banks, TISCO and Krung Thai), who were SSI UK's main creditors, object to the Government's plans for the compulsory purchase of the Steelworks in Redcar.
November 2019	JV Partners acquire option on 70 acres of Redcar Bulk Terminal Land
December 2019	TVCA approves commercial loan to Tees Valley International Airport and endorses their plan to enter into a JV with the JV Partners.
December 2019 – February 2020	Negotiations between JV Partners, SSI, STDC and Mayor on leverage of RBT land option.
February 2020	STDC agree settlement with SSI and the Thai Banks ("SA1"), to proceed with the CPO, and establish to 50/50 JV with the JV Partners. Delegated authority to CEO to conclude the JV and SA1.
March 2020	TVCA agree to proceed with CPO and delegates its reserve powers to STDC for the purposes of forming the JV.
March 2020	STDC establishes the joint venture company (initially known as South Tees Enterprise Ltd) with a 50/50 split between STDC and the JV Partners.
April 2020	Inspector Philip Ware, acting under powers delegated to him by the then Secretary of State confirmed the CPO without modification.
June 2020	STDC Chief Executive and JV partners agreed "Supplemental Deed" effectively transferring 50% of value of recyclable materials to JV partners
June 2020	Government approves STDC business case for remediation and development of Teesworks site
July 2020	STDC withdraw from first settlement agreement and enter into second settlement agreement ("SA2")
July 2020	Teesworks Limited established by amendment of the company formerly named as South Tees Enterprise Limited.
Summer 2020	Government agreed funding of £125.75m to TVCA between 2020 and the end of 2022/23 financial year.

January – March 2021	An additional £20m provided by BEIS to support the development of an offshore wind manufacturing centre.
March 2021	Government announcement of Teesside Freeport
July 2021	TVCA agrees Headlease for GE for Teesworks site
August 2021	STDC Board agreed 90:10 JV Partnership in favour of the JV partners
November 2021	Mayor's decision to approve disposal of parts of Teesworks site at less than best consideration
November 2021	TVCA agrees borrowing of £106m for development of South Bank Quay
July 2022	STDC Board agree proposed transaction with SeAH Wind Investments
October 2022	TVCA Cabinet agree change from GE to SeAH as anchor tenants
March 2023	TVCA Cabinet approved granting of SeAH headlease
March 2023	STDC agreed delivery model for NZT

## Appendix 4

### Teesworks Project - Schedule of Key Legal Documents

<b>2020</b>	
2020-02-20	<p><b>First Settlement Agreement (SA1)</b>  An agreement between STDC, Official Receiver (OR), SSI UK, SSI PCL, DCS Industrial Ltd, DCS Industrial (South) Limited.</p> <p>Title:- Settlement Agreement relating to the South Tees Development Corporation (Land at former Redcar Stee Works, Redcar) Compulsory Purchase Order 2019.</p> <p>This agreement was intended to reflect the negotiated settlement between the various parties which relied upon the RBT Option Land owned by the JV Partners which provided leverage over SSI/Thai Banks because the land was necessary to enable the SSI/Thai Banks proposal for a Bulk Terminal.</p> <p>The settlement also provides for a second piece of land to be allocated to SSI/Thai Banks for the purpose of an Electric Arc Furnace. (Lackenby Land)</p> <p>Provides for various transfers of land with a view to enabling the land assembly for Teeswork project and for the SSI/Thai bank proposals. In return, SSI/Thai banks agree to withdraw their objections to the CPO which will enable the bulk of the land assembly.</p> <p>A key condition is that Within 12 weeks of the signing of the SA1 agreement the Thai banks must submit to the OR a release of security on the Site 1a. The 'Condition'. The deadline for the Thai banks to comply was 5<sup>th</sup> May 2020. In the event they didn't submit the release and the SA1 agreement didn't crystallise.</p> <p>The agreement includes the surrender of the RBT option held by the JV partners to enable SSI PCL to develop their Bulk Terminal proposal.</p> <p>It also includes the obligations on STDC to release the Lackenbury land to SSI PCL in order that they can pursue an electric arc steel facility with Jangyre Ltd.</p> <p>N.b. there is a requirement for the Thai banks to submit a Deed.</p>
	<b>50/50 JV</b>
2020-03-13	<p><b>Shareholders Agreement (JV1)</b>  Between:- Northern Land Management (NLML); JC Musgrave Capital Ltd; STDC; STEL</p> <p>The Shareholder Agreement is the basis on which the Joint Venture is established. There is no separate JV agreement setting out in detail the basis and purposes of the JV.</p> <p>Relates to a newly formed company described as JVC with the shareholding:-</p>

	<p>STDC 2 shares NLML 1 JCM 1</p> <p>Para 2.1 and 2.2 describe the ‘Business of the JVC’ as follows:-</p> <p style="padding-left: 40px;"><i>2.1 The business of the JVC is the development and commercial exploitation of land south of the River Tees broadly contiguous with the South Tees Development Corporation boundary.</i></p> <p>3.3.3 Provides for the appointment of David Allison (Former CEO of TVCA &amp; STDC), M Corney and J Musgrave as Directors.</p> <p>Clause 5 refers to matters requiring the consent of shareholders – Reserved Matters – and these are listed in Sched 2 of the agreement.</p> <p>6.11 Provides that the Quorum at a meeting is all three Directors. A B &amp; C.</p>
2020-03-13	<p><b>Option Agreement</b> relating to land on the South Bank of the River Tees at Redcar. STDC – STEL <b>Option Agreement</b> Relating to Land on the South Bank of the River Tees at Redcar. DCS Industrial (South) Limited. – STEL <b>Option Agreement</b> Relating to Land on the South Bank of the River Tees at Redcar. STDL – STEL</p> <p>These three option agreements provide the mechanism by which Teeswork land assembled by various means, would be drawn down by TWL (Formerly STEL).</p> <p>The cost of the option (Option sum) is £1 The Purchase Price is the ‘Market Value’ as defined by the option agreement and if they can’t agree an expert will be appointed to determine. 30 year option period The costs of draw down (for Tata land £7,536 per acre within 6 months after which it’s) the market value.</p> <p>Para 3 The Option agreements specifically provides a licence for the Developer to enter the land and undertake demolition, remediation etc. within the option period.</p> <p>Para 3.3 provides for payments to be made to the Developer for undertaking particular types of work such as maintaining the site.</p>
2020-03-13	<p><b>Put and Call Option Agreement</b> in respect of the entire issued share capital of DCS Industrial (South) Limited.</p> <p>STDC; DCS Industrial Ltd, (DCS)</p> <p>Agreement for the option for STDC to buy 100% shares of DCS Ind (South) Limited which was intended to be the recipient of various parcels of land.</p>
2020-03-13	<p><b>Commission Fee Arrangement</b></p>



	<p>Between DCS Ind Limited; DCS Ind (South) Limited; STDL; STDC;</p> <p>This provides that when land is drawn down by TWL under the options, DCS shall be entitled for a Commission Fee on that sale. This was intended to align with the 50/50 JV p/ship which arose in March 2020.</p> <p>Para 2.1 provides that DCS will be paid 50% of the 'Uplift' which is defined as the difference between the 'Base Value' and the Market Value.</p> <p>Base Land Value is either £1 or (£7536 for Tata Land).</p> <p>Clause 3.2 imposed a restriction on the sale of any land without the express permission of DCS.</p>
2020-05-15	<p><b>Notice to Terminate the First Settlement Agreement (SA1).</b></p> <p>STDC served the above notice due to the default of the Thai Banks – they didn't submit consent by the deadline.</p>
2020-06-04	<p><b>STDC Published confirmation of the CPO</b></p>
2020-06-11	<p><b>Supplemental Deed v3</b> STD L; STDC; DCSIS; STEL (TWL); MLML; JCML</p> <p>Para 1 of The Deed variations adds provisions to the 3 option agreements (2020-03-20), which clarify that:-</p> <p>the Developer may remove scrap, minerals, aggregates etc. and the title to such materials shall pass to the Developer on removal from the property.</p> <p>Para 2 imposes a requirement that the Owner may only remove materials etc. with the permission of the Developer.</p> <p>It also makes changes to the Shareholder Agreement including the removal from the list of Matters Reserved for Shareholder Approval – 16. 'Declaring or Paying a dividend'</p>
2020-06-30	<p><b>STDC made the General Vesting Declaration in respect of the CPO land.</b></p>
2020-07-14	<p><b>Second Settlement Agreement relating to the South Tees Development Corporation (Land at Former Redcar Steel Works, Redcar) Compulsory Purchase Order 2019</b></p> <p>Between:- STDC; SSI UK; Kenneth Beasley; SSI PCL;</p>

**Recital O:-**

*The intended outcome of this agreement is to enable the regeneration of the former Redcar Steelworks site and to compensate the Thai Banks for the loss of their interest in the CPO land in full and final settlement of all claims.*

2.1 SSI agrees not to challenge the CPO.

3.2 STDC will pay £15m to Thai Banks

3.2.2. SSI PCL relinquishes all claims against STDC arising for the CPO including the First Settlement Agreement

7.1 SA1 shall be set aside and have no further effect.

**2020  
-09-20**

**First MoU MHCLG; BEIS & TVCA**

MHCLG; Dept, for Business, Energy & Industrial Strategy (BEIS); TVCA

Sets out the terms principles and practices that will apply to the working relationship between MHCLG; BEIS and TVCA to redevelop the SSI Site. Covers FY 20-21 only.

Financial Year	Total (£m) BEIS	Total (£m) MHCLG	Total (£m)
20/21	16.827	4.242	21.069
21/22	46.1	10.006	56.106
22/23	21.819	25.662	47.481
Total 20/21-22/23	84.746	39.910	124.656

The MoU states that S.31 grant money will be paid to TVCA to enable STDC and STSC to progress the work on the SSI site.

3.4. **TVCA will ensure** that in using this funding all necessary legal requirements are complied with, including State aid. In particular, in relation to the Commission Agreement dated 13 March 2020 between STDC and STDC's Joint Venture (JV) Partners it will be ensured that any commission payments paid to the JV Partners under the Commission Agreement are not calculated on the basis of any increase in land values as a result of work done by STDC using this funding.

The above imposes obligations on TVCA to ensure that the grant funding is used in a lawful manner and the MoU specifically identifies the Commission Fee arrangement for particular scrutiny.

	<p><i>4.5.1. There is an expectation that TVCA will provide regular project, financial and risk reporting in an agreed format to MHCLG and BEIS, in such format as they reasonably require from time to time, demonstrating that the previous funding has been spent and outcomes are being met, in line with the agreed business case.</i></p> <p><i>7.1. MHCLG and BEIS will provide grant funding subject to TVCA hereby agreeing to full transparency, open book working and a duty of good faith in regard to all matters relating to the project, TVCA, and this MOU.</i></p>
<b>2021</b>	
	<b>90/10 JV</b>
2021-11-26	<p><b>Deed of Adherence and Variation – (90/10 JV)</b></p> <p>Between: TWL; DCSIL; NLML; JCMCL; STDC</p> <p>The Deed notes that STDC has transferred 40 of its 50 TWL shares to DCSIL.</p> <p>This is supplemental to the Shareholders Agreement of 2020-03-13 (SHA) which is amended as provided by Schedule 2 of the Deed.</p> <p>Clause 4. The revised SHA changes the Quorum requirement for Board meetings to enable a quorum of the 2 JV Partner Directors and doesn't provide for and STDC Director but instead under Cl 4.4 Provide that STDC may send a non-voting observer to Board meetings.</p> <p>Cl. 5.2 Provides that there is no obligation on the parties to provide any further finance to the JVC but if they do so, the parties shall each provide the same amount on the same terms unless they agree otherwise in writing.</p> <p>The reserved matters list was reduced to 11 matters</p>
2021-11-26	<p><b>Supplemental Commercial Deed</b></p> <p>TWL; STDC; DCS Ind Ltd (DCS); DCS Ind Devs Ltd. (DCSID)</p> <p>Concerns the GE Land development.</p> <p>Provides for a fee to be paid by TWL and DCSID to STDC for the provision of demolition and extraction of scrap services. The payment will be a sum of up to 50% of the Net Land Value. To be paid within 7 Days of receipt of money by TWL.</p> <p>Provides for a fee to be paid to DCS for Marketing Services in respect of the GE Land Disposal. Up to 50% of the Net Land Value</p>

	<p>If the above don't happen by 26-11-2022 they fall away and leave a obligation on TWL to pay £15m to STDC on disposal of the site. To be paid within 5 days of TWL receiving the disposal payment.</p> <p>Cl 15 obliges STDC to procure that the GE site is development ready within 18months of the date of the agreement.</p> <p>Cl 3 concerns Dividends and Other Payments and provides that STDC shall not be entitled to any dividends and/or distributions of of profits until such time that the amounts paid by TWL to STDC pursuant to the Scrap Agreement are equal to 10% of the cumulative distributable profits of TWL commencing from the Effective date. (01-08-21)</p>
2021-11-26	<p><b>Commercial Deed: Scrap</b> TWL; STDC; DCS</p> <p>Clause 2. Provides for the payment by TWL to STDC, from the effective date (1<sup>st</sup> August 2021), of up to 50% of the proceeds of the sale of scrap recovered from the site in consideration for the demolition and extraction works provided by STDC – up to a maximum of £60m. <b>Subject to the cashflow needs of TWL.</b></p> <p>Clause 3. Provides the same provision for payments from TWL to DCS of up to £60m from the proceeds of the sale of scrap in consideration for marketing services provided by DCS, <b>but without the 'subject to the cash flow needs' provision.</b></p>
2021-11-26	<p><b>Commercial Deed re PD Ports</b></p> <p>TWL; STDC; DCS;</p> <p>Relates to the dispute between PD Ports and STDC regarding access to PD land across the Teeswork land.</p> <p>Clause 2. In the event that PD Ports pay cash consideration for access rights TWL shall be entitled to 50% of any sum up to a limit of £54m (50% of the Remediation Sum), to assist within TWL business.</p> <p>2.2 TWL undertakes to use reasonable endeavours to expend that within 5 years.</p> <p>Clause 3. Provides that DCS shall be entitled to a fee for consultancy services in connection with the dispute up to £54m – to be paid within 7 days of the invoice.</p>
2021-11-26	<p><b>Commercial Deed re Land Value</b></p> <p>TWL; STDC; DCS; DCSID</p>

	<p>CI 2. Makes provision for the payment by TWL and DCSID of a fee to STDC of up to 50% of any Net Land Value in connection with the GE Site. (Presumed to be approx £15m at the time). In consideration of STDC managing and funding the demolition and remediation of the site.</p> <p>It is suggested that this was intended to compensate STDC for the fact that the GE project had been initiated during the 50/50 JV but would not complete until in the 90/10 and as such would have reduced the share going to STDC.</p> <p>CI 4. It also provides for a payment of a fee to DCS for the provision of Marketing Services in connection with the GE site, of up to 50% of the Net Land Value.</p> <p>CI 4.3 Provides that in the event TWL undertakes, prior to disposal, any works to make the site Development Ready. The Disposal Payment shall be reduced by the amount which TWL incurred.</p>
2021-11-26	<p><b>Option Agreement – Rights of Emergency Access for PD Ports</b></p> <p>STDL; TWL; STDC</p> <p>Grants an option to the Developer to require the Owner to grant access rights to the benefit of certain PD Ports land.</p>
	<p><b>Agreement/Lease with SeAH Wind</b> No Copy</p> <p>Agreement with SeAH wind for the Sub-lease of the land on which the Wind Turbine factory will be located.</p>
2021-11-26	<p><b>Deed of Release of Commission Fee Arrangement</b></p> <p>DCS; DCSIS; STDC; STDL.</p> <p>In consideration of the transfer by STDC to TWL, of 40 TWL shares DCS releases STDC; DCSIS; STDL from the obligation to pay the Commission Fee.</p>
2021-11-26	<p><b>Second Supplemental Deed relating to land on the South Bank of the River Tees</b></p> <p>STDL; STDC; TWL;</p> <p>Supplemental and collateral to the Option Agreements and varies the terms of those options. (N.b. the DCS option had become redundant because it didn't hold any land on the site).</p> <p>References a valuation by Knight Frank which assessed the notional land value of the Property as £1 on the basis of the inherent funding shortfall of approximately £109,466,500 associated with remediating and providing the necessary infrastructure of the Property.</p>

	<p>CI 6.1 In the event STDC creates an estate management co CI 6.1 Creates an option for TWL to acquire that company at market value upon serving written notice to STDC.</p> <p>CI 6.2 – In the event of service of a notice STDC shall transfer any rent charge and assign the benefit of any covenants.</p> <p>Amends the purchase price under the Option Agreements to £1 (Indexed) to reflect the agreement that the market value was effectively a negative amount.</p> <p>To provide that if TWL exercised its option over any part of the Quay Land it would immediately grant STDC a lease of that land. This was because STDC/TVCA were funding the construction of the Quay from a UKIB loan which would need to be funded from income generated by the operation of the Quay.</p> <p>A form of lease is appended and</p> <p>A form of Quay Operating Agreement which provides that once STDC completes the construction of the Quay, inconsideration of the fees in Clause 5, it will appoint Teeswork Quay Limited (TWQL) to operate the Quay.</p> <p>Clause 5 provides that any fee paid by TWQL shall not exceed the annual cap of £3,602,416 subject to a cumulative cap of £170m.</p> <p>N.b. Also appended is the NEC contract between STDC and John Graham Construction Ltd for the construction of the Quay. (N.b. Query whether there was a tender competition for this?).</p>
2022-10-11	<p><b>Transfer of Title – South Quay</b></p> <p>STDC; TWL</p> <p>HM Land Registry Document Recording Transfer of the title of the Quay land from STDC to TWL for the sum of £16.27.</p>
2022-10-11	<p><b>Lease of South Bank Quay</b></p> <p>TWL; STDC</p> <p>TWL grant a lease of the South Bank Quay Land to STDC with a term of 99 years.</p>
2022-10-11	<p><b>Quay Operating Agreement</b></p> <p>STDC; TWL; TWQL</p> <p>STDC appointed TWL as the operator of the new South Bank Quay</p>

2022-12-16	<p><b>Deed of Variation relating to South Bank Quay</b></p> <p>Payment to STDC to cover costs of additional works on the Quay.</p> <p>TWL; STDC; TWQL</p> <p>A deed which makes changes to the Quay Operating Agreement and to the Lease held by STDC over the South Quay.</p> <p>Increased the rate to be paid by TWQL to STDC (£3602416 - £3936884) in recognition of the additional £6.5m they had to spend on an additional aspect of the Quay.</p>
2022-12-16	<p><b>Supplemental Land Value Deed</b></p> <p>TWL; STDC; TVCA; DCS; JCML; NLML; DCSIDL.</p> <p>This replaced both the Commercial Deed re GE Transaction and the Commercial Deed re Land Value, because the original deal had fallen through and had been replaced by an arrangement with SeAH Wind.</p> <p>This new agreement required TWL to make a payment of £15m to STDC by no later than the 3<sup>rd</sup> anniversary of the agreement. (2025/12/16)</p> <p><i>CL2.1 TWL shall make a Disposal Payment (£15m) to SRDC by no later than the longstop date. (16-12-2025).</i></p> <p><i>CL2.2. Provides that STDC acknowledges the TWL's ability to pay the Disposal Payment may depend upon its ability to generate an appropriate level of cash or capital receipt which is anticipated will be realised if TVCA enters in to a TVCA Lease or Leases and accordingly TVCA shall enter into a TVCA Lease or other Commercial Arrangements promptly following written request by TWL.</i></p> <p>The Deed also imposes a requirement on TVCA to enter into up to 3 leases (Including the first SeAH lease), and TVCA must act 'promptly' following a written request to do so from TWL.</p> <p>The Schedule to the Supplemental Land Value Deed also varies the Scrap and Supplemental Commercial Deed.</p>
2023-03-23	<p><b>Draft Third Supplemental Deed</b></p> <p>Draft prepared by Ward Hadaway – no copy of final version provided.</p>
2023-04-23	<p><b>Deed of Variation</b> No copy provided.</p>







## Department for Levelling Up, Housing & Communities

**Rt Hon Michael Gove MP**

*Secretary of State for Levelling Up, Housing & Communities*

*Minister for Intergovernmental Relations*

2 Marsham Street

London

SW1P 4DF

Mayor of Tees Valley Combined Authority  
Teesside Airport Business Suite  
Teesside International Airport  
Darlington  
DL2 1NJ

29 January 2024

Dear Lord Houchen,

On 16 May 2023 you approached Government regarding an independent review of the South Tees Development Corporation (STDC) and Teesworks. You raised concerns regarding the allegations made in parliament by Andy McDonald MP of ‘dubious dealings’ and ‘industrial-scale corruption’. You were particularly concerned about the damaging effects that these allegations could have on investment and job creation across Teesside. I wrote to you on 24 May 2023, noting that the exceptional circumstances meant I would establish such a review. I appointed an independent Panel to report to me, with the Terms of Reference published on [gov.uk](https://www.gov.uk).

Today, I have published the independent panel’s report into the Tees Valley Combined Authority’s (TVCA) oversight of the STDC and Teesworks Joint Venture. My colleague, Lee Rowley, is also making a statement to Parliament setting out our assessment of the report and its recommendations. I am grateful to the Panel for their work and to you, your members and officers, and other partners, for your cooperation with the review, providing the Panel with information requested, and meeting with them to aid their investigation.

Their report makes clear that the panel found no evidence of corruption or illegality. I know you will strongly welcome this conclusion. They also note that the pace and scope of the regeneration has had wide-reaching positive impact on the local economy, which we all welcome. The panel report identifies a ‘need to strengthen governance and increase transparency which can be done with limited impact on pace of delivery’ and makes recommendations as to how to address these by strengthening scrutiny and improving public accountability to the residents of Teesside. There are some specific areas for improvement and lessons to be learned, which I know you will also welcome. I am grateful for your assurance that you stand ready to accept in principle the recommendations, while recognising that the panel also made recommendations to Government which will be carefully considered and to which I will respond in due course.

I ask that you now engage with the panel’s recommendations, working with the Combined Authority and partners as appropriate, and provide me with an initial report by 8 March on how you intend to respond to the Panel’s recommendations. I will not take decisions on further action until you have responded. My officials stand ready to support yours, with your response to these recommendations.

A copy of this letter will be placed in the House libraries.

With every good wish,

A handwritten signature in black ink that reads "Michael Gove". The signature is written in a cursive style with a large initial 'M' and a long, sweeping underline.

**RT HON MICHAEL GOVE MP**

Secretary of State for Levelling Up, Housing and Communities  
Minister for Intergovernmental Relations

***Appendix 4 is an Exempt Item pursuant to Paragraph 3 of Schedule 12A of the Local Government Act 1972.***

***Appendix 5 is an Exempt Item pursuant to Paragraph 3 of Schedule 12A of the Local Government Act 1972.***

## **AGENDA ITEM 12**

### **REPORT TO THE STDC BOARD**

**29<sup>TH</sup> FEBRUARY 2024**

### **REPORT OF GROUP CHIEF EXECUTIVE OFFICER**

#### **STDC –v- PD Ports – Litigation update**

##### **SUMMARY**

The purpose of this report is to provide the Board with an update in relation to the litigation with PD Ports for negative declaratory relief in respect of rights PD Ports claimed to have over the Teesworks Site.

##### **RECOMMENDATIONS**

This Report seeks from the Board:

- (1) a confidential decision as detailed in Appendix 4
- (2) a confidential decision as detailed in Appendix 5

##### **DETAIL**

1. The Board is aware that on 15 March 2021 STDC submitted a claim to the Court for Declaratory Relief in respect of rights claims by PD Ports across the Teesworks Site.
2. This matter was last reported to the Board on 21 September 2023.
3. Following a five-and-a-half-week trial at the Royal Courts of Justice, Business and Property Courts in London which commenced on 3 October 2023 and concluded on 10 November 2023 (with a site visit on 11 December 2023) Mr Justice Rajah handed down his judgment in respect of that case on 5 February 2024. That Judgment is attached to this Report at Appendix 1.

##### **The Judgment**

4. PD Ports had originally claimed fifteen rights of way over the Teesworks Site, which were argued for on the basis of eighteen different legal lines of argument.

5. However in their skeleton argument, filed days before trial, PD Ports decided not to pursue eight of the legal arguments leaving ten to be determined. This accordingly reduced their claimed rights of way over the Teesworks Site, leaving the Judge just ten to consider during the trial.
6. The routes, as detailed in the Judgment are shown on the plan attached to this Report at Appendix 2.
7. During the trial, the routes as highlighted yellow in Column A on the table at Appendix 3 were considered by the Court. In regard to Columns B – D of the table:
  - a. Those marked in green were successfully defended;
  - b. Those marked in grey were dropped by the Defendant prior to trial;
  - c. Those marked in red the Defendant was successful on; and
  - d. Those marked in blue were either not determined or a lesser position was agreed between the parties.
8. The Judgment records the following in respect of the above routes.
  1. Route B.1 The Court did not agree with PDT that the relevant land ownership position was clear enough to support their proposition that Dorman Long was a competent grantor or that the benefit of the relevant rights of way could benefit the TCC and so PDT as a successor in title. 57 - 103 & 287
  2. Route B.2 The Court considered that the 1974 Conveyance was limited and discrete, purely focusing on the conveyance of the land, and given the deliberate drafting it could not be said that there was an implied intention to grant a right of way over the diverted route. 91 - 101 & 287
  3. Route B.3 The Court was satisfied that there had been open use of this route for access to the lighthouse and breakwater and associated facilities from 1974 to the date of trial 164 - 182 & 286.4
  4. Route C.2 The Court concluded that there was an implied right of way across the STDC parties' land at Redcar to access Redcar Quay as a quay where the primary system of loading and unloading does not generally require road access and that road access was necessary for its ordinary use as a quay. 110 - 118 & 286.3
  5. Route C.3 Judge did not determine as he had granted a right at C2 above. 124
  6. Route D.1 The Court was satisfied on the evidence that between 1953 (when route 1 was completed) until 1997/9 there was open and continuous use of Route 1 for access and egress to land at Teesport for all purposes except for haulage for which there was no evidence. 183 - 240 & 286.1. The Court was satisfied on the evidence that between 1963 and 2002 there was use of Route 1 for emergency access when Tees Dock Road was flooded. 241 - 246 & 286.2
  7. Route D.2 The Proprietary Estoppel claim failed as (1) Whilst the Court accepted there had been an assurance they did not consider it reasonable for PDT to rely on that assurance (2) The Court did not in any event consider that PDT did rely on the assurance and (3) accordingly there was no detrimental reliance that could give rise to an estoppel. 261 – 285
  8. Route D.3 The Court considered that whilst the route had ceased to have utility, they did not consider the delay in asserting the right to be sufficient for refusing a

declaration given the 1946 conveyance created a valid and binding easement over the identified route. 125-130 & 286.5

9. Route D.5 The parties accepted that this express right existed, but it was conceded by PDT that the extent of the land benefitted was not the whole of Teesport as they had pleaded but just the Rhombus land. 131 - 136 & 286.6
10. Route D. 6 The Court considered it had no evidence of use of Access Route 1 that employees or visitors of Shell and ICI used Access Route 1 from Smiths Dock Road to access the Rhombus and so failed to discharge the burden of proving the claim 137 – 145

### **Court Timetable**

9. Following the Judgment which was initially released to the parties under embargo on Wednesday 31 January 2024 the Court required all parties to confirm any factual and typographical amendments to the Judgement by 2 February 2024. Counsel for STDC duly filed our proposed amendments by the deadline along with a draft Court Order as agreed with the other parties which established the next steps to the consequential hearing.
10. The Judgment was formally handed down by the Judge and made public on 5 February 2024.
11. Following the Judgment, there will be a consequential matters hearing on 27 March 2024 which will deal with:
  - e. The form the Court Order is to take, in terms of how the declarations made in the Judgment are to be properly reflected in the subsequent Court Order;
  - f. The matter of costs and how these are to be apportioned between the parties; and
  - g. Any applications from the various parties for permission to appeal any parts of the Judgment, should they wish to do so.
12. Following the consequential matters hearing, the next steps in the Court timetable will be as follows:
  - a. If permission to appeal has been granted at the consequential hearing, then the Court will then look to schedule a date for the formal appeal and set directions to the same; or
  - b. If permission to appeal is not granted at the consequential hearing then the next step would be to seek permission to appeal from the Court of Appeal. If granted then the position would be the same as at (a) above, if not then the appeal process would have been exhausted.

### **Next steps for STDC**

13. Appendix 4 is an Exempt Item pursuant to Paragraph 5 of Schedule 12A – the information contained within it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings and Paragraph 3 of Schedule 12A – the information is relating to the financial or business affairs of any particular person (including the authority holding that information).

### **FINANCIAL IMPLICATIONS**

14 Legal fees spent to date £3,100,000.00

15. Appendix 5 provides further information on future litigation costs, is exempt information pursuant to Paragraph 3 of Schedule 12A – the information is relating to the financial or business affairs of any particular person (including the authority holding that information).

## **LEGAL IMPLICATIONS**

As above

## **EQUALITY & DIVERSITY**

No specific impacts on groups of people with protected characteristics have been identified.

**Name of Contact Officer:** Julie Gilhespie  
**Post Title:** Group Chief Executive Officer  
**Email Address:** [Julie.gilhespie@teesvalley-ca.gov.uk](mailto:Julie.gilhespie@teesvalley-ca.gov.uk)



Neutral Citation Number: [2024] EWHC 214 (Ch)

Case No: BL-2021-000461

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS OF ENGLAND & WALES**  
**CHANCERY DIVISION (ChD)**

Rolls Building, Royal Courts of Justice  
Fetter Lane, London, EC4A 1NL

Date: 5 February 2024

**Before:**

**MR JUSTICE RAJAH**

-----  
**Between:**

**(1) South Tees Development Corporation**  
**(2) South Tees Developments Limited**

**Claimants**

**- and -**

**PD Teesport Limited**

**Defendant**

**-and-**

**Teesworks Limited**

**Third Party**

-----  
-----  
  
Zoë Barton KC and Daniel Petrides instructed by Forsters LLP for the Claimants  
Andrew Walker KC and James Mitchell instructed by DWF Law for the Defendants  
Katharine Holland KC and Admas Habteslasie instructed by Taylor Wessing LLP for the Third  
Party

Hearing dates: 3-6, 9-13, 16-20, 23-27, 30 October, 7, 9, 10 November 2023  
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**APPROVED JUDGMENT**

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**Mr Justice Rajah:**

**A. INTRODUCTION**

1. This is a trial to determine the existence and extent of several rights of way that the Defendant (“**D**”) claims to enjoy over the site of the former British Steel steelworks at Teesside, near Middlesbrough.
2. The steel works were permanently closed in October 2015. The site now forms part of 4500 acres, which has been designated by central government as part of the UK’s largest freeport. The area is said to be the largest brownfield development in Europe, and the development is expected to create up to 20,000 jobs for the local area.
3. The first Claimant (“**STDC**”) is a mayoral development corporation which was incorporated in August 2017, by statutory instrument to promote the regeneration of the area. The second Claimant (“**C2**”), is a wholly owned subsidiary of STDC which was incorporated in January 2019. I refer to the two Claimants together as “**Cs**”. The third party (“**Teesworks**”) is a private company which is a joint venture vehicle. C's have a shareholding in Teesworks. JC Musgrave Capital Limited, Northern Land Management Limited and DCS Industrial Limited are the other shareholders in Teesworks. Teesworks has the benefit of options over land owned by Cs. Although separately represented, the interests of Cs and Teesworks in this litigation are entirely aligned. I shall refer to them together as “**the STDC parties**”. The STDC parties are the freehold owners of the land over which D asserts rights of way.
4. D is the statutory harbour authority for the River Tees, and owner and operator of the port of Teesport, one of the UK’s major ports. D owns the land where the port is situated. D also owns Redcar Quay and it owns land, including the breakwater and lighthouse, at South Gare. It also owns a strip of land bordering the Smith’s Dock Road (“**the Smith’s Dock Road Parcel**”).
5. D’s land, and that of the STDC parties, forms part of the wider Teesside site (“**the Site**”) which is located on the southern bank of the River Tees in the Borough of Redcar and Cleveland, approximately 3 miles from Middlesbrough and close to the

towns of South Bank, Grangetown and Redcar. It broadly comprises of four areas known as South Bank, Redcar, Lackenby and South Gare, and abuts land owned by third parties (most notably Redcar Bulk Terminal Ltd (“**RBT**”). Fig 1 indicates the different areas’ names within the Site and the public transport connections:

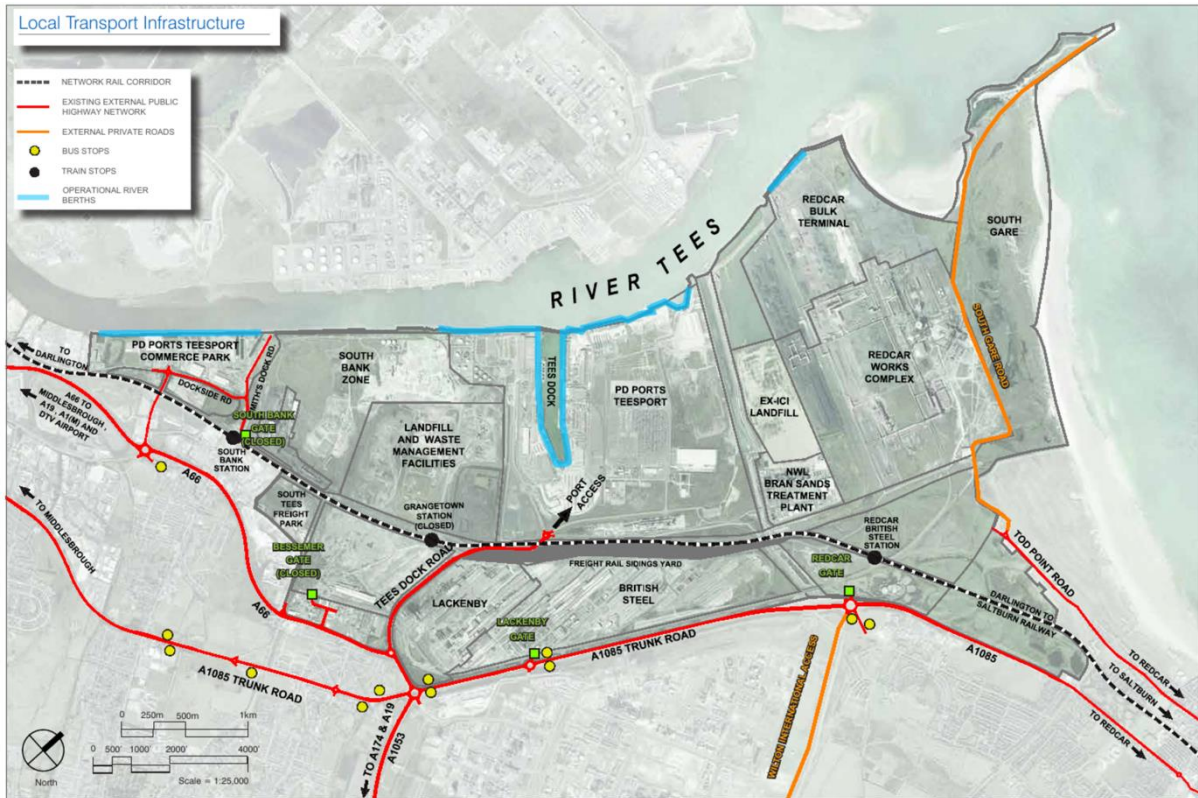
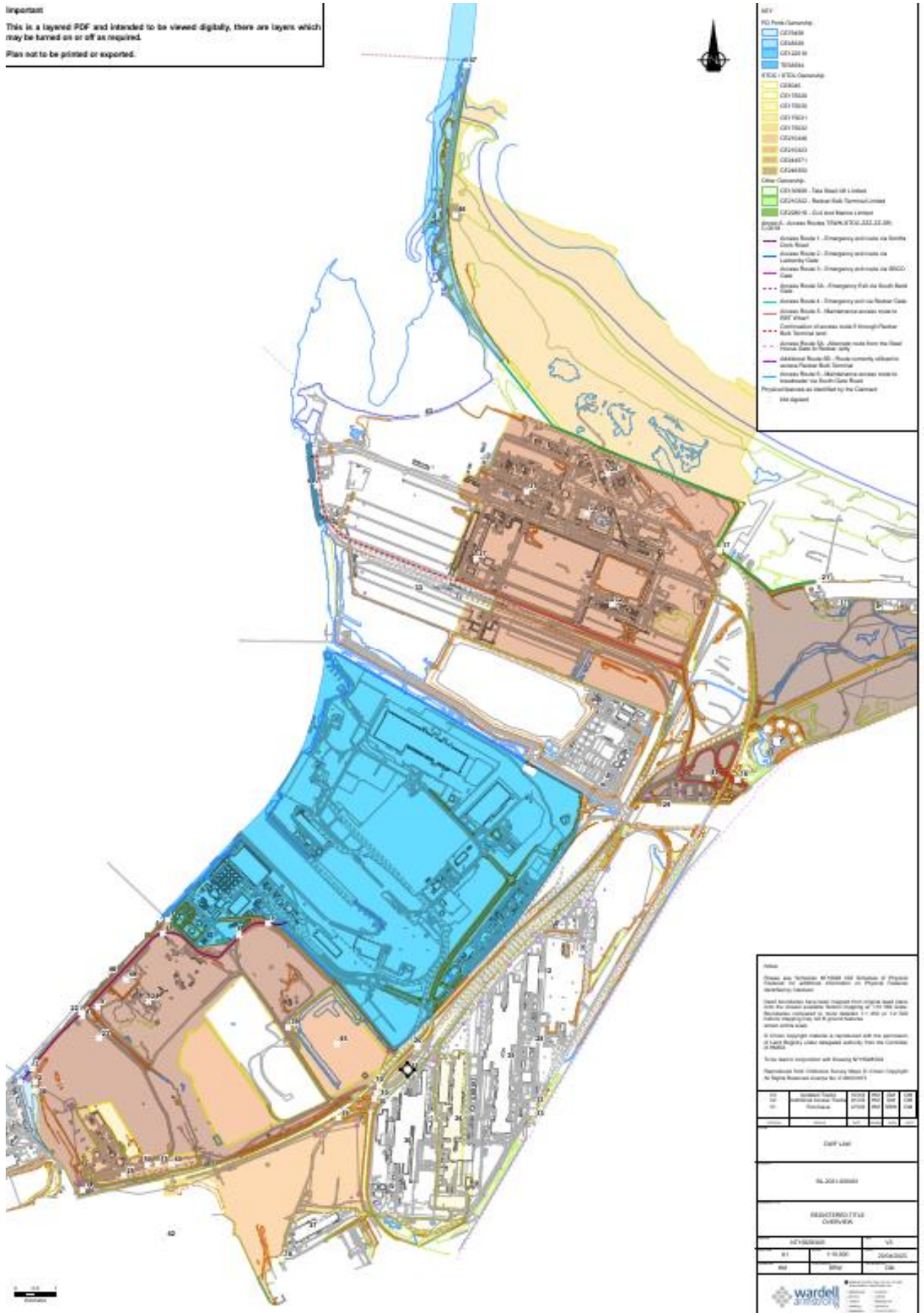


Fig 1

6. The STDC parties’ land is shaded in yellow and brown on the (north orientated) plan below (Fig 2). D’s land is shaded blue. The white land belongs to third parties.

**Important**

This is a layered PDF and intended to be viewed digitally, there are layers which may be turned on or off as required.  
 Plan not to be printed or exported.



**KEY**

**STC Ponds/Canals:**

- CE19486
- CE19488
- CE19489
- CE19490

**STC / STC's Ownership:**

- CE19491
- CE19492
- CE19493
- CE19494
- CE19495
- CE19496
- CE19497
- CE19498
- CE19499

**Other Ownership:**

- CE19500 - Teesport Ltd's Land
- CE19501 - Teesport Ltd's Land
- CE19502 - Teesport Ltd's Land
- CE19503 - Teesport Ltd's Land
- CE19504 - Teesport Ltd's Land

**Access Routes:**

- Access Route 1 - Emergency access via South Quay Road
- Access Route 2 - Emergency access via Ladbroke Quay
- Access Route 3 - Emergency access via BCCO Quay
- Access Route 4 - Emergency access via South Quay Road
- Access Route 5 - Emergency access via South Quay Road
- Access Route 6 - Emergency access via South Quay Road
- Access Route 7 - Emergency access via South Quay Road
- Access Route 8 - Emergency access via South Quay Road
- Access Route 9 - Emergency access via South Quay Road
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- Access Route 50 - Emergency access via South Quay Road

**Other Features:**

- Additional Route 1 - Emergency access via South Quay Road
- Additional Route 2 - Emergency access via South Quay Road
- Additional Route 3 - Emergency access via South Quay Road
- Additional Route 4 - Emergency access via South Quay Road
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- Additional Route 50 - Emergency access via South Quay Road

**Notes**

Please see 'Schedule of Works and Details of Physical Features' for additional information on Physical Features identified by location.

Small structures located within the site boundary have been shown for reference only. They are not to be built unless specifically indicated on this plan or in the relevant specifications for a given feature.

All other features shown are reproduced with the permission of the relevant authority, from the records of the relevant authority.

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NO	REVISION	DATE	BY	CHKD	APPD
01	ISSUED FOR TENDERS	15/03/2011	WJ	WJ	WJ
02	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
03	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
04	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
05	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
06	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
07	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
08	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
09	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
10	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
11	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
12	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
13	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
14	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
15	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
16	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
17	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
18	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
19	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
20	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
21	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
22	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
23	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
24	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
25	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
26	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
27	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
28	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
29	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
30	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
31	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
32	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
33	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
34	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
35	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
36	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
37	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
38	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
39	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
40	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
41	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
42	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
43	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
44	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
45	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
46	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
47	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
48	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
49	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ
50	REVISED TO REFLECT COMMENTS	15/03/2011	WJ	WJ	WJ

**Wardell**

**B. OVERVIEW OF THE ISSUES**

7. Cs brought these proceedings seeking negative declarations that D does not enjoy any rights of way across their land. Following Teesworks' acquisition of part of Cs' land in October 2022, it was joined to the proceedings. D, by way of its Counterclaim, seeks positive declarations that it enjoys the benefit of rights of way across that land. D's Revised Schedule of Rights (served in July 2023) identified 15 separate categories of rights claimed, but in its trial skeleton argument D abandoned many of its claims to rights of way and has filed amended pleadings to reflect that. The STDC parties have lain down a marker that they intend to address the costs consequences of this late abandonment of part of D's case at an appropriate juncture. It is common ground that D, as the party seeking positive declarations as to the existence of those rights, bears the burden of proof in the proceedings.
8. D's claims relate to three areas: South Gare, Redcar Quay and South Bank.
9. D owns the breakwater at South Gare and maintains a lighthouse and other facilities there. The only road access to the breakwater and the lighthouse is along a solitary road, from the lighthouse to where it meets Tod Point Road at Fisherman's Crossing. The road is privately owned. The STDC parties own the road from Fisherman's Crossing to the point where it reaches D's land, and it is owned by D from that point until it ends at the lighthouse. D claims to be entitled to a right of way for all purposes and with vehicles across the STDC's section of the road. In these proceedings, this road has been called "Access Route 6". D's claim is that it has an express right of way granted to it in various conveyances dating back to 1891, and that although the route may have moved or been diverted, it retains a right of way over Access Route 6. In the alternative, D says that it has a prescriptive right arising under the common law from long user.
10. D also owns Redcar Quay. This is a bulk ore terminal constructed in the early 1970's which is currently leased to RBT. Redcar Quay has access from the River Tees but is otherwise landlocked. Road access to a highway (the A1085) must cross over land owned by RBT and land owned by the STDC parties – this is Access Route 5. D says that the grant of a right of way is implicit in the

conveyance to it in 1971, or under a 1995 lease, but if it is wrong on that then it claims a right of way by necessity under the common law.

11. D owns Teesport. The primary access to Teesport is via the Tees Dock Road which connects Teesport to the A66 and the A1065. Tees Dock Road is susceptible to flooding. D claims a right of way along a riverside road, which connects D's land by the highway at Smith's Dock Road (the Smith's Dock Road Parcel shaded light blue in the bottom left-hand corner of Fig 2) to the Tees Dock Road on D's land at Teesport. This is Access Route 1. D claims a right of way by prescription under the common law arising from long user for general purposes, and separately for emergency access and egress when Tees Dock Road cannot be used.
12. In relation to Teesport, D also claims a right of way under the doctrine of proprietary estoppel. In order to secure D's agreement to the building of a roundabout which D says encroaches on its land, D alleges it was assured by STDC that it would be granted a suitable alternative access route through the STDC parties' land at South Bank and it has acted to its detriment as a consequence.
13. The STDC parties say a complete answer to this claim is that D's predecessor in title did not have the statutory capacity to acquire easements; they seek to amend to plead that point. D opposes the proposed amendment only on the ground that it is without merit and so at the outset of the trial, I directed that submissions on the issue should be made as part of closing submissions and for the application to amend to be considered alongside the other issues for determination in this Judgment.
14. Subject to that issue, the STDC parties dispute D's contentions that it has express or implied rights arising from the conveyances as a matter of their proper construction and the law.
15. As for prescription, the STDC parties say that D cannot discharge the burden of proof on it in respect of any of its claims. In the alternative, they assert that any period of established use was with the permission of one of them or their predecessors in title or was interrupted by a period of such permissive use.

**C. THE TRIAL**

16. The trial was ordered to be expedited. It commenced on 3 October 2023 and lasted for approximately 6 weeks. Unfortunately, attempts to find an available courtroom in Middlesbrough or Newcastle proved unsuccessful, with the consequence that the trial was heard in the Rolls Building in London. Some 34 witnesses, most of them from Middlesbrough or the area around it, travelled down to London to give their evidence. Three witnesses – aged 91, 79 and 79 - gave evidence remotely by video conference. I travelled to Middlesbrough to visit the site with representatives of the parties after the trial.
  
17. I heard evidence from two expert witnesses. Mr David Meddings, a chartered land surveyor, gave evidence for the D and Mr Martin Clay, an architect, gave evidence for the Cs. The purpose of their evidence was twofold. Firstly, they provided assistance in the interpretation of contemporaneous documents like aerial photographs and prepared a series of maps and plans showing the present and historical position of title to the land, the routes claimed, and the physical features thought to be relevant. Secondly, they gave their expert opinion on whether the roundabout encroached on D’s land.
  
18. The following witnesses of fact were called by D:
  - 18.1. Leonard Tabner
  - 18.2. Ian Turner
  - 18.3. Paul Thatcher
  - 18.4. Alan Daniels
  - 18.5. Bernard Meynell
  - 18.6. Michael Westmoreland
  - 18.7. Michael McConnell
  - 18.8. Jeremy Hopkinson
  - 18.9. Joseph Wilson
  - 18.10. Brian Dresser
  - 18.11. Paul McGrath
  - 18.12. Peter Johnston
  - 18.13. Michael Robinson



- 18.14. Paul Grainge
  - 18.15. Alfred Brian Bainbridge
  - 18.16. Patrick Taylor
  - 18.17. Keith Overfield
  - 18.18. Peter McWilliams
  - 18.19. David Varey
  - 18.20. Allan Duncan
  - 18.21. Matthew Warburton
  - 18.22. Neil Dalus
19. The following witnesses of fact were called by Cs.
- 19.1. Julie Gilhespie
  - 19.2. Chris Harrison
  - 19.3. Neil Thomas
  - 19.4. John McNicholas
  - 19.5. Robert Norton
  - 19.6. David Jones
  - 19.7. Christopher Briggs
  - 19.8. Andy Pickford
  - 19.9. Clive Donaldson
  - 19.10. Colin Agar
  - 19.11. Mark Buttita
  - 19.12. Paul Booth
  - 19.13. Karl Dickinson
20. Teesworks called no witnesses, but relied on the evidence called by Cs.
21. In relation to the documentation, there were hundreds of deeds, conveyances, office copy entries and other conveyancing documentation, hundreds of historic plans and maps (conveyancing plans, site plans prepared by British Steel or its predecessors, Ordnance Survey maps over the last hundred years), and nearly as many interpretive plans prepared by the experts. There were historic photographs, including aerial photographs and publicly available reports, books and other publications. There were also contemporaneous communications between the



parties and internal documentation the bulk of which related to the roundabout and promissory estoppel issues.

22. Notwithstanding the vast number of documents in the electronic bundles, it is also clear that I do not have all relevant documents. As appears below in relation to trespass, there are important deeds and plans which are missing. During the course of the trial, it became clear that there is a cabinet system of about 300,000 plans in the possession of British Steel. Although STDC has a licence to access that cabinet system, and some plans were produced from it, a proper search has not been conducted for the purposes of disclosure. There is also a general dearth of internal communications or inter party communications prior to 2002, about D's use of Access Route 1 for emergency use and generally. There is no documentary record of the discussions, which must inevitably have taken place between the THPA and British Steel at the time the road to South Gare was diverted to accommodate the new Redcar steelworks. These are just examples of the gaps in the documentary record. I have to do my best to identify what reliable conclusions can be drawn from this incomplete universe of documents.

#### **D. APPROACH TO THE EVIDENCE**

23. Most of the factual witnesses were called to give evidence on the disputed issues of prescription. In the main, these were patently honest witnesses doing their best to assist the court. However, it is clear that they cannot all be correct because there are countless inconsistencies between their recollections. Memory plays tricks on people. It is perfectly possible for an honest witness to have a firm memory of events which they believe to be true, but which in fact is not correct.
24. The well known, and even now, most comprehensive, judicial treatment of the science, is by Mr Justice Leggatt (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Com m), at paragraphs 15-20.

*“15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.*

*16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological*

*research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.*

*17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).*

*18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.*

*19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.*

*20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been 'refreshed' by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence*

*after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events."*

25. Since those comments were made, CPR PD57AC has been introduced in the Business and Property Courts. It requires witness statements in most Business and Property cases to be prepared in accordance with the Statement of Best Practice which is annexed to it. There is a similar warning to that in *Gestmin* to be found at paragraph 1.3:

*"Witnesses of fact and those assisting them to provide a trial witness statement should understand that when assessing witness evidence the approach of the court is that human memory:*  
*(1) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but*  
*(2) is a fluid and malleable state of perception concerning an individual's past experiences, and therefore*  
*(3) is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration."*

26. The Statement of Best Practice is intended to guide the preparation of witness statements in line with the science, particularly as to how to access recollections without interfering with them. The rules for examination in chief do not allow leading questions or free use of documents to "refresh memory" and the science suggests examination in chief was a good model for accessing a witness' recollection without corruption. In broad terms, the Statement of Best Practice encourages the preparation of a witness statement in a way which follows the template of an examination in chief:

1. the interviewer should ask open questions as far as possible;
2. the interviewer should not ask leading questions as far as possible;
3. the witness should not be shown documents except those documents which could be shown to a witness to refresh memory in examination in chief (i.e. a document created or seen by the witness at an earlier point in time while the

facts evidenced by or referred to in the document were still fresh in their mind);  
and

4. the preparation of a trial witness statement should involve as few drafts as practicable.

27. All of the witness statements in this case profess to have been made in accordance with CPR PD57AC. The extent to which I consider the Statement of Best Practice has been complied with in respect of each witness, is something which I consider when assessing their evidence. It must be said, however, that even religious compliance with the Statement of Best Practice does not remove the risk of interference with memory.

28. D criticises Cs, with some justification, as to the extent to which they have complied with CPR PD57AC. For example, Christopher Briggs was interviewed with Noel Kelly. Noel Kelly did not give evidence. Although the witness statement sets this out openly, it is not what the Statement of Best Practice envisages. The witness statement does not say, as Mr Briggs said in cross examination, that he had been approached to give evidence by David Jones who was also present during the interview. Mr Brigg's witness statement was not solely his evidence, but included words and recollections from others. It was a combined effort, and it fails to identify what are his own recollections, or prevent his recollections being interfered with by discussion with others. Like many of Cs witnesses, Mr Briggs was shown documents which would not have satisfied the test for refreshing memory, including the "Out of Gauge" plan, which (as I explain below) is misleading. While I am completely satisfied that he was an honest witness, his witness statement simply did not comply with CPR PD57AC, or its objectives, notwithstanding the purported certificate of compliance. Ms Barton submitted that this non-compliance was unfortunate but not particularly relevant as I had heard the evidence and seen it tested. I disagree for the reasons I have sought to explain above. The manner in which the recollections of honest witnesses are accessed does matter because it can change the recollections of those witnesses without them realising it.

29. I also formed the view that David Jones was not being open and transparent about the preparation of his evidence. In his evidence, he admitted being contacted by Mr Musgrave and Mr Corney (who are the individuals behind Teesworks) and for whom he does work, to give evidence. He said that he nevertheless did not have any conversations with anyone about his evidence, apart from Forsters, before he prepared his statement. It later transpired that he had contacted Mr Briggs and Mr Kelly and persuaded them to give evidence, and indeed attended at Cs premises with them and was present when Forsters took instructions for their evidence. He had also seen the “Out of Gauge” plan before he made his witness statement – his explanation that he must have seen it lying around when he was involved in removing papers from the Site for the Official Receiver and remembered it because he had a “snapshot memory” was not credible. I consider it more likely, that someone provided Mr Jones with the “Out of Gauge” plan as part of discussions about his evidence. I noticed that his evidence improved through cross-examination, correcting, and expanding, on what was said in his witness statement. While I do not disregard his evidence, I treat it with caution.
30. Although Legatt J’s words have been sometimes taken as an encouragement to place no reliance on witness recollection, particularly when there is an abundance of reliable contemporaneous documentation, the Court of Appeal has confirmed that the assessment of the credibility of a witness’ evidence should be a part of a single compendious exercise of finding the facts based on all of the available evidence; see *Kogan v Martin* [2019] EWCA Civ 1645 and *Natwest Markets Plc, Mercuria Energy Europe Trading v Bilta (UK) Ltd (In Liquidation)* [2021] EWCA Civ 680 at paragraphs 50 and 51.
31. Each witness’s evidence has to be weighed in the context of the reliably established facts (including those which can safely be distilled from contemporaneous documentation bearing in mind that the documentation itself may be unreliable or incomplete), the motives and biases in play, the possible unreliability or corruption of human memory and the inherent probabilities. Where there is reliable contemporaneous documentation, it will be natural to place weight on that. Where documents add little to the analysis, other secure

footholds in the evidence need, if possible, to be found to decide whether it is more likely than not that the witness' memory is reliable or mistaken.

32. That is the approach I take.

## **E. HISTORICAL CONTEXT**

### *The Port Authority*

33. The Tees Conservancy Commissioners (“**the TCC**”) was a statutory body formed by the Tees Conservancy and Stockton Dock Act 1852, which inherited the duties of the old Tees Navigation Company.

34. The TCC was replaced by the Tees and Hartlepool Port Authority (“**the THPA**”), which was created by the Tees and Hartlepoons Port Authority Act 1966 (“**the 1966 Act**”).

35. A private limited company, the Tees and Hartlepool Port Authority Ltd, was incorporated on 2 August 1991 with the power to acquire the property, rights and functions of the THPA pursuant to s.2 of the Ports Act 1991. On 1 April 2003, this new company changed its name to that of D.

36. In this Judgment, I refer to D, the THPA and the TCC together as “**D and its predecessors**”.

37. D is a privately owned company with commercial profit-making objectives. It also has a statutory function. The statutory powers and duties of D and its predecessors include:

37.1. A duty to maintain and manage the port and waterways, and broad powers conferred for that purpose: see e.g. Part III of the 1966 Act.

37.2. The power to operate a police force. Originally founded pursuant to the Harbour, Docks and Pier Clauses Act 1847, the Tees Harbour Police now operate pursuant to s.103 of the 1966 Act, which provided that the THPA could continue and maintain the police force maintained by the TCC and that its members “*shall have all the powers and privilege, and shall be entitled to the indemnities and protection, of a constable within the harbour*”.

*and in any place not more than two miles beyond the limits of the harbour”.*

37.3. Under the Pilotage Act 1987, the power to regulate the provision of pilotage services within the harbour.

*Land reclamation and the breakwater*

38. Historically, much of the Site formed part of the riverbed or the foreshore of the estuary of the River Tees. Prior to the Victorian period, even above the high water-mark, much of the relevant land consisted of marshes, sands and mudflats unsuitable for construction or industry. That land has been reclaimed from sea, river and marsh by work done by, or under the auspices of the TCC.
39. A 2 ½ mile long breakwater was built by the TCC, with a railway line along it. It was formally opened in 1888. A lighthouse and coastguard station were established at its furthest reaches at South Gare. Much of the breakwater has now been incorporated into land reclaimed on either side, but there still remains the last section of it leading to the lighthouse at South Gare.
40. The Newcomen family was a prominent family in the area and were significant landowners. Trustees and entities holding that land are involved in many of the conveyances in this case. For convenience, the parties have referred to them as **“the Newcomen Estate”**.

*Industry*

41. By 1912, there were two main industries at the Site – shipbuilding and steelmaking.
42. The shipbuilder Smith’s Dock Company opened a major ship-building yard in 1909, on the western side of Smith’s Dock Road roughly where the Teesport Commerce Park is now located. In 1966 Smith’s Dock Company merged with another local shipbuilder, Swan Hunter & Wigham Richardson (**“Swan Hunter”**). The ship-building yard remained in active use until its closure in 1987.

43. As for steelmaking, a collection of iron works in the area came to be replaced by a succession of major iron and steel manufacturers. By 1865, Bolckow, Vaughan & Co (“**Bolckow Vaughan**”) was producing 1 million tons of pig iron per annum from its factories in the area. It acquired another major manufacturer, Walker Maynard & Co in 1916 before it was itself eventually subsumed by Dorman, Long & Co (“**Dorman Long**”) which employed 20,000 people in the area in 1914 and opened major new steelworks on the Site. The Iron and Steel Act 1967 brought the fourteen largest steel producers in the UK, including Dorman Long, into public ownership as the British Steel Corporation (“**British Steel**”). By this point, Dorman Long owned all the land now owned by Cs at the Site and it was vested in British Steel by statutory instrument in 1970.
44. Following the nationwide steel strike in 1980 and acceleration of de-industrialisation over that decade, the steel industry on Teesside entered a period of steady decline. In 1999, British Steel (now re-registered as British Steel Ltd) merged with the Dutch steel producer, Koninklijke Hoogovens, and was renamed Corus UK Ltd in 2000 (“**Corus**”), under whose ownership the Teesside steel operations were mothballed. Corus Group was then acquired in 2007 by the Tata Group, with the effect that Corus was renamed Tata Steel UK Limited (“**Tata**”) in 2010. Shortly thereafter in 2011, parts of Tata’s holdings were sold to Sahaviriya Steel Industries Limited (“**SSI**”), the rest being acquired by Cs in 2019. SSI recommenced steelmaking in around 2012 and operated the Redcar Steelworks, South Bank Coke Ovens and Lackenby works for some time. However, following SSI’s insolvency in October 2015 the steelworks were permanently closed.
45. In this Judgment, I will refer to STDC and its relevant predecessor in title to the land, namely British Steel which became Corus and then Tata, as “**the STDC predecessors**”.

**F. EASEMENTS – essential characteristics**

46. An easement is a right a landowner has to use land owned by another (or to prevent it being used), in a particular way. It is an incorporeal hereditament, and therefore a species of land itself. Unlike a personal right (such as a licence), an



easement attaches to the land it benefits and the benefit and burden of the easement passes to successors in title to the original parties.

47. The essential characteristics of an easement were identified in the Judgment of Evershed MR in the leading case of *Re Ellenborough Park* [1956] Ch 131 (and recently approved by the Supreme Court in *Regency Villas Ltd v Diamond Resorts Ltd* [2018] UKSC 57; [2019] AC 553):

47.1. There must be a ‘dominant tenement’ (i.e. land which enjoys the benefit of the easement) and a ‘servient tenement’ (i.e. land over which the easement is exercised); an easement cannot exist ‘in gross’.

47.2. The right must ‘accommodate’ (i.e. benefit) the dominant land. The right must be of some practical importance to the dominant tenement, as being of benefit and utility to its normal use and enjoyment. The dominant land does not need to neighbour the servient land, but it needs to be close enough to the dominant land to confer a practical benefit on it.

47.3. There must be diversity of ownership, such that the dominant and servient land must be owned by different persons. If the dominant and servient land come into common ownership, any easement will be permanently extinguished.

47.4. The right must be one which is capable of forming the subject matter of a grant.

## **G. CAPACITY**

48. The STDC parties seek permission to amend to raise as a defence to D’s claims that between 1 November 1966 and 31 July 1991, THPA did not have the capacity to acquire easements. It is contended that this lack of capacity prevented the THPA acquiring easements by express or implied grant, and further it prevented prescriptive rights arising.

49. There is no dispute that the TCC (the THPA’s immediate predecessor) had capacity to acquire easements nor that any easements the TCC had were vested

in the THPA. There is also no dispute that D has the capacity to acquire easements.

50. The STDC parties contend that, unlike the statutes constituting the TCC and D, the 1966 Act which established the THPA, contains no express powers to acquire easements by agreement. It is not suggested there was a reason for removing from the THPA the power to acquire easements by agreement, but it is contended that this is the consequence as a matter of statutory construction.
51. The TCC's powers were set out in various Tees Conservancy Acts. An express power to "*purchase, but by Agreement only...any Rights of Way or other Easements over [Land adjoining or near to the Tees]*" was provided for by section 11 of the Tees Conservancy Act 1863. Section 23 of the Tees Conservancy Act 1867 empowered the Commissioners to acquire by agreement "*any Easement, Right, or Interest in or affecting any Lands*" which may be required for certain works. Section 9 of the Tees Conservancy Act 1875 provided that persons empowered by the Land Clauses Act to sell or convey certain lands could "*grant to the Commissioners any easement ...*".
52. The preamble to the 1966 Act explains that the THPA was being created to consolidate the entire undertaking of the TCC, the Hartlepool Commissioners, the Docks Board, and the entities operating Stockton Quay and Middlesbrough Wharf. By section 12, the THPA was given the duty to take such steps as it considered necessary for the conservancy, maintenance and improvement of the harbour and its facilities and for the reclamation of land. For that purpose, it was given the power (section 12(2)(d)) to "*do all other things which in their opinion are expedient to facilitate the proper carrying on or development of the undertaking*".
53. By section 14(1), the THPA was given the power to "*acquire land by agreement, whether by way of purchase, exchange, lease or otherwise*" (emphasis added). By section 14(3), the THPA was given the power to "*dispose of land...in such manner, whether by way of sale, exchange, lease, the creation of any easement,*

*right or privilege or otherwise, for such period, upon such conditions and for such consideration as they think fit”.*

54. Pausing there, if the question of construction stopped there, I would be inclined to accept that in the context of the permissive empowerment of section 12, section 14(1) was wide enough to permit the THPA to acquire interests in land including easements. This is reinforced by the fact that s. 14(3) is wide enough to permit the THPA to acquire an easement by reservation on a disposal of land. But the matter does not stop there.
55. The 1966 Act (section 4(1)) incorporates s.3 of the Harbours, Docks and Piers Clauses Act 1847, which defines “land” as including “hereditaments”. The 1847 Act was one of a series of acts consolidating clauses and terms usually contained in other statutes. The Land Clauses Consolidation Act 1845 was another such act, section 3 of which also defines “land” as including hereditaments. Hereditaments was authoritatively determined to include incorporeal hereditaments, such as easements, in *Great Western Railway v Swindon and Cheltenham Extension Railway Co* (1884) 9 App Cas 787 at 795, 800-803 and 807-809. In doing so, the House of Lords distinguished the obiter remarks in the Court of Appeal of Lord Carnworth in *Pinchin v London and Blackwall Railway Company* (1854) 43 E.R. 1101.
56. I am satisfied therefore, that there is no merit in the contention that the THPA did not have the power to acquire easements by agreement and therefore no merit in the proposed amendments. I dismiss the applications.

## **H. EXPRESS AND IMPLIED RIGHTS OF WAY**

### **H.1 Express and implied rights to access South Gare**

#### ***South Gare and Access Route 6***

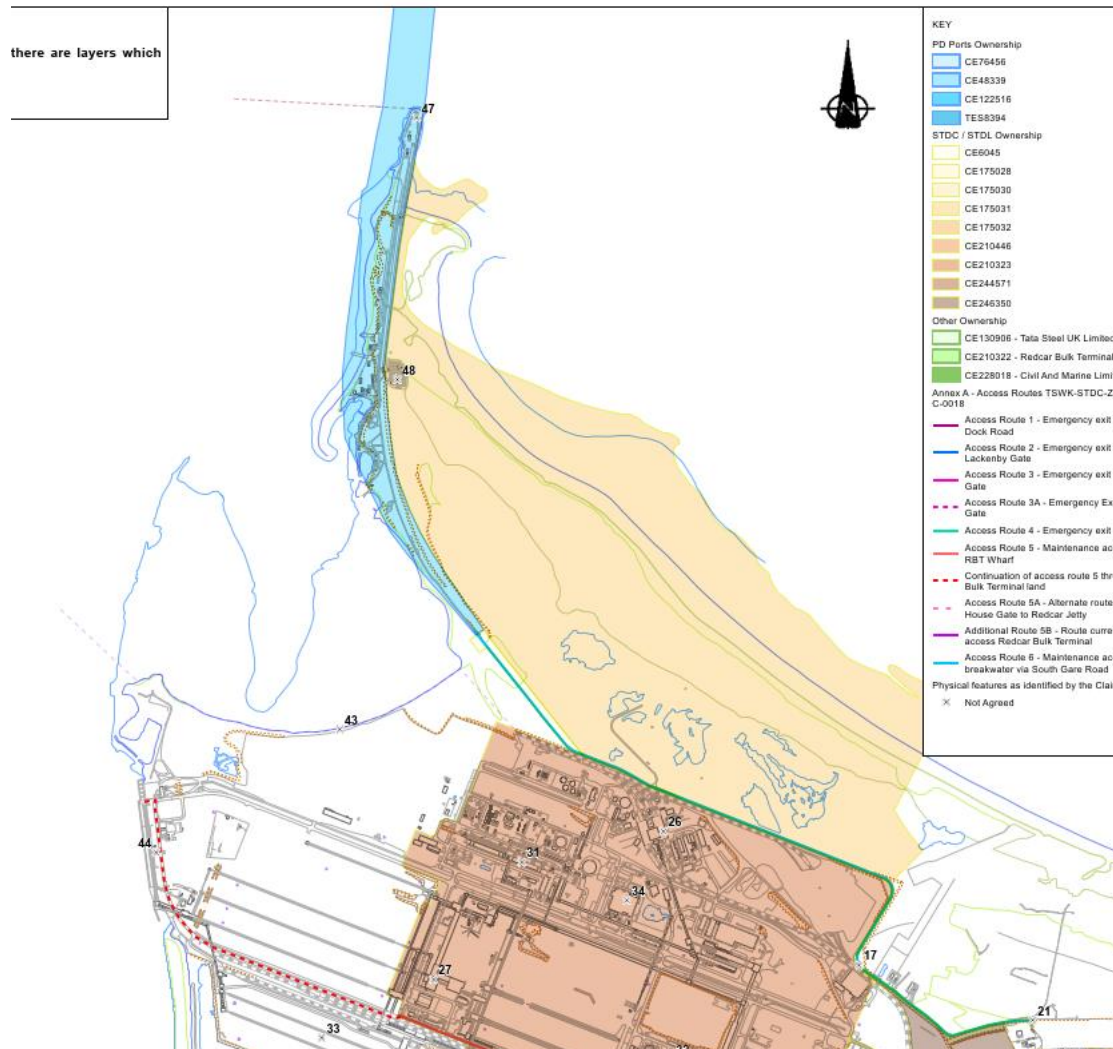


Fig 3

57. The land at South Gare which is owned by D (“**South Gare**”), is shaded light blue on the plan above and extends out to sea. Its principal feature is what remains of a narrow breakwater some two-and-a-half miles long, formed by the tipping of millions of tons of slag from local ironworks. Construction began in the 1860s and it was completed in 1888. At its end is sited a lighthouse.
58. The area to the east, shaded yellow, belongs to the STDC parties. It is largely undeveloped and is now protected as a Site of Special Scientific Interest under the Wildlife & Countryside Act 1981. There is a group of fisherman’s cabins on the STDC parties’ land which are licensed out.

59. Access by road to South Gare has at all material times started at a point called Fisherman's Crossing (marked 21 on the bottom right corner of Fig 3). When the Redcar Steelworks (shaded brown on Fig 3) were constructed in the 1970s, a new section of road was constructed, which followed the perimeter of the new Redcar Steelworks. This road from Fisherman's Crossing to South Gare is Access Route 6, shown in green on the plan above. Although what is now Access Route 6 first appears on Ordnance Survey mapping in 1980, it is clear enough from an aerial photograph from November 1974 that it was in place on the ground by then.

*D's case - a compilation of rights from three deeds*

60. D's case is that by a combination of three deeds, it has a complete right of way between Fisherman's Crossing and South Gare along Access Route 6. The three deeds are:

60.1. an Indenture between the TCC and the Newcomen Estate dated 7.5.1891 (**"the 1891 Deed"**)

60.2. an Indenture between Dorman Long and the TCC dated 14.7.1925 (**"the 1925 Deed"**)

60.3. a Conveyance between THPA and British Steel dated 19.12.1974 (**"the 1974 Conveyance"**)

61. There has only ever been one access road on and off South Gare via Fisherman's Crossing, but the route has been altered twice: first, in around 1925; second, in around 1974.

62. D says that the 1925 Deed gave the TCC a right of way along the then route from A to B, and from B to C, on the plan below (**"the 1925 Route"**), it already having a right of way from the breakwater (where the words "Tod Point" appear on the plan) to C and on to Fisherman's Crossing pursuant to the 1891 Deed (**"the 1891 Route"**).

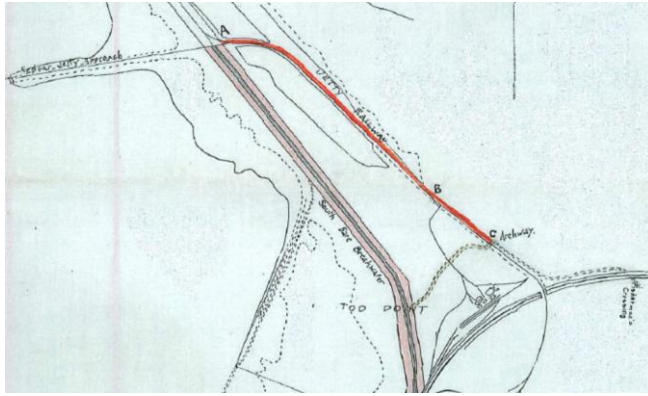


Fig 4

63. When in 1974 the route was changed again, D says it acquired a right of way by implication over the diverted route in the 1974 Conveyance. The extent of the deviation between the 1925 Route (shown as the red pecked line) and Access Route 6 (shown as the solid red line) can be seen below. The deviation begins at point B on the 1925 route and so D still relies on the 1925 Deed for a right of way from B to C and on the 1891 Deed for a right of way between C and Fisherman's Crossing.

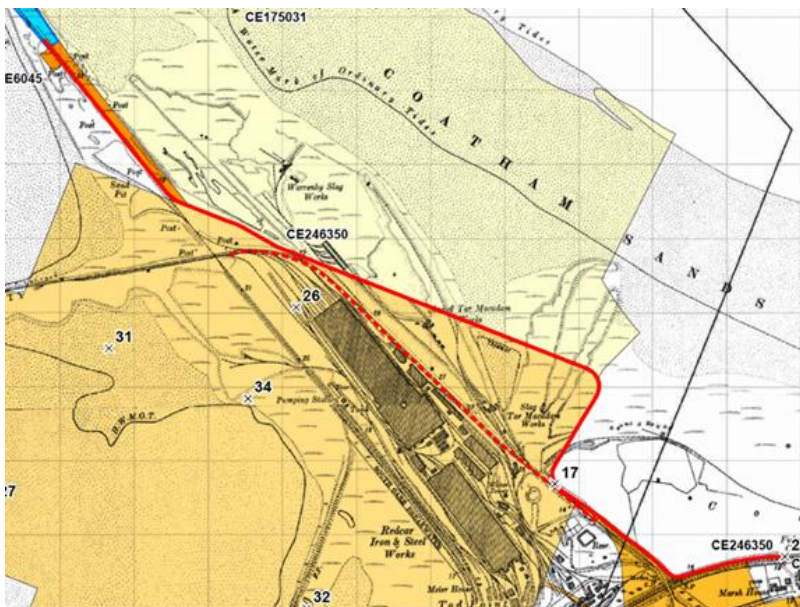


Fig 5

64. The STDC parties attack every stage of D's attempted compilation of a complete right of way over Access Route 6.

*The challenge to D's ownership of South Gare*

65. In their skeleton arguments for trial, the STDC parties for the first time raised a challenge to D's paper title to South Gare.
66. By a conveyance dated 8.9.1863, it seems that the TCC acquired the land from the Crown on which it intended to build the breakwater. A copy of this conveyance has not been found, but it, together with a deed dated 31 July 1869 whereby the TCC acquired parts of what became the breakwater from the Newcomen Estate, was referred to in subsequent conveyancing documents as the root of the TCC's title to the breakwater. From 1863 onwards D and its predecessors have constructed, maintained, used and occupied the breakwater.
67. However, the THPA only became the registered owner of South Gare (the land shaded light blue on Fig 3) as a result of a deed of exchange dated 8 May 1980 ("the Deed of Exchange"). By that deed, the Crown conveyed South Gare to the THPA in exchange for the THPA conveying back to the Crown the land it had acquired in 1863. The conveyance plan below shows in pink the land the THPA acquired in 1980 (and D continues to own) and in blue the land that the TCC had acquired by the conveyance dated 8 September 1863 and owned until 1980.
68. The STDC parties say that any rights D claims under any instrument to which it was party prior to 1980 cannot have been proprietary rights benefiting the land which D currently owns. Accordingly, D's claim under the 1974 Conveyance (either express or impliedly diverting the 1925 Route) must fail, as the allegedly burdened land did not give access onto D's then land (coloured blue below), but onto the pink land which was then Crown land.

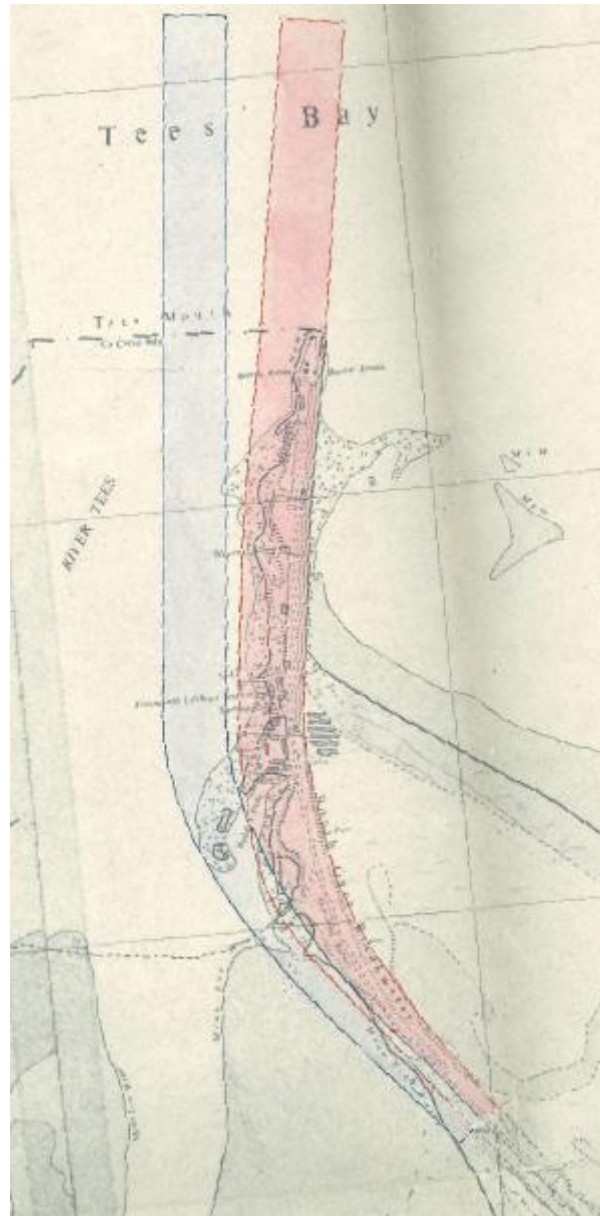


Fig 6

69. D does not dispute that the Deed of Exchange suggests that either (1) the Crown conveyed some of the wrong land to the TCC in 1863 or (2) when building the breakwater, the TCC built it partly along the wrong alignment. D says that this is not a point that the STDC parties are entitled to raise on their pleadings, and in any event, this does not lead to the conclusion for which they contend.
70. As to the entitlement to raise it, D says that, although the STDC parties had the 1980 Deed of Exchange, they raised no positive case about it in their pleadings, and merely put D to proof of the ownership of South Gare at the date of the 1925



and 1975 Conveyances. These pleas were introduced only by amendment in July 2023, with Teesworks explaining that the amendments “*all go to the construction of the relevant documents*” in relation to D’s case on diversion of the 1925 route. There was no express denial of THPA’s title to any relevant land, nor any positive plea based on the Deed of Exchange.

71. D rightly says that the STDC parties cannot raise a positive case against D’s title to South Gare at the relevant dates, but I do not think that D can ignore the 1980 Deed, and effectively treat the non-admission as an admission. It is right that the STDC parties had the information to plead a positive case, denying D’s title rather than resting on a non-admission, but what D cannot say is that on the information it had, the STDC parties should have admitted D’s title; see *SPI North Ltd v Swiss Post International (UK) Ltd* [2019] EWCA Civ 7 at [48]-[49]. While the STDC parties cannot raise a positive case on the 1980 Deed of Exchange, D must still prove a *prima facie* case of ownership of the Gare at the date of the conveyances on which it relies. D could do that if it could prove a *prima facie* paper title at the relevant dates from the conveyancing documents. Then no positive case could be advanced to displace that *prima facie* title. D’s difficulty is that it cannot prove a *prima facie* paper title prior to 1980. D has to rely on the Deed of Exchange to show that D now has paper title to South Gare, but that also shows that it did not have paper title to it before the Deed of Exchange.
72. D’s response is that so far as the THPA’s ownership of the pink land is concerned the 1980 Deed of Exchange was completely unnecessary. This is because, it says, the construction of the breakwater was a clear act of taking possession of the land on which it was built, thereby ousting the Crown’s possession of that land. While the TCC and its successors had a statutory duty to build and maintain a breakwater and the facilities there, that gave it no right to enter upon the land of another to do so, so its activities on the land were *qua* owners. Under the common law, that possession immediately gave the TCC and its successors a *prima facie* estate in fee simple, good against all the world except for the true owner: see Jourdan, *Adverse Possession* at para 20-23 et seq. The TCC believed it was the owner of the breakwater and since then it and its successors have maintained the breakwater and acted in all respects as its owners, including in its dealings with the STDC predecessors who have treated it as the landowner. Pursuant to s.1 of

the Crown Suits Act 1861 and s. 4 Limitation Act 1939, after 60 years the TCC's *prima facie* title will have become indefeasible by the Crown. This will have expired at the latest in 1948.

73. I accept these submissions that the TCC had a *prima facie* possessory fee simple from at least 1888. There is no reason in principle why easements cannot be acquired or reserved for the benefit of a possessory fee simple. I also accept that the TCC's possessory title became *prima facie* inalienable from at least 1948.
74. It will require a positive case to disprove that *prima facie* title to the land and as I have already indicated no such positive case was raised by the STDC parties. I declined to allow Miss Holland to raise a completely new point in her oral closing submissions, based upon s.66 of the Tees Conservancy Act 1875 (prohibiting interference by the TCC with Crown land without written consent). Firstly, this impermissibly raised a positive case and secondly raised a new point for the first time far too late in the proceedings. There might be arguments available to the Crown, if it chose to challenge the inalienability of the TCC's and THPA's title prior to 1980. Those arguments might be based on s.66, and indeed the express recital in the Deed of Exchange which state that the Crown was then the owner of the pink land. I am not convinced they are points which could have been taken by the STDC parties if they had chosen to raise a positive case, and they do not appear to affect the TCC's *prima facie* possessory fee simple.

### ***The 1891 Deed – Fisherman's Crossing to Point C***

75. The 1891 Deed conveyed a section of reclaimed land immediately adjoining the western side of the breakwater from the TCC to the Newcomen Estate. Among the various rights granted and reserved, the Newcomen Estate were granted access across the breakwater (and the railway running along it) to connect their land on either side, and they granted the TCC the following right of way:
- “the said Tees Conservancy Commissioners and their tenants, servants and workmen shall be entitled to have and use a free and convenient right of way between their cottages erected near Tod Point and the land adjacent thereto and the Village of East Coatham in such course or direction as the said [Newcomen*

Estate] *Trustees or their assigns may from time to time assign for the purpose*"<sup>1</sup>. The cottages are marked on the accompanying plan and appear on other contemporaneous plans and maps. East Coatham is also marked on contemporaneous maps, being further east along the road from Fisherman's Crossing.

76. This granted the TCC a right of way to and from the breakwater over a route to be chosen by (at that time) the Newcomen Estate.
77. The dominant land benefitted by the right of way is not expressly identified by the 1891 Deed. Where an easement is created by an express grant, there is no legal necessity for it to specify the dominant tenement, but it is essential that there is one. The court will consider the facts known to the grantor and the grantee at the time of the grant, to identify the dominant tenement and its extent. The breakwater at this point was in the ownership of the TCC and was its means of access to South Gare. This right of way appears to be the only road access to the breakwater and was for the TCC's tenants, servants and workmen. The purpose of obtaining access to this point of the breakwater must have been to thereby gain access to the rest of the breakwater and the land it accessed. I determine that the dominant tenement included South Gare and not just the part of the breakwater immediately adjacent to the cottages.
78. D says that the plan to the 1925 Deed (Fig 4 above) shows that the chosen route (at least by 1925) was over Fisherman's Crossing, through an archway under the Jetty Railway at point C and then along the yellow track or road to the breakwater where the words "Tod Point" appear on the plan.
79. The STDC parties dispute that point C (the archway) to Fisherman's Crossing was part of the chosen route pursuant to the 1891 Deed. They point to a map in 1893 showing the existence of other routes between the cottages and Fisherman's Crossing. Nevertheless, I am satisfied on the balance of probabilities that D is correct. D's contention is consistent with the 1913 OS mapping and the plans to the 1917 Agreement, the 1917 Deed and the 1925 Deed. It is clear from those

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<sup>1</sup> [E/14/14-15]. The cottages are on other contemporaneous maps and plans: e.g. [E/4/1] and [G/138].

documents and others, that the 1925 Route was an extension of the by then existing road from Fisherman's Crossing to the archway.

80. The STDC parties also say that any right of way from Point C to Fisherman's Crossing is not a right of way for vehicular access. However, there is nothing in the 1891 Deed to restrict the use of the right of way, and unless there is something in the context or factual circumstances which indicates otherwise, it is a general right of way for all purposes for which the way was suitable; *Kain v Norfolk* [1949] Ch 163 at 168, *Cannon v Villiers* (1878) 8 Ch D 415 at 420-1. There is nothing in the context to indicate that a restriction to non-vehicular access was intended. At the time of the 1891 Deed, the STDC parties say, labourers employed by the TCC probably travelled on foot or by bicycle. Even if that be right, I have no reason to think that the route was only to be used by labourers and not also by supervisors, surveyors, engineers, and others who might be accustomed to travelling by horse, cart or carriage. The right of way extends to the village of East Coatham some distance away, and it would have been reasonable for those who were able, or enabled by the TCC, to use a horse or cart to travel to and fro and transport tools and material. There is also nothing in the evidence to indicate that a right of way for vehicles was not suitable. As discussed below, by 1917 there was a tarmac road which it seems may have been 20 foot wide (that being the width of the extension to it).

***The 1925 Deed – Points A to B and Points B to C.***

81. The route was changed in 1925, apparently to enable Dorman Long to redevelop and considerably expand Coatham Iron Works.
82. By an agreement for sale and purchase between the TCC and Dorman Long, dated 14.8.1917 (“**the 1917 Agreement**”), so far as relevant to the right of way:
- 82.1. Dorman Long was to acquire the land which was to become the 1925 Route (A to C on Fig 4) from the Newcomen Estate. This was intended to be wide enough to construct a new road (at least 20 feet wide) and all necessary embankments. This new road was to be “*from the Jetty Railway Archway to the Redcar Jetty approach ... in continuation of the present*

*“Fisherman’s Crossing” road from Coatham and to join up with the surface of the South Gare Breakwater*”. If Dorman Long could not acquire the land for the 1917 Road, they were instead to acquire a perpetual right of way for Dorman Long and the TCC.

- 82.2. Dorman Long was to construct the new roadway along this route, with a tar macadamed surface, for the private use of the TCC and Dorman Long.
- 82.3. Once completed, Dorman Long was obliged to grant, and the TCC obliged to accept, a perpetual right of way over the 1925 Route in substitution for the right of way granted by the 1891 Deed (between point C and the breakwater at Tod Point).
83. By deed dated the same day (**“the 1917 Deed”**), Dorman Long acquired ownership of points A to B of the 1925 Route from the Newcomen Estate. As to the balance (points B-C), they were granted a right to extend the road *“together with a perpetual right of way ... for [Dorman Long] at all times and for all purposes over the said extended road”*. This was neither the acquisition of the land, nor the procurement of a perpetual right of way for both Dorman Long and the TCC that the 1917 Agreement envisaged.
84. The road was built and the 1925 Deed was made. By clause 1, the TCC were purportedly granted a right of way for all purposes between points A and C. From that point onwards, the access road to South Gare was the 1925 Route and the existing road joining to the public highway via Fisherman’s Crossing. This remained the case until around 1974.
85. The STDC parties dispute that the 1925 Deed was effective in giving the TCC a right of way from points B to C. They correctly observe that Dorman Long was not the owner of the land between B and C, instead only having a perpetual right of way over that land. Consequently, Dorman Long lacked the capacity to grant any right of way along that part of the route to the TCC.
86. D seeks to get around this problem as follows:
- 86.1. The 1917 Deed granted a right of way between points B and C. That right was granted for the benefit of the land conveyed to Dorman Long under

that deed, including the 1925 Route between points A and B. That was the dominant tenement.

- 86.2. That dominant tenement was a route of access to other land, so the right of way could be used as a route of access to the land at and beyond point A on the 1925 Route: see *Nickerson v Barraclough* [1980] Ch 325, 336E-H; distinguishing *Harris v Flower* (1904) 74 L.J. Ch. 127 at 132 in such a situation (*Harris v Flower* is authority for the proposition that ordinarily a right of way to get to the dominant tenement may not be used so as to pass over the dominant tenement to get to other land).
- 86.3. When Dorman Long granted the TCC a right of way over between points A and B, it thereby granted to the TCC a legal interest in the dominant tenement under the 1917 Deed. That carried with it the benefit of the right of way to that dominant tenement under the 1917 Deed, i.e. the right of way between points B and C under the 1917 Road. The fact that the TCC were granted an easement rather than, for example, a lease, does not make them any less entitled to exercise Dorman Long's right of way.
87. Ms Barton submitted that, as a matter of construction of the 1917 Deed, it was only Dorman Long's land beyond point A which was intended to be benefitted by the perpetual easement over B-C. I do not agree. The land at A to B was the dominant land benefitted by the easement over B-C. The requirement that the dominant land is in the ownership of the grantee is therefore satisfied. That land was purchased to build a road to replace the existing road to the breakwater, and I do not see any justification for finding as a matter of construction an intention to restrict its use to only accessing some of the land accessed by the previous road beyond point A.
88. Nevertheless, I do not accept D's analysis. Where I consider it falls down is in the proposition that, by granting the TCC a right of way over the road between A-B, the TCC thereby became a successor in title to a sufficient part of that land to carry with it the benefit of Dorman Long's easement over B-C. No authority has been produced to support this proposition. An incorporeal hereditament such as an easement is capable of itself being a dominant tenement for the grant of

some right which is appurtenant to it; see *Hanbury v Jenkins* [1901] 2 Ch 401. That is not the issue here, as there is no valid grant of rights by Dorman Long to the TCC over B-C because Dorman Long did not own the land at B-C. The easement over B-C is notionally affixed to Dorman Long's land between A-B as the dominant land. It would pass on a transfer of title to the dominant land comprising A-B (or if the land is partitioned, any part of it; *Newcomen v Coulsen* (1877) 5 Ch D 133 at 141)) and it can be enjoyed by those occupying the land at A-B. An easement granted over A-B, however, is not a transfer of part of the title to A-B. Nor does it confer rights of occupation of A-B (as under a lease). It is simply the creation of a right to use the land. It does not make the TCC a successor in title of all or part of the land at A-B so that the benefit of the right of way over B-C passes to it.

89. D's alternative argument is that if in some way the 1925 grant was ineffective, Dorman Long were estopped by deed from denying that right, which estoppel was 'fed' in 1954, when it became the owner of the road from B-C. Estoppel by deed is a common law doctrine, not an equitable one. Two categories of estoppel by deed were identified in *First National Bank plc v Thomson* [1996] Ch 231. D relies on the first category only:

*"where the grant contained an express recital or other clear and unequivocal representation of the grantor's title, he was estopped from denying that he had the particular title which he had asserted"*.

As Millet LJ explained of this technical and limited estoppel, it is based on an express representation of a specific title:

*"It requires an express and unambiguous assertion or representation of title by the grantor, and usually takes the form of a recital in the grant"*.

It is to be distinguished from the wider second category (on which D does not rely) which precludes a grantor from disputing the validity or effect of his own grant. On the issue of estoppel by deed, the passage in *Taylor's Fashions Ltd v Liverpool Trustees Co* [1982] 1 QB 133 at 159B-F has to now be read in light of *First National Bank v Thomson*, as it seems to me to elide the two categories.

90. As the STDC parties say, however, there was no “*clear and unequivocal*” statement in the 1925 Deed by Dorman Long that it owned B-C. The 1925 Deed was in fact scrupulously clear about the extent of Dorman Long’s interest. The recitals to it recorded that Dorman Long now owned the land between points A and B in fee simple and had the benefit of a perpetual right of way between points B and C pursuant to the 1917 Deed. Although the deed goes on to express that Dorman Long “as Beneficial Owners hereby grant” the easement over the whole road A-C, that cannot be a clear and unequivocal representation of ownership in light of the explicit recitals. Therefore, insofar as the benefit of a perpetual right of way was insufficient to constitute Dorman Long as a competent grantor, it was not representing otherwise in the 1925 Deed.

***The 1974 Conveyance – a diverted route***

91. It is still necessary for me to consider the issues in relation to the 1974 Conveyance.
92. The route of the access road was changed in around 1974 to facilitate the redevelopment of Redcar Iron and Steel Works by British Steel. The deviation is highly likely to have been agreed between the THPA and British Steel. But there is no evidence of any such agreement and an express right of way over the deviated route must be by deed; s.52(1) of the LPA 1925 provides that “*all conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed*”. D therefore seeks to rely on an implied right arising under the 1974 Conveyance to use the new route to get to and from Fisherman’s Crossing. It seems to me that if D is correct in its submissions as to the effect of the 1974 Conveyance, it will also remedy the invalid grant in the 1925 Deed of a right of way over B-C. Indeed, it would not be necessary for D to rely on either the 1891 Deed or the 1925 Deed at all, as an implied grant in the 1974 Conveyance would give it a complete right of way over the STDC parties section of the road to South Gare.
93. By the 1974 Conveyance, the THPA sold part of the breakwater to British Steel. This is the land marked dark blue on the plan below prepared by the experts from the conveyance plan (“**the 1974 parcel**”).



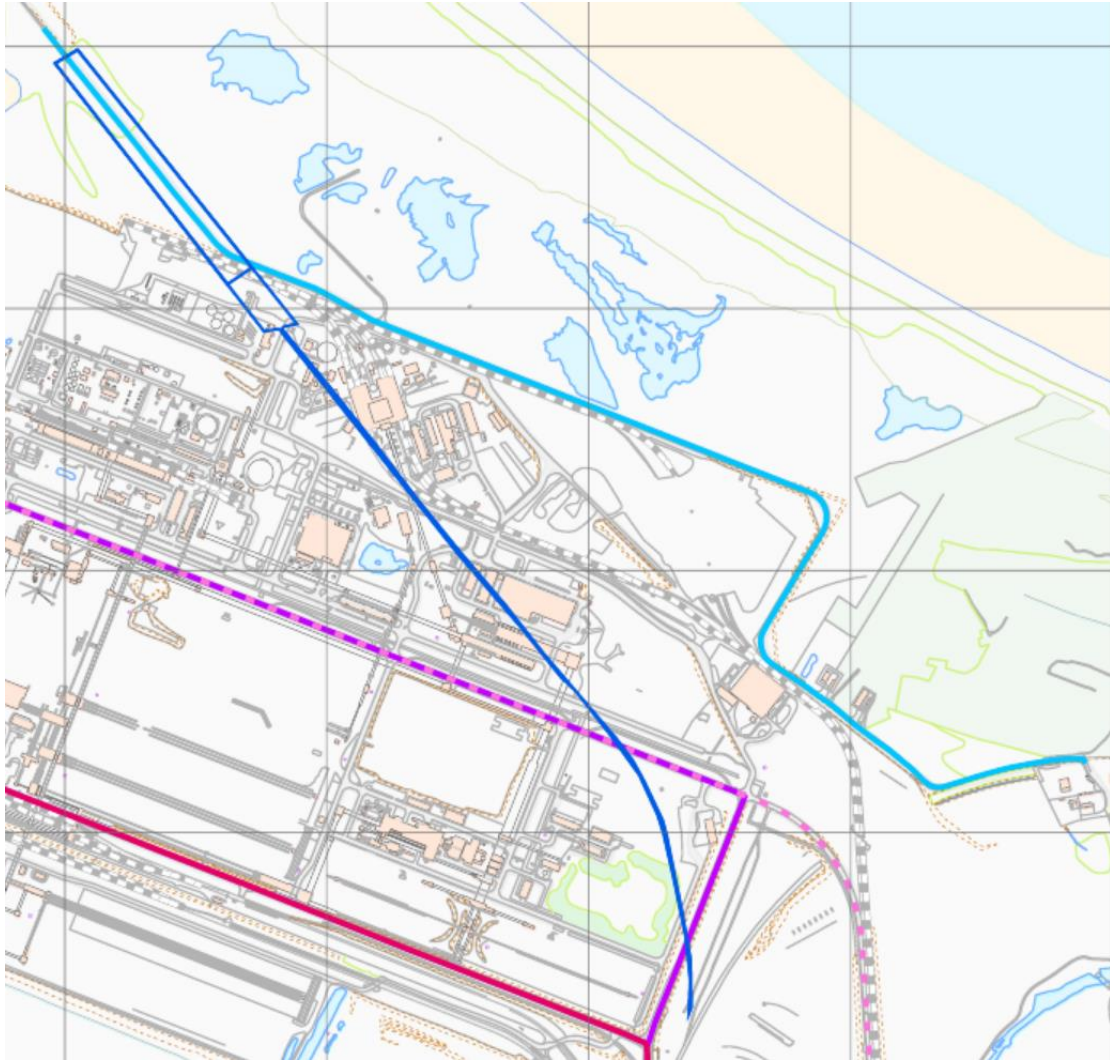


Fig 7

94. Over the northern part of the 1974 Parcel, the THPA reserved to itself “*the right for [the THPA] to pass and re-pass at all times with or without vehicles plant and equipment over and along the area [marked on the conveyancing plan] for all purposes until such time as the Corporation is able to grant to [the THPA] an alternative right of access acceptable to [the THPA]*”. This area ends where the new route (marked on the plan in light blue) meets the land being conveyed to British Steel, so seems to have been intended to provide for the continuation of the THPA’s access to South Gare from Fisherman’s Crossing along the new route which had by then been constructed.
95. D says it would have been absurd for the THPA to reserve a right of access that could be used only to travel between South Gare and the end of the land over

which the right was expressly reserved. D submits that a grant by British Steel in favour of the THPA over the rest of the route can be implied as a matter of the application of the rules of construction to the 1974 Conveyance. Those rules, as they are now understood, are that the interpretation of a contract is the ascertainment of the contract's meaning to a reasonable person with all the relevant background knowledge. A term which is not in the written contract can only be implied if the court finds that the parties must have intended to include that term in their agreement; it is not enough that it is a term that reasonable parties would have agreed to if it had been suggested to them. It must be a term which is necessary to give the contract business efficacy or be a term which is so obvious as to go without saying; *Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey)* [2015] UKSC 72.

96. In the context of easements, it may be said that these principles of construction find expression in the explanation of Lord Parker of Waddington in *Pwllbach Colliery Co. Ltd v Woodman* [1915] A.C. 634 {AU/81} at 646–7:

*“My Lords, the right claimed is in the nature of an easement, and apart from implied grants of ways of necessity, or of what are called continuous and apparent easements, the cases in which an easement can be granted by implication may be classified under two heads. The first is where the implication arises because the right in question is necessary for the enjoyment of some other right expressly granted. The principle is expressed in the legal maxim " Lex est cuicumque aliquis quid concedit concedere videtur et id sine quo res esse non potuit." Thus the right of drawing water from a spring necessarily involves the right of going to the spring for the purpose....*

*The second class of cases in which easements may impliedly be created depends not upon the terms of the grant itself, but upon the circumstances under which the grant was made. The law will readily imply the grant or reservation of such easements as may be necessary to give effect to the common intention of the parties to a grant of real property, with reference to the manner or purposes in and for which the land granted or some land retained by the grantor is to be used ... But it is essential for this purpose that the parties should intend that the subject of the grant or the land retained by the grantor should be used in some definite and particular manner. It is not enough that the subject of the grant or the land retained should be intended to be used in a manner which may or may not involve this definite and particular use.”*

97. In *Stafford v Lee* (1992) 65 P. & C.R. 172, Nourse LJ explained in relation to the second class of cases at p.175:

*“There are therefore two hurdles which the grantee must surmount. He must establish a common intention as to some definite and particular user. Then he must show that the easements he claims are necessary to give effect to it.”*

98. It seems to me that an application of the principles in *Pwllbach*, should not be allowed to detract the court from the primary exercise which it is undertaking, namely ascertaining the meaning of the document to a reasonable person, including the implication of terms a reasonable person would conclude that the parties must have intended to include in it. No doubt most circumstances which fall into one or other of the two heads referred to by Lord Parker will also satisfy the ordinary rules of construction. But it is possible that there will be cases where they do not. It seems to me that this is one such case.

99. On the face of it, both heads of classification in *Pwllbach* are engaged. Firstly, the reserved right was a right of way over part of the road to access D’s land at South Gare (the 1974 Conveyance refers to the reserved right continuing until “an alternative right of access” is made available). That right could only be used or enjoyed if there was a right to get to that section of road over the rest of the road from Fisherman’s Crossing. Secondly, the relevant background includes the long-established use by the THPA of its land at South Gare to maintain the marine facilities there (including a breakwater, a lighthouse, a coastguard station, a pilot station, a radar and radio installation, a marina and fisherman’s cabins). A reasonable person would infer that the THPA and British Steel intended that use to continue. Access to South Gare, and a right of way over that part of the route, which was owned by British Steel, was necessary for that use.

100. However, the problem with D’s submission seems to me to be that the 1974 Conveyance is a discrete and limited transaction – it deals with the conveyance of the 1974 parcel by the TCC and matters consequential upon it and nothing else. Save for an express reservation of a right of way over the new route on the part of the land sold on which it ran, there is no reference in it to the new route or to British Steel’s land over which the new route ran. It is perfectly business

efficacious, in achieving its apparent object of conveying the 1974 parcel and dealing with matters arising from that. There is no need to imply a term to give it business efficacy. It is impossible to say that it is obvious that the parties intended British Steel to grant a right of way over the rest of the route *by this document*. On the contrary, it seems to me to be quite clear from the document that there was no such intention. There is a deliberate and careful reservation over part of the route, which shows the draughtsman and the parties (who were sophisticated landowners) had the route well in mind but made no attempt to make provision in respect of the rest of the route. That appears to have been deliberate. It may be that it was intended that further documentation would be executed with a grant of such a right of way. It may be that there was a mistaken assumption, that the THPA already had a right over the remainder of the route. Neither are matters which can be corrected as a matter of construction, as opposed to, say, by an estoppel by convention (which is not pleaded or contended for).

101. D has therefore failed to establish an implied grant of a right of way in the 1974 Conveyance.

### ***Conclusion***

102. D has failed in its attempts to compile a complete right of way across Access Route 6 from the three deeds.
103. On one of the plans prepared by D's expert the 1974 parcel does not connect to the rest of D's land at South Gare. There is no suggestion of any gap on Cs' expert plans and nobody suggests that any gap was intended. I am satisfied that this is a drawing error by D's expert.

## **H.2 Implied rights to access Redcar Quay**

### ***Redcar Quay and Access Route 5***

104. Redcar Quay is the land marked blue on the plan below. The yellow and orange land belongs to the STDC parties. The only road access to Redcar Quay is marked in red and pecked red – Access Route 5. The white land between Redcar Quay and the STDC Parties' land coloured yellow, and which Access Route 5 crosses in pecked red, belongs to RBT.

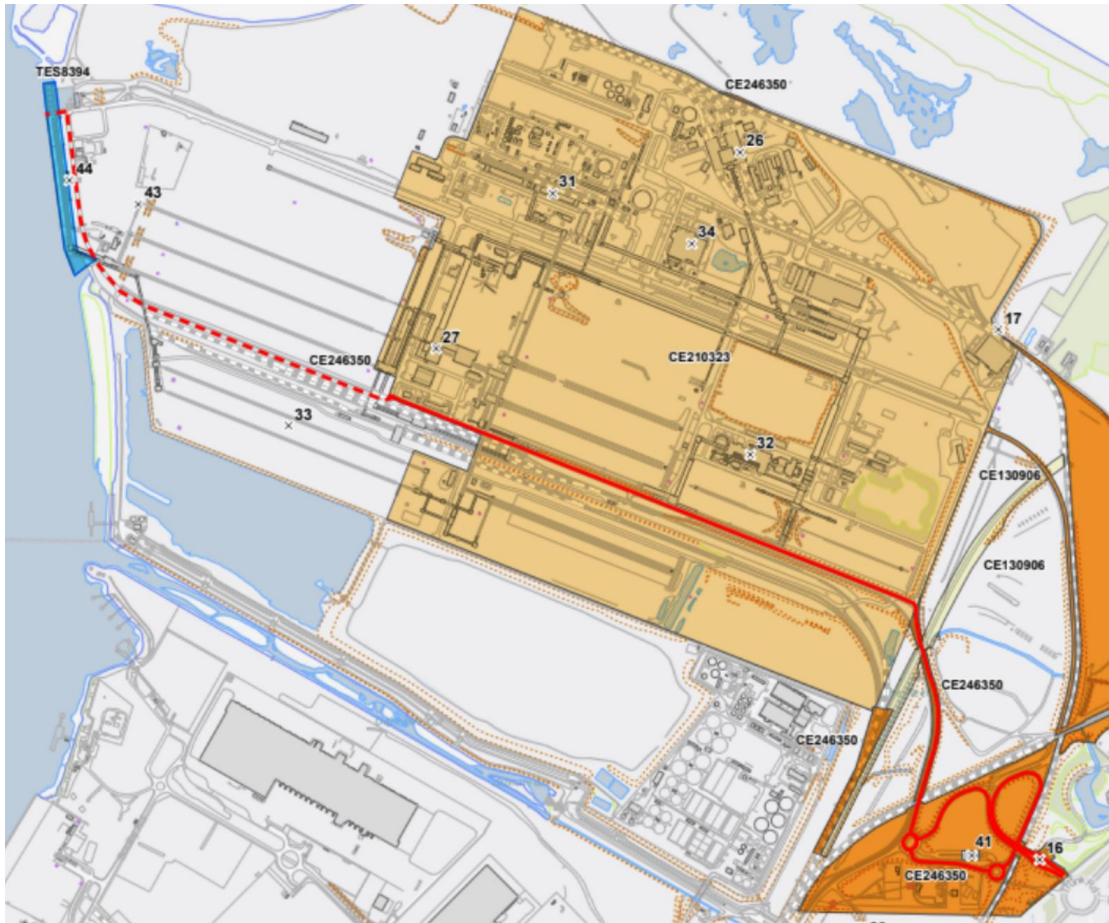


Fig 8

105. From around 1969 there were plans to redevelop the Redcar site, replacing the original ironworks with a modern steelworks facility. Part of the redevelopment of the Redcar ironworks was the construction of a new ore quay and terminal. This required extensive excavation of the riverbed to permit access from ships with higher deadweight tonnage than had previously been possible, and the reclamation of the tidal flats on which the new Redcar steelworks would be constructed.
106. Land was transferred by British Steel to the THPA to build the quay, with the intention that the THPA should lease it to British Steel to be used in conjunction with the facilities being constructed by British Steel at the site. A number of papers were prepared by the engineers, who built the quay or worked on the unloading and distribution system, from which it can be seen that the quay was intended to receive the importation of 7 million tons of foreign ore per annum and then distribute it by rail to ironmaking plants in Cleveland, Hartlepool, Consett

and Workington. The unloading and distribution system used a conveying system to move the ore from the quay to the wagon loading station, where a purpose-built fleet of tippler railway wagons could be loaded with ore. What was eventually to become Access Route 5, featured in early drawings before work was commenced, but the road was not the intended distribution method for the ore. Access Route 5 was partially complete in 1974 and first appears in completed form on the historical mapping in 1980. Prior to Access Route 5's completion, there must have been other road access – there are references in the engineering reports to 1.1 million cubic metres of blast furnace slag being brought in by road to reclaim land for the quay.

107. By a conveyance on 26.5.1971, British Steel conveyed the Redcar Quay to the THPA (“**the 1971 Conveyance**”). This reserved a right of access to British Steel in order to provide and install unloading equipment “*for use in connection with the Quay about to be constructed by the Purchaser on the said land*”. In fact, it seems construction had already begun by the date of the 1971 Conveyance. At the time of the 1971 Conveyance, British Steel owned all of the land over which Access Route 5 now runs.

108. Redcar Quay was then leased to British Steel by the 1974 Lease, which demised Redcar Quay for a term of 20 years from 17.06.1973. It reserved a right for the lessors to use the quay for other traffic. In 1995, the 1974 Lease was renewed for a term of 40 years from 17.06.1993 (“**the 1995 Lease**”). It included the same reservation permitting use of the quay by D:

*“The Lessors shall have the right to use the said Quay forming part of the demised premises for traffic other than that of the Lessees but subject in each instance to the prior written consent of the Lessees and only to such extent that this can be done without impeding the use of the Quay for traffic of the Lessees which shall in all respects have priority...”*

***D’s case – implied rights in the 1971 Conveyance and the 1995 Lease***

109. D does not claim to enjoy the benefit of any express rights of access to Redcar Quay, nor is any prescriptive claim pursued. Instead, D says an easement arises

by way of implication into either the 1971 Conveyance or the 1995 Lease. D puts its case on rights of access to the Redcar Quay on three bases:

- 109.1. A right of way implied into the 1971 Conveyance by reason of its intended purpose;
- 109.2. A right of way by necessity being implied into the 1971 Conveyance; or
- 109.3. A stand-alone claim to an ancillary right of way in the 1995 Lease in order for D to be able to exercise its reserved rights under that lease.

***1971 Conveyance - rights to give effect to intended purpose***

110. I have set out earlier in this Judgment, the principles applied by a Court in the construction of a document and the implication of terms. I have also referred to the principles of construction, as expressed in the context of an implied grant of an easement in *Pwllbach* and *Stafford v Lee*.
111. It is clear that the common intention of British Steel and the THPA at the time of the 1971 Conveyance, was that the new Redcar Quay would be built and operated as a quay. The 1971 Conveyance itself referred to “*the Quay about to be constructed*” and it is identified as a proposed quay on the plans to the 1971 Conveyance.
112. D submits that a right of way between the land on which the Quay was to be built and the public highway was necessary, to give effect to that intended purpose. The quay could not have been built, nor could it be operated, without it. Operation as a quay means operation for the unloading and/or loading of goods or materials between ship and land, to enable their transportation onwards: landward access to and from the public highway is an essential part of this. Such landward access was also needed to bring the plant and materials required to build it; and it would have been known that it would continue to be needed for the people, plant and materials required to operate and maintain it.
113. The STDC parties answer to this is that the Redcar Quay was intended to be leased to British Steel and operated by it – so the THPA did not need access. Secondly it was to be operated by British Steel as a quay servicing its ore storage and



distribution facilities at Redcar. Road access was not required for the unloading and distribution of ore which was intended to be dealt with by the conveying system and railway.

*Discussion*

114. It is clear that the common intention of the vendor and the purchaser to the 1971 Conveyance was that the land would be used to build a quay which would be used as a quay in conjunction with the ore facilities. The construction of the quay is long since complete and any implied right of access for that purpose is now irrelevant. The question is whether D can prove that road access is necessary for its use as a quay in conjunction with the ore facilities.
115. The fact that the operator of the quay might be British Steel, as lessee, who owned the adjoining land does not seem to me to be an answer. The question is not whether the THPA needed access to the quay when it was going to be let to British Steel, nor is it whether British Steel needed a right of way when it owned the adjoining land. The question is whether road access is necessary for the use of Redcar Quay as a quay.
116. The answer to that question seems to me to also be clear - yes. The quay needs to be maintained. The plant and machinery on it need to be serviced, renewed and replaced. The quay needs to be staffed. For that reason alone, road access is and always has been necessary for its ordinary use as a quay. A reasonable person would conclude that the parties intended there should be road access for that purpose.
117. In principle operation as a quay also requires road access to enable goods to be delivered for loading or distributed after unloading. In this case, the quay was intended to be used in a specific way in conjunction with the ore facilities. Road access was not *generally* required for the unloading and distribution of ore, which was intended to be dealt with by the conveying system and railway. There might still be a requirement for road access for its use in conjunction with the ore facilities – I can conceive that it might be necessary to use road distribution if the



conveying system fails or there is a problem with the railway, or for distribution to a plant which was not serviced by the railway. There is no evidence of that before me.

118. It might be said that, at some point in the future, Redcar Quay may not be used in conjunction with the ore facilities. It might be used for some other purpose for which road access is necessary to load and unload goods. I do not think that assists D. It is not enough for D to show that Redcar Quay might be used in this way in the future – it has to show that it was the common intention at the time of the 1971 Conveyance that it would be so used; see *Pwllbach Colliery*. Else it cannot show that the parties must have intended to grant or reserve a right for such future use.

*RBT*

119. RBT has not been joined to these proceedings. It has made clear that it has no desire to be included in this litigation. It currently does not take issue with D's use of Access Route 5 over its land to access Redcar Quay.
120. The STDC parties say that the absence of RBT is fatal to D's claims in relation to Redcar Quay. They say RBT is a necessary party. Had the STDC parties raised the point timeously in these proceedings, RBT could have been joined and no doubt would have played a minimal role. I do not accept their protestations that it was for D to join RBT. CPR 1.3 requires the parties to litigation to help the court further the overriding objective of dealing with cases justly and at proportionate cost. This requires litigants to take reasonable steps to ensure that there is a common understanding as to the substantive and procedural issues in play; see *Abbott v Econowall UK Ltd* [2016] EWHC 660. That is not achieved by leaving an issue as to whether the proceedings have been constituted with the right parties until the run up to trial and the skeleton arguments for trial.
121. Fortunately, the STDC parties are wrong in their assertion that RBT is a necessary party. It may have been a desirable party, to ensure that it was bound by my Judgment, but it is not a necessary party. No relief is sought against RBT in these proceedings. The only declarations sought are as to rights over the STDC parties'

land; and such declarations will be binding on and affect only the STDC parties and their successors in title. RBT will not be bound by my findings in this Judgment. I can take care to fashion an appropriate declaration in respect of D's rights in relation to Redcar Quay so that they do not affect RBT.

122. There is a risk that one day there will be another trial to vindicate a right of way over the land owned by RBT. There is a risk that at that trial, the judge will reach different conclusions to me on different evidence. That is undesirable, but I consider that there remain pressing reasons for continuing in the absence of RBT, in particular to resolve the current dispute which is as between the STDC parties and D.

### *Conclusion*

123. I conclude that there is an implied grant of a right of way in the 1971 Conveyance, for the purpose of using Redcar Quay as a quay where the primary system of loading and unloading does not generally require road access.
124. It is not necessary to consider D's fall-back arguments for an easement of necessity or a limited easement arising under the 1995 Lease and I do not do so. These arguments would only arise if I am wrong that road access is needed for the intended use of the land in 1971. At this stage, it is not clear to me what counterfactual I should use for analysis of the fall-back arguments.

### **H.3 South Bank – express rights in Swan Hunter Conveyance**

125. On 3 December 1946 Swan Hunter conveyed to the TCC certain land beside the River Tees on the South Bank (“**the Swan Hunter Conveyance**”):

*“TOGETHER ALSO WITH for the purpose of gaining access to the said land hereinbefore described a right of way for the Purchasers and their successors in title and assigns and all persons authorised by them for all purposes on foot and with carts carriages motors and other vehicles over and along the existing road marked “A” and “B” on the said plan”.*

126. The same route was previously the subject matter of a grant by virtue of a conveyance dated 4 February 1924 from Bolckow Vaughan to Swan Hunter. Bolckow Vaughan (owners of the servient land) reserved the right “*at any time it becomes more convenient as necessary for them to do as to close divert or otherwise alter the road between points marked A and B hereinbefore referred to and provide other road access to the said piece of ground*”.
127. At the time of the 1924 grant, the southernmost portion of the route ended at Grangetown Station, where it was connected to the public roadways via an underpass. By 1953, the underpass had ceased to exist. There is no conclusive evidence as to when the underpass ceased to exist and it seems to me that the Swan Hunter Conveyance itself is evidence that it continued to exist as at its date in 1946 and the right of way granted continued to have utility to the dominant land at the time of the grant. In other words, the Swan Hunter Conveyance created a valid and binding easement over the identified route.
128. However, it is fair to say that route has ceased to be of any utility long ago. The road itself has now disappeared (although D points out that Bolckow Vaughan and its successors were entitled to move the route). D says it is nevertheless entitled to a declaration of its continuing right under the Swan Hunter Conveyance.
129. The STDC parties raised a number of points in their pleadings, including *laches*, which were not pursued in closing submissions. They were refused permission to amend to plead abandonment and extinguishment. They say that D has stood back and allowed the STDC predecessors to act on the burdened land, without making any assertion of these rights until its counterclaim in these proceedings. In that context, they submit that the Court should decline to grant declaratory relief – the granting of declaratory relief being discretionary; *Rolls Royce plc v Unite the Union* [2009] EWCA Civ 387.
130. In circumstances where D has established a subsisting right which the STDC parties are unwilling to recognise (and indeed seek a declaration that it does not exist), it would require some exceptional reason for that right not to be vindicated by the grant of declaratory relief. I do not regard the alleged delay, in

circumstances which do not affect the validity of the subsisting right or fall within one of the established doctrines for preventing the assertion of the right (such as laches or estoppel), to be sufficient grounds in this case for refusing relief.

#### **H.4 South Bank - express rights under the 1964 Deed**

131. On 26 December 1964, by a Deed of Exchange (“**the 1964 Deed**”) the TCC acquired a rhombus of land south of the oil jetty and oil tanks, together with a right to construct an entrance to Access Route 1. In the First Schedule, by paragraph 7, it defined the land to be conveyed by reference to a plan (“**the Rhombus**”). By the following paragraph at 8 it also granted an express right of way as follows:

*“to pass and repass over and along the lands of Dormans respectively coloured green and hatched green on the said Plan Numbered 1 and also (as to the said land hatched green) on the plan hereto annexed marked Plan Numbered 2 so as to enable the Commissioners and the tenants for the time being of the said land and all persons authorised by the respectively with or without vehicles plant and materials for the purposes for the time being permissible in accordance with Clause 15 hereof to obtain access and egress to and from the said land”.*

132. The rhombus is hatched in dark blue on the plan below and the express right of way is marked in red.

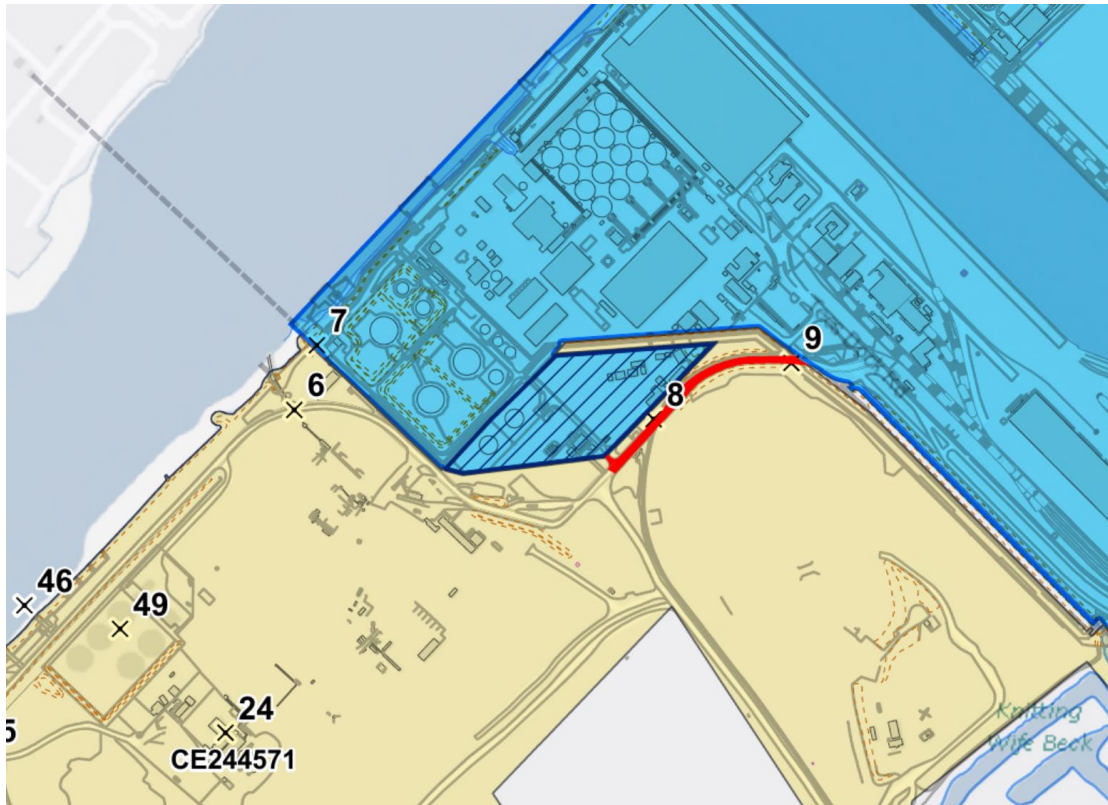


Fig 9

133. Cs accept that D, as owner of the Rhombus, enjoys this express right. Teesworks does not dispute that D has this express right, but objects to the way the claim is pleaded and says it should be dismissed.
134. Teesworks objects to the fact that paragraph 37(1) of the Re-Re-Re-Amended Defence to Counterclaim (“**the RRRADCC**”) asserts that, “*Teesport has the benefit of the rights granted by*” the 1964 Deed and Teesport is defined elsewhere in the RRRADCC as all of D’s land at Teesport. Mr Walker has conceded that he only contends that the Rhombus benefits from this easement. Ms Holland maintains that D is not entitled to the relief as sought. The relief sought in D’s RRRADCC is “*A declaration that D has a right to use the Defendant’s 1964 Right of Way as defined in paragraph 37 of the Defence*”. Absent amendment to paragraph 37, she says, D cannot make out its case and it must be dismissed.
135. In fact it is paragraph 37(2) that defined “*the Defendant’s 1964 Right of Way*”. It defined it as the right of way in paragraph 8(a) of the First Schedule to the 1964 Deed and quoted the excerpt set out above at paragraph 130. It is silent as to which

land benefits from the easement. I see nothing that Teesworks can say requires amendment in that definition of “*the Defendant’s 1964 Right of Way*” and therefore nothing which requires amendment in relation to the relief as sought in the prayer. I can address any legitimate concern Teesworks might have as to the land benefitted in the form of the order.

136. I accept Mr Walker’s concession of a lesser case as to the land benefitted without requiring further amendment to the pleading. It would be disproportionate to do otherwise.

### **H.5 South Bank - implied rights under the 1964 Deed**

137. D also claims a right of way along that part of Access Route 1 between the 1964 Parcel and Smith’s Dock Road. The claim is that such a right was implied into the 1964 Deed by s.62 of the Law of Property Act 1925.
138. S.62 contains general words which, in the absence of a contrary intention, are implied into a conveyance. In particular s.62 passes to the transferee all rights and advantages which at the time of the conveyance appertain or are reputed to appertain to the land or are enjoyed with the land conveyed or part thereof. The effect of s.62 may be to create new easements by way of express grant where there were previously only quasi-easements. There is no requirement for the right or advantage to be necessary for the reasonable enjoyment of the land.
139. The section envisages something which exists and is seen to be enjoyed as a right or advantage; *Nickerson v Barraclough* [1981] Ch 426. There needs to be a pattern of regular use. Where there has been no use at all within a reasonable period preceding the date of the conveyance s.62 cannot operate to create an easement; *Wood v Waddington* [2015] EWCA Civ 538 at [52].
140. Access Route 1 was complete and in use by the time of the 1964 Deed. At that time, Access Route 1 was wholly owned by Dorman Long. D says that in addition to the express right of way under the 1964 Deed, from the Rhombus to the Tees Dock Road, it has an implied right pursuant to section 62 in the other direction, to reach Smith’s Dock Road.

141. Prior to the 1964 Deed, the Rhombus had been leased by Dorman Long to ICI and Shell – so there was diversity of ownership. It is not therefore necessary to show that the right or advantage was continuous and apparent in the sense used in the rule in *Wheeldon v Burroughs* (although a made up road has been described as the “easiest case” of a continuous and apparent right; see *Hansford v Jago* [1921] 1 Ch 322 at 338).
142. The STDC parties suggested that there was no access point from Access Route 1 to the 1964 Parcel before the 1964 Deed. The language of the 1964 Deed, suggests that some sort of construction work was to be carried out at the intended access point from the Rhombus to Access Route 1. However, a Layout plan of Teesport in 1958 shows an entrance to the Rhombus was already there and the plans to licences granted by Dorman Long to ICI in 1962 and July 1964 also show it and describe it as the “*main ICI access*”.
143. D’s difficulty, however, is that there is no evidence at all of use by Shell and ICI of Access Route 1 to get to the Smith’s Dock Road prior to December 1964. Mr Walker says that there is no evidence that Dorman Long had a right of way over the Tees Dock Road and could only have provided to its lessees with access along Access Route 1 to Smith’s Dock Road. Whatever rights Dorman Long had (or indeed Shell and ICI might have independently had), it is clear from the licences referred to above that the intended route of access and egress to the Rhombus was via the Tees Dock Road and not in the other direction.
144. As I explain below when considering the claim for prescription, Access Route 1 was at this time a convenient route to travel to and from Teesport and was open to all. Employees or visitors of Shell and ICI could have used Access Route 1 from the Smith’s Dock Road, but I have no evidence that they did. They could also have only used Access Route 1 from the Tees Dock Road because that was the route authorised by Dorman Long. I have very limited evidence as to how the Shell and ICI sites operated and the nature of the traffic to and from their sites; the 1962 licence suggests access to the ICI site was only required (and only authorised) for emergencies, construction and maintenance.
145. D has not discharged the burden of proving its claim under s.62.

146. **PRESCRIPTION****I.1 The relevant law**

147. Prescription describes the common law concept of a legal right over land that is acquired by use or enjoyment for the period and in the manner fixed by law. The right acquired is measured by the extent of the enjoyment that is proved; *Williams v James* (1867) LR 2 CP 577, 580.
148. The manner of the use required is use “*as of right*” (in the sense of “*as if of right*”); per Lord Walker in *R(on the application of Beresford) v Sunderland City Council* [2000] 1 AC 335 at [72]).
149. That has the same meaning as the Latin expression ‘*nec vi, nec clam, nec precario*’ – without force, without secrecy, without permission. Lord Rodger said of the Latin tripartite test in *R. (Lewis) v Redcar and Cleveland Borough Council (No.2)* [2010] 2 A.C. 70 at [87], “*their sense is perhaps best captured by putting the point more positively: the user must be peaceable, open and not based on any licence from the owner of the land.*” In *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335 Lord Hoffman explained: “*The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right - in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period.*”
150. It has been decided at the highest level that “*as of right*” and the tripartite test (*nec vi, nec clam, nec precario*) are synonymous in meaning and effect; *R(on the application of Beresford) v Sunderland City Council* [2000] 1 AC 335 at [6] and [55], *R (on the application of Lewis) v Redcar & Cleveland BC (No.2)* [2010] UKSC 11 at [20] and [87], *Lynn Shellfish Ltd v Loose* [2016] UKSC 14, at [37]. Use which satisfies the tripartite test establishes a prescriptive right. There is no



further criterion to be satisfied; *London Tara Hotel v Kensington Close Hotel Ltd* [2011] EWCA Civ 1356; [2012] 1 P&CR 13 (CA) at [28], [74].

*Use*

151. The use must accommodate the dominant tenement in the sense of being connected with the normal enjoyment of the dominant tenement.

*“The essence of an easement is to give the dominant tenement a benefit or utility as such. Thus, an easement properly so called will improve the general utility of the dominant tenement. It may benefit the trade carried on upon the dominant tenement or the utility of living there.”*

*Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd* [2018] UKSC 57 at [38].

152. The focus is on the way the land has been used by the users and the quality of that use; *Redcar* per Lord Brown at [100]. The use in question must have the quality that the users have used it as one would expect those who had the right to do so, to have used it; *Redcar* per Lord Kerr at [116]. It must be of such amount and in such manner as would reasonably be regarded as the assertion of a right; *Redcar* per Lord Hope at [67]. It is judged by how the use would have appeared to the reasonable owner of the land; *Redcar* per Lord Walker at [30] and [36], *London Tara* per Neuberger LJ at para [29].
153. It does not matter what the owner of the land and the users of the roadway actually think as to who the user is or why or on what basis the use is occurring. The subjective understanding and intention of the person or persons when enjoying the amenity now claimed to have been acquired by prescription is irrelevant; *Sunningwell*, per Lord Hoffman at 356A-D. The subjective understanding and intention of the owner of the land is equally irrelevant; *London Tara* per Lewison LJ at [60].
154. The use must be continuous and uninterrupted.

*Peaceable use (nec vi)*

155. The authorities have held that peaceable use is use which is not just without force, but also use which is not contentious, because, for example, the servient owner objects and protests to the use. I do not need to consider this in any detail because it is not pleaded (and although raised in written closing submissions, was by the end of closing submissions no longer contended) by the STDC parties that any of the use relied on by D was contentious.

*Open use (nec clam)*

156. The use in question must not have taken place in secret; *Redcar* per Lord Kerr at [116].
157. It is not contended that the use in question in this case took place in secret. If the landowner does not have actual or constructive knowledge of the use, then there may be an issue as to whether the use has been secret, for the purposes of the tripartite test. It is not contended here that the STDC predecessors did not have actual knowledge of the alleged use.

*Without permission (nec precario)*

158. Use will not be ‘*nec precario*’ if there has been some grant of permission by the servient owner, whether express or implied: see *Beresford*. As to the types of act which may be demonstrative of permission:

158.1. The classic example would be an express permission, such as the granting of a licence.

158.2. Even where there is no express licence, an implied licence may arise. Lord Bingham said at [5]:

*“I can see no objection in principle to the implication of a licence where the facts warrant such an implication. To deny this possibility would, I think, be unduly old-fashioned, formalistic and restrictive. A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days:*

*the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use."*

158.3. Permission may also be demonstrated by the erection of an appropriately worded sign, as per Lord Rodger at [59]: *"Prudent landowners will often indicate expressly, by a notice in appropriate terms or in some other way, when they are licensing or permitting the public to use their land during their pleasure only."*

158.4. Non-verbal acts may indicate the user is with permission, as Lord Walker explained at [75]:

*"...permission to enter land may be given by a nod or a wave, or by leaving open a gate or even a front door. All these acts could be described as amounting to implied consent, though I would prefer (at the risk of pedantry) to describe them as the expression of consent by non-verbal means. In each instance there is a communication by some overt act which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass."*

158.5. Permission cannot however be implied from mere inaction by the landowner: Lord Bingham at [6]. However informal, the arrangement must involve a positive act of granting the use of the property, as opposed to mere acquiescence in its use: Lord Rodger at [57].

### *Length of use*

159. The law on prescriptive periods has been described as:

*"a mixture of inconsistent and archaic legal fictions, practical if sometimes haphazard judge-made rules, and (in the case of easements ...) well meaning but ineptly drafted statutory provisions."*

*Lynn Shellfish Ltd v Loose* [2016] UKSC 14, per Lords Neuberger and Carnworth at [38]

160. There are three periods of prescription recognised in English law which operate as follows:

160.1. In order to prescribe at common law, it is necessary to show that the user has been ongoing since ‘time immemorial’ which, since the First Statute of Westminster in 1275, has been fixed at the accession of Richard I in 1189. There is now a rebuttable presumption, that if the user has been ongoing for longer than living memory it can be traced back to 1189. This period is of no relevance in the present case since the relevant land was underwater until the mid-19<sup>th</sup> century, and so cannot have been burdened by any routes in the 12<sup>th</sup> century.

160.2. Because of the obvious difficulties created by the common law, over time the courts created the fiction of ‘lost modern grant’ by which, if it could be shown that the user in question had been continuously ongoing for any period of 20 years, it could be presumed that the right had been expressly granted by a deed which could not be produced in court had since been lost. The fiction has now become a fixed rule of law such that even conclusive evidence that there was never any grant made will not prevent it from operating: *Tehidy Minerals Ltd v Norman* (1971) 2 QB 528.

160.3. Finally, a third alternative was created by s.2 of the Prescription Act 1832. This also requires the user to have been ongoing for a period of 20 years (with interruption of up to one year being disregarded). But, in contrast to lost modern grant, by virtue of s.4 that period must be the period immediately preceding the commencement of the action.

161. In this case, D relies on the doctrine of “lost modern grant” in respect of all its claim to prescriptive rights. In short, D must show 20 years of continuous and uninterrupted use. D also relies on s.2 of the 1832 Act in relation to South Gare, but it adds little to its claim.

162. I observe at this stage that had there been merit in the STDC’s parties’ contentions on THPA’s statutory capacity I would have had to consider the STDC’s parties’ submissions that this defeated D’s prescription claims. There being a legal fiction that a grant was made pursuant to which the use followed, I would have found

that a prescriptive right could still arise, notwithstanding any lack of capacity on the part of THPA to acquire new easements, particularly as use had commenced when the dominant land was owned by the TCC which did have the capacity to receive a grant.

*Burden of proof*

163. The dominant landowner (D) has the legal burden of proof of prescriptive use, but if it proves open use then an evidential presumption arises that the enjoyment was as of right - in particular, that it was without permission and not contentious. The evidential burden then passes to the servient landowner (the STDC parties) to prove permission and contention. The STDC parties have pleaded that Ds use was with the permission of one or more of the STDC predecessors. There is no plea of contention.

***1.2 Prescription – Access Route 6 to South Gare***

*Use and period of use*

164. Access Route 6, which gives access to South Gare, became fixed on its current route in 1974, but before then there had been a single road giving access for many decades.
165. The South Gare breakwater was constructed by D's predecessor and since 1893 has had a lighthouse and a coastguard station at its furthest reaches. A lifeboat station followed in about 1911. A pilot station came soon after. By 1970, there was a radar and radio installation.
166. There is no dispute that D and its predecessors have maintained the breakwater, the lighthouse and many of the other facilities since they were put in place. There are written records like the Tees and Hartlepool Port Authority North and South Gares Breakwater study in 1987, which record the history of the breakwater's construction using 135 million tons of slag. As well as the regular need for remedial and maintenance work to prevent the breakwater breaking up.

167. Since 1974, the only land access D has had for maintaining the facilities at South Gare has been Access Route 6. The shoring up of the breakwater sometimes requires depositing tonnes of material along it. For example, a recent piece of maintenance required the installation of 100 12-14 tonne armour blocks, requiring a hundred visits by concrete trucks. From 1974 they would have used Access Route 6 to do so.
168. In addition, the facilities at the breakwater have had to be maintained. Mr Dalus was D's former General Manager of Engineering, having joined in 2012. He explained that currently there are cyclical checks carried out at South Gare at least weekly and there are records of those checks having been carried out over many years. Maintenance workers will have gained access to the breakwater from 1974, over Access Route 6.
169. The facilities at South Gare have been manned and operated by D's employees and others, whose only land access for that purpose since 1974 has been Access Route 6. For example, the pilots who were based on South Gare (by licence from D and its predecessors) until around 2011 when the Government Jetty was washed away. There were multiple pilots on shift all day, every day. They will have used Access Route 6 to get to the pilot station.
170. In addition to this, there are facilities on South Gare which are leased or licensed to the public. The South Gare Marine Club uses a building there. I heard from Alan Daniels who is the current Chairman of the Club which has 155 members. He has been a member for over 20 years. He explained that there is no written lease, but they pay an annual rent. There are about 130 boats in the marina there. There are cabins which are licensed to members of the public by D. There has been a diving club based there. Since 1974 all these facilities have been accessed by Access Route 6.
171. D called over 20 witnesses to give evidence of their use of Access Route 6 to access South Gare. They were a selection of D's employees, agents, licensees and tenants who had a legitimate reason to go to South Gare. Their evidence of use of the road to South Gare covered the period from 1949 to date and the regularity of use ranged from daily to sporadic. The gist of the evidence of each is that they

have used the single road to access South Gare, they believed they were entitled to do so, and save for the road closures which I will come to, they were not challenged or stopped or otherwise impeded. No one asked for permission to use the road. The nature of South Gare and its single route of land access means it is reasonable to infer that almost every other employee, agent, tenant or licensee of D and its predecessors, who had a right to be on South Gare has travelled to South Gare along Access Route 6 in a similar fashion. This includes all those making land deliveries of heavy materials and equipment. There will only be a small handful, like those operating survey boats not based at South Gare, who will have arrived and left by sea.

172. I am satisfied that there has been open use of Access Route 6, as a means of access to the lighthouse and breakwater at South Gare and the facilities there for all purposes from the completion of the diverted route in 1974 to the date of trial. The evidential burden is therefore, on the STDC parties to show that such use was with permission of the STDC predecessors or was interrupted by a period of permissive use.
173. This may be a convenient point to say that the witnesses were repeatedly cross-examined, as to whether they assumed or believed they were authorised or had permission to use the road. As I pointed out during cross-examination, it seemed to me that the witnesses understood that they were being asked whether they felt entitled to use the road. Most answered in the affirmative. Not only is their subjective belief irrelevant, but any affirmative answers to such questions do not provide evidence, that they were actually granted permission.

*Road closures*

174. For as long as anyone can remember there has been an annual closure of the road to South Gare. This has been done by Cs and D and their respective predecessors together. In recent times, the South Gare road has been closed by both D (and its predecessors) and Cs (and their predecessors), at the points where their respective parts of the road begin, travelling towards South Gare. The harbour police

travelled between the two points to assist. The road closures were notified to the general public, in advance through the local press.

175. There was a considerable amount of cross examination about these road closures. A number of clear points emerged:

175.1. The road closures were a joint and collaborative exercise between C and D (and their predecessors).

175.2. All cars were stopped on the day of the road closure. Those with a legitimate reason for going to South Gare (such as pilots, lifeboat crew, and others attending for work, but also members of the public who were cabin tenants, or had a boat in the marina, or were a member of the Marine Club) were allowed to pass. Other members of the public were turned away.

175.3. Nothing was said to those who were allowed through that their access was discretionary or by permission or could be refused.

175.4. From about 2019 vehicle logs were completed by the security carrying out the road closure to record brief details of which cars were allowed through and which were not.

176. The STDC parties rely upon the road closures as evidencing the grant of permission for use of the land to those who were allowed through. These road closures were clearly intended by Cs and D (and their predecessors) as an exercise of control by preventing access on one day of the year to members of the public, thereby displaying that the public's use for the rest of the year was with the permission of the landowners. It has little bearing on those who were not turned away. In particular, there is no evidence of a positive grant of permission to those who had a legitimate reason to travel to South Gare – they were allowed to pass as if they had the right to do so.

### *Signage*

177. There is photographic evidence of signs stating that the road is private property having been in place at Fisherman's Crossing, where the public road ends and Cs'



private road begins, in 2007. There is also evidence of private property signs having been present on other parts of Cs' road in 2009.

178. The signs shown in the photographs read as follows:

178.1. *“Corus UK Ltd Private Property [;] This is a private estate owned by Corus UK Limited [;] Court action may be taken against trespassers [;] All persons using the estate do so subject to the current Corus Site Regulations (...) All persons entering the estate must take care of their own safety and for the safety of their property (...) Copies of the Corus Site Regulations may be obtained from [address]”;*

178.2. *“Private Property [;] Motor cyclists are prohibited & offenders may be prosecuted”;*

178.3. *“Private Road [;] No unauthorised vehicles beyond this point”.*

179. As to the witness evidence, some witnesses remembered seeing signs, a number of witnesses recalled signs having been present prior to the photographs in 2007, most said they paid no attention to them. Those who were travelling to South Gare for work or because they had a cabin or boat in the marina did not regard the signs as applying to them.

180. In the context of an assertion that prescriptive user is contentious, then prominent signs prohibiting use of the land may be sufficient to make any use contrary to the signs contentious; see *Winterburn v Bennett* [2017] 1 WLR 646 (CA). These signs do not stipulate who Corus regards as “trespassers” or what were “unauthorised vehicles”. These and other issues were not explored in submissions because there is no plea that D’s and its predecessors’ use of the land was contentious.

181. The STDC parties rely on the signs as the grant of permission to all who used the road. A permissive sign (e.g. “This wood is private property but its use by dogwalkers is with the permission and at the discretion of the landowner”) is capable of granting permission for the use of land. Ms Holland’s argument is that the signs in this case are partly prohibitive and partly permissive. They prohibited

unauthorised persons from using the road and thereby implicitly gave permission to authorised persons to use the road. I do not accept that the signs are capable of bearing that interpretation. These are completely prohibitive signs. They tell the world that unless they already have a legal right to be on the road, they are prohibited from using it. They do not purport to confer permission on anyone. Authorised users did not require permission. Those travelling to use the marine facilities at South Gare for work or because they had a cabin or boat in the marina did not regard the signs as addressed to them.

*Conclusion – Access Route 6*

182. D has therefore established that it has a prescriptive right for all purposes and all vehicles under the 1832 Act and the common law doctrine of lost modern grant.

***1.3 Prescription – general use of Access Route 1 across South Bank***

*South Bank and Access Route 1*

183. The TCC acquired land at Teesport shaded blue in the middle of the plan below (“Teesport”) between 1946 and 1955, save for the Rhombus which was acquired in 1964.



Fig 10

184. The principal access to Teesport is by an inland route via Lackenby and the Tees Dock Road. Access Route 1 connects D's land by the highway at Smith's Dock Road (the Smith's Dock Road parcel – light blue on the plan above) to Tees Dock Road on the Defendant's land at Teesport.
185. By 1953, the Tees Dock Road had been constructed and is visible on OS mapping and aerial photographs, but the riverside road did not yet connect with it to form Access Route 1.
186. The experts agree that the completed Access Route 1 is visible on the 1965 OS map but is not visible on the previous 1952-1955 edition. There are two Dorman Long plans dating back to 1955 (one revised in 1956 and the other in 1959) and a third plan in 1958, all of which show the riverside road had joined up with the Tees Dock Road to form Access Route 1 by those dates. These were not seen or

commented on by the experts. Cs sought to raise doubts about the reliability of those plans as evidence that Access Route 1 was in existence by 1955 on the basis that the plans might be construction plans for a proposed completion of Access Route 1. Not only is there nothing in the documents warranting that speculation, but it would also be contrary to the descriptions of two of the plans as scale layout plans and could not explain why Access Route 1 appears on a plan for the laying of an unrelated feed cable. I find that Access Route 1 was complete by 1955.

187. The deep-water port at Teesport was constructed in the early 1960s and officially opened on 4 October 1963, although there were already oil jetties (the Queen Elizabeth II jetty and the West Byng jetty) at Teesport. Access Route 1 can only have been used in connection with the operation of the deep-water port after 1963.
188. By 1999 at the latest, Access Route 1 was blocked by the placing of an earth bund across the road to prevent vehicular access. The experts agree that the bund was in place in 1999 and in 2007 although there is plenty of evidence that it was a removable structure and it was removed by bulldozers if access was required. While the bund was in place the only access to and from Teesport was via the Tees Dock Road from the A66. The Tees Dock Road is susceptible to flooding at a particular point. The evidence as to the frequency of flooding varied, but it is clear that there are one or more incidents of flooding every year. When flooded the road is impassable to traffic. In 2002 D sought, and was granted, permission from Cs' predecessor Corus, to remove the bund and to use Access Route 1 for emergency access to Smith's Dock Road. D's claim for prescription does not rely on any use after 2002.

*Witnesses*

189. D called a number of witnesses to give evidence about the use of Access Route 1.
190. Cs called a number of witnesses to give evidence of control by the STDC predecessors of the site. The evidence focussed on four features along Access Route 1, namely a weighbridge, the PCM Cabin, the placing of steel bars or an

earth bund to block SDR and the East Wharf gateway. In addition, there was evidence as to security measures generally.

*Use and period of use*

191. I heard evidence from D's witnesses that Access Route 1 was regarded as the quickest route between Teesport and Middlesbrough before the A66 was built. Mr Norton said it was a regular run for those who knew the route in the 1970's and 1980's. The A66 was completed as far as Teesport at the end of 1990 or early 1991.
192. From its completion until the opening of the A66, I am satisfied that Access Route 1 was used routinely and regularly as a route to get between Teesport and Middlesbrough.
193. I heard evidence from the 91 year old Brian Bainbridge who worked for the TCC, THPA and D between 1949 and 1993. He was seconded to Randell, Palmer & Triton between 1949-1952 for the construction of the Tees Dock Road. He cycled to Teesport along Access Route 1 from offices in Middlesbrough for snagging works on the Tees Dock Road or for other development work.
194. Patrick Taylor was employed by the TCC, the THPA and D from 1963 to 1995. When working in the wages department he was based in Teesport and he drove a weekly run along Access Route 1 and back to collect cash for the wages department between 1963 and 1967 and occasionally thereafter into the 1980's.
195. Peter McWilliams was employed at Middlesbrough Dock from 1956. He was largely based at Middlesbrough Dock (which became part of THPA in 1967) until its closure in 1980. He travelled from Middlesbrough to Teesport by Access Route 1 to attend a weekly meeting between 1967 and 1980 to discuss which ships were to dock in Teesport and which to dock in Middlesbrough. He explained that it was the shortest route and he therefore believed it was the route which should be taken as a travel allowance was being claimed from the THPA.

196. Keith Overfield was employed with the TCC from 1963-1964, and then the THPA from 1968-1995. He initially joined the TCC as a diver, and then returned as a captain of a boat in the conservancy team. From 1968, people in the conservancy team would use the van to travel Access Route 1. This was either to conduct surveys, with the van following the vessel along the road, or for a land survey being conducted at fixed points. The road was also used by his team to travel to Teesport to deliver survey results or if there was other business at the port. Roughly once a month he travelled Access Route 1 when dropping off a craft at the depot.
197. Michael Westmoreland, another employee at the THPA, used Access Route 1 to get to and from Teesport for the purposes of his job from 1974 until at least the mid 1980's.
198. Bernard Meynell was employed by the THPA and D from 1975 to 2009 based in Middlesbrough. He used Access Route 1 three or four times a week to get to meetings at Teesport until it was blocked.
199. Paul McGrath was employed with the THPA and D between 1978 and 2018 (although he moved jobs to the Humber in 2006). He started as a general clerk at Middlesbrough and transferred to Teesport in 1979. He became the wages clerk in 1981. He was based at Teesport until 2006. He travelled regularly by bicycle or car to Teesport from Middlesbrough along Access Route 1, all year round from 1978 until it was blocked.
200. Brian Dresser, another THPA employee used Access Route 1 to get between Teesport and the Smith's Dock Road (as well as to access jetties along the route) from 1981 into the 1990s.
201. David Varey was an internal auditor for the THPA between 1983 and 1984 which required him to visit Teesport. The quickest route was Access Route 1 which Mr Varey used roughly on a monthly basis.
202. Allan Duncan was employed by the THPA and D between 1989 and 1997 as Tees Dock Manager based at Teesport. As part of his job, he needed to drive to head

office in Middlesbrough. He used Access Route 1 once or twice a week for the whole period of his employment for this purpose.

203. Several of the witnesses gave evidence of being told about the route by colleagues at work and of knowing of other colleagues also using the route. I am satisfied that the evidence which I have heard is representative of widespread use of Access Route 1 to get from Middlesbrough to Teesport and vice versa. By the 1980's Access Route 1 was marked on a THPA map. Although not identified as a principal road, it is evidence that it was regarded by the THPA as a route for use in connection with the activities of the THPA. In a letter from a security manager at D to Corus dated 11.12.2002, Access Route 1 was described as having once been "*one of the main access roads to the Teesport estate*". I am satisfied that was an accurate description of Access Route 1 prior to the opening of the A66.
204. After the A66 was built use of Access Route 1 dropped off. The A66 became the preferred route for most. Nevertheless, it is clear that Access Route 1 continued to be used, very regularly by some (for example Mr Maynell, Mr McGrath and Mr Duncan), until it was blocked by an earth bund.
205. Apart from using Access Route 1 to get from Smith's Dock Road to Teesport, it was also used regularly to access points along the route, such as the wharves and jetties along the riverside. It was used by THPA employees to do hydrographic and land surveys along the riverside and for access for dredging and maintenance work. Until the arrival of a security portacabin at East Wharf Gate, at some point after 1987 (discussed below), Access Route 1 was accessible to members of the public and freely used to access points along the riverside. Mr Tabner travelled it regularly between 1968 and 1978 to collect driftwood for his house and travelled it almost daily in 1986 when writing a book about Smith's Dock. Mr Johnston and others travelled down it to park up and watch the boats come in at lunchtime or in the evenings. It was described as "open access" by Mr Tabner. I accept that as an accurate description of the position until at least 1987.

*Steel beams and earth bund*

206. At some stage beams and an earth bund were placed at the Smith's Dock Road end of Access Route 1 blocking it off. The purpose was to deter theft and other wrongdoing. The likely sequence of events is that steel beams were used as temporary barriers initially, and that practice was replaced by using a more substantial earth bund later. Mr Agar, who was involved in the first placement of beams suggests this happened in the 1990s. There is inconclusive aerial photography from 1995 which may or may not show a steel beam across Access Route 1.
207. By 1999, an aerial photograph shows a blockage consistent with an earth bund across the road. In 2007, another aerial photograph shows a different earth bund in a similar position. The evidence was that that the bunds could be removed when access was required and replaced when it was desired to prevent access.
208. Some witnesses suggested that the bund was in place was much earlier. Mr Norton had been involved with security on site since 1972 and was security manager for the Teesside works from 1981 to 1991. He was a patently honest witness. He recalled that there had been a bund in place at the Smith's Dock end of Access Route 1 in 1987; he was especially confident of that date because it was the year after he was appointed as a magistrate, and he recalled an incident at the bund in which he had had to temper his actions because he was a magistrate. But there is an aerial photograph, which the parties agree is from July 1988, which shows no earth bund and no sign of one having been there or of one having been temporarily removed. Mr Norton accepted that he might therefore be mistaken as to when the bund was put in, and I think he was mistaken.
209. It is not possible to reconcile all of the evidence. I regard as a secure foothold the evidence of Mr Duncan who had been Tees Dock Manager from 1987 to 1997. He had used Access Route 1 once or twice a week for the entirety of his employment. He could not have done so if there was a steel beam or earth bund in place and he was clear that there were no steel bars or earth bund in his time using the road. It is possible that steel beams were in place on days when he was not using the road. It is conceivable, but implausible, that an earth bund was in place but had been removed for some reason on the occasions when he used the road. The volume of earth which would be required for the earth bund means that,



even if part of it was removed to clear the route, it is implausible that Mr Duncan would not have noticed its installation. I think it more likely that there was no serious attempt to block Access Route 1, until a period after Mr Duncan ceased employment in 1997. Another secure foothold is the aerial photograph in 1999 showing a clear blockage, probably an earth bund, in place by 1999. I find that Access Route 1 was probably blocked sometime between 1997 and 1999.

### *Weighbridge*

210. There had been a weighbridge at the Smith's Dock Road end of Access Route 1 from about 1956, when it appears on a spreadsheet and plan prepared for rates. Mr Bainbridge recalled it and his evidence was that some vehicles stopped at the weighbridge. This was not evidence of the weighbridge being used to control access to the Site (as the STDC parties submitted), but simply evidence of the weighbridge being used as a weighbridge. Mr Jones thought the weighbridge men reported suspicious vehicles, but that was not confirmed by Mr Norton who remembered the weighbridge but clearly did not regard it as a security feature. In any event, what Mr Jones is describing is a security measure against theft. None of the witnesses had their journeys along Access Route 1 impeded by the existence of the weighbridge. The weighbridge went out of use in the early 1980's.

### *Gates*

211. There are photographs dating back to 1948 which show a building at the entrance to Access Route 1 from Smith's Dock Road but the experts agree that it no longer appeared on OS mapping after 1955.
212. There was a railway ("the jetty railway") which crossed Access Route 1 at the Smith's Dock Road end. This did not prevent access to or along Access Route 1. There are some inconclusive plans and aerial photos in 1976 and 1980 which are at best consistent with there being some feature on the ground which might be a barrier or might be part of the jetty railway. But there is a clear aerial photo from July 1988 which shows no barrier or other feature at that point in time.

213. Some of the witnesses thought there might have been a gate there in the 1970s and 1980s. Mr Jones thought there was a gate attached to a fence from the start of his time at the site in 1978. Many more, including those mentioned above who gave evidence of unimpeded access along Access Route 1 during that period, said there was no gate there. I conclude that it is more probable that there was no gate there. If there was, it was not used to control access.

*PCM Dispatch Post*

214. There was a small cabin midway along Access Route 1 which had once been a dispatch office for the Pig Casting Machine foundry. After that closed down it became a base for mobile/foot security officers to get in from the cold. By 1987, it appears on plans as a security cabin. At most, *ad hoc* vehicle checks were carried out along that stretch of road on an occasional basis, using the cabin as a convenient base. None of D's witnesses had ever been stopped as part of such checks. David Jones said he recollected work tickets being collected at that location at one point. This appears to me to be a reference to a time when it was still operational as a despatch office, when Mr Norton explained drivers would collect their despatch notes from there. Mr Jones seemed to think work tickets were a means of controlling access to those with a legitimate reason to be on site, but none of the witnesses involved in security made any mention of such a system.

*East Wharf gate*

215. Mr Norton said it was his proposal to have a gatehouse here. His evidence was that, prior to the installation of the gatehouse, both entrances to Access Route 1 were unmanned. The first gatehouse he installed was simply a blue portacabin with a manually operated barrier. It was later replaced by an island gatehouse with electrically operated gates which remains to the present day. This has been called the East Wharf Gate.
216. Much time was spent at trial trying to pin down when the first portacabin was installed by Mr Norton.

217. There is an aerial photograph which shows there was no gatehouse or security cabin at this location in 1982 or 1983. A hazy aerial photograph from 1992 is consistent with a gatehouse being in place by then. The island gatehouse that now exists is visible on imagery at the Tees Dock Road end of Access Route 1 from 1995 onwards.
218. A security gatehouse in this position is marked in manuscript on an “Out of Gauge Load Routes” plan but it is unclear what date that marking occurred. The underlying plan of infrastructure was drawn by a “M. Smith” in 1986 (at which point it seems there was no security gatehouse at that site) but the manuscript annotations appear to have been added in different handwriting subsequently for the purpose of showing height and width restrictions on routes into and out of South Bank. This is the plan which many of Cs’ witnesses were shown when preparing their witness statements and which may mistakenly have encouraged them to think there was a security gatehouse in place in 1986.
219. Various witnesses thought with varying degrees of confidence that there might have been some form of security cabin at this end of the route from earlier dates in the 1980s or even 1970s, but this was generally ungrounded evidence and not in my judgment any more reliable than those witnesses who did not recall a gatehouse until much later. Mr Norton himself thought the gatehouse had been installed around 1986 – but, as he explained, this was based on a logical deduction that the gatehouse must have been put in place at about the same time as the earth bund and therefore based on his mistaken recollection of when the bund went in. He accepted in cross examination that he could not be sure of the date of installation, and it was at best an estimate. I preferred the evidence of Mr McGrath who was confident that there was no gatehouse in place in January 1987 because he had suffered a leg injury in December 1986 and had cycled to work as part of his rehabilitation. His evidence was that once the security cabin was installed he did not approach it, and so, if his evidence is correct, it cannot have been there in January 1987.
220. There are British Steel drawings which show that the proposed construction of a security cabin was being considered from 1987 to late 1990 at a slightly different

location. Mr Norton's evidence is that those proposals prior to 1990 were never implemented and the building on the plans was not the portacabin he installed. There is OS mapping from 1993 which is consistent with a structure in line with the plans. In light of the plans which were disclosed after the exchange of expert reports, Mr Meddings revised his position to accept these as gates shown on the mapping. But this is not consistent with Mr Norton's evidence. Nor is it consistent with the 1992 photograph which does not show any building envisaged by those plans. D sought to argue that the plans show that it was at some point after 1990 and before the end of 1992 that the security gatehouse first appeared at the Tees Dock Road end of the Access Route 1. They do not. They shed no light on when the first security portacabin was installed. They do suggest that the island gatehouse was not installed until sometime after 1990. The first security portacabin installed by Mr Norton was a very basic security feature, which was later replaced by the more advanced island gatehouse with electrically controlled barriers. The plans are consistent with being an alternative proposal for what became the island gatehouse, and so logically are likely to have been prepared before a decision was made to install the island gatehouse. I have come to the conclusion that the plans are a red herring.

221. I conclude that the first security portacabin was installed at some point between January 1987 (Mr McGrath's evidence) and 1992 (the aerial photo). By 1995 it had been replaced by the island gatehouse.
222. Significantly, even after the first security portacabin was installed cars could continue to travel through. The barriers were often left open, or opened before cars reached them. Mr Norton explained that whoever manned the manual gates would not be opening and closing them for every vehicle as "*he would literally be swinging that barrier open and closed every five minutes*". Those who were stopped were waved through if they identified themselves as Port Authority employees or as being on Port Authority business.

*Security generally*

223. Witnesses like Mr Norton were clear that there was a gradual tightening up of security, but much more difficult to pin down was when this manifested itself and in what way.

224. It is clear that there was an issue with theft on the site. Mr Norton said the main problem was electric cable, materials and plant being stolen from sub-stations and other installations. Suspicious vehicles tended to be pick-up trucks. There was also a problem with vandalism and travellers taking up occupation on the site. In later years the risk of terrorism and safety regulations created another imperative to tighten up security.
225. Although Mr Norton's recollection was that the tightening up of security dated back to the 1980's, in fact the reliable factors he and other witnesses identified as causing the tightening up of security were generally in the late 1990's. For example, both Mr Norton and Mr Donaldson referred to the COMAH Regulations (Control of Major Accident Hazards Regulations 1999) which were introduced in 1999 and only then brought such regulation to steelworks. There was an increasing concern about terrorism, particularly when the local MP, Mo Mowlam, became Secretary of State for Northern Ireland in 1997) and after '9/11' – 11.9.2001. Thinking at management level about the need for greater security may well have been gradually building before then. Mr Norton recalls being briefed by the security services, as long ago as the 1970s, about the Northern Ireland Troubles. He was involved in the 1980's in preparing a major incident plan. He recalls a disaster in Flixborough in 1974 which highlighted the needs for visitor logs. There is little sign that any of this thinking impacted on the use of Access Route 1. It is not suggested, for example, that visitor logs of users of Access Route 1 were introduced before the route was blocked. There may also have been periods of increased security, such as during the Steel Strike of 1980 and during the Miners' Strike in 1984, but these were exceptional and temporary.
226. Looking at the evidence in the round, I consider that the gradual tightening up of security likely began to manifest itself in the late 1980's and early 1990's but was initially aimed at preventing theft and vandalism and stopping suspicious vehicles. It became more extensive as the years went by as regulation, wider health and safety concerns and the risks of terrorism increased. Even when in place, however, the presence of security personnel on gates, and the increased security, did not prevent access along Access Route 1 for persons with a

legitimate reason to travel to and from Teesport at any stage before the route itself became blocked at the Smith's Dock Road end.

*Conclusions on use and period of use (South Bank)*

227. I am satisfied that for the period from 1953, when Access Route 1 was completed, until it was blocked at some point between 1997 and 1999, D has proven open and continuous use of Access Route 1 as a means of access to and egress from its land at Teesport. That use was for the benefit of all of D's land at Teesport (from 1964 in respect of the Rhombus) – it was during this period a main access road to the Teesport estate, and it was the quickest route for anyone on the Teesport estate to get to Middlesbrough and vice versa. From 1963 access included access for the purposes of accessing the deep-water port, but even before then it was a means of accessing D's land at Teesport. The persons who used Access Route 1 included employees of D, although there is no need for the user to be by D as long as it accommodates D's land as it does here; *Winterburn v Bennett* [2016] EWCA Civ 482.
228. There is, however, no evidence that it was used for haulage or HGVs except for emergency access and egress. It was used as a route for individuals to access and egress Teesport on foot, bicycle, car and van. As mentioned above, the extent of an easement by prescription is determined by the extent of the user. It was said by Bovill C.J. in *Williams v James* (1866-67) L.R. 2 C.P. 577, 580, that “where a [prescriptive] right of way ... is proved”, then “unless something appears to the contrary” the right acquired is “a right of way for all purposes according to the ordinary and reasonable use to which the land might be applied at the time of the supposed grant”. Here, it does appear that Access Route 1 was not used by HGVs except for emergency access or egress, so there is something which contradicts prescriptive use for haulage. I am also satisfied from the evidence I heard of the condition of and around the road over the years (and from my site visit, recognising that the current state is not reflective of the historic state of Access Route 1) that it would not be ordinary and reasonable use for regular haulage as an alternative access to Teesport, except as emergency access or egress.

229. There is no evidence that D or its predecessors believed they had a right of way over Access Route 1, and if anything, there is evidence (for example, from the request for permission to remove the bund in 2002) that they did not. But the subjective belief of the person carrying on the user is irrelevant. What is relevant is the character of the user. Is it user of a kind that would be carried on if the person carrying it on had the right claimed? It was.

*Statutory function of D*

230. The evidential burden ought now to shift to the STDC parties to show the use was with permission (contention not being pleaded or pursued). However, they argue that D has not discharged the burden of showing sufficient open use.
231. The STDC parties assert that because D is a port authority, and its employees were generally using Access Route 1 as part of their jobs, their use was not use which would bring home to a reasonable owner of the servient tenement that a right to use Access Route 1 was being asserted. A similar submission was made in respect of Access Route 6, and I deal with both submissions here. The reason, it is said, that D's employees were not stopped or challenged or were allowed to use the relevant roads was because they were carrying on "the statutory functions of D as port authority". These submissions need to be analysed. They seem to me to comprise at least two possible strands.
232. Firstly, that use to access and egress Teesport while otherwise "as of right" and *nec vi, nec clam and nec precario*, would nevertheless have appeared to the reasonable landowner to not be "as of right" because D was the port authority. It seems to me this submission can only work if the use "as of right" appeared to be pursuant to some non-proprietary right because D was the port authority – such as in the exercise of D's statutory powers as port authority. If that were correct, careful thought might be needed as to whether and how it affected a prescriptive right arising, but in fact no evidence has been adduced, to show that D had any such rights as port authority to routinely enter onto the STDC predecessors' land whether for the use of Access Route 1 or otherwise. Ms Holland disclaimed reliance on the existence of any such rights on the part of D.

233. Secondly, and separately, it is said that use by D's employees while open and sufficiently frequent, was impliedly permitted by the STDC predecessors because of D's status as the port authority and in a spirit of cooperation. This is an allegation that use was "*precario*" and does not prevent the evidential burden shifting. It is perilously close to saying that the STDC predecessors acquiesced in D's use because of its status as the port authority. Acquiescence is not an answer to a claim for prescription, it is at the heart of why the law allows prescription. The burden of proving that the use was with permission as opposed to acquiescence is on the STDC parties, and no positive act of the grant of such permission is pleaded or proved. At best, there is only evidence of inaction by the STDC predecessors and that is not sufficient to amount to permission.
234. The premise of these submissions (the impact on the STDC predecessors of D's statutory function) is also not supported by the evidence.
- 234.1. The slim evidential premise for these submissions appears to be the evidence of Mr Varey that the Port Authority was "a big noise" and that saying that he was from the Port Authority generally got him through road barriers around the port and not just on Access Route 1.
- 234.2. To the extent that the submission contains an implicit proposition that the STDC predecessors' security team mistakenly believed all D's employees were entitled to pass and repass over Cs' land because they were carrying out "the statutory functions of a port authority", there is no evidence at all of there being a mistaken belief by the STDC predecessors' security team of that kind. Further, as I have found above, until the appearance of a security portacabin there was open access to Access Route 1. That is not consistent with persons only being allowed to pass because they were carrying on "the statutory functions of D as port authority".
- 234.3. Until the security portacabin appeared between 1987 and 1992 there were security patrols, but they were aimed at preventing theft and vandalism. D's employees were often driving private cars and it would not have been apparent that they were employees of D. None of D's witnesses were stopped or challenged before the security portacabin was installed. There



was some evidence from Mr Norton that he instituted occasional vehicle checks, but he did not suggest that his men were briefed to let through Port employees because they were carrying out “the statutory functions of a port authority”, still less to let them through because of a mistaken belief that Port Authority employees had some right to roam wherever they pleased because they were on port business. So, for the period from 1953 to at least 1987, the STDC parties’ submission in relation to Access Route 1 does not get off the ground.

234.4. After the security portacabin was installed, there is evidence that if the barrier was down, flashing a Port pass or identifying oneself as a Port Authority employee resulted in the barrier being lifted. There was no evidence as to there being any briefing of security staff to do this. As I have found above in the period before Access Route 1 was blocked the primary concern was theft and vandalism and D’s employees were not turned back at the barrier because they had a legitimate reason to be travelling to and from Teesport.

235. It was also submitted that user for the purposes of carrying out the statutory functions of the port authority do not accommodate the dominant tenement but are a personal benefit to D. It is sufficient that the use accommodates or benefits the dominant land in the sense of being closely connected with the normal enjoyment of the dominant land. A right of access and egress to land will ordinarily be of utility and benefit to the land and whoever is using it. In respect of Access Route 1, the dominant land is a port and the use of a road by those who had reason to visit the port enhances the normal use of the land. In respect of Access Route 6, the dominant land is South Gare with its marine facilities there and the use of a road to access South Gare permits the normal use of the land. The fact that the owner of the dominant land happens to be a port authority with a statutory function is irrelevant.

*Permission – the 1980 Licence*

236. Generally, in respect of South Bank, it is clear from the existence of various express agreements and licences that the STDC predecessors had granted a number of carefully restricted licences for the use of Access Route 1. An example is a licence dated 16 May 1969, whereby Dorman Long licensed ICI to use three different parts of Access Route 1, for three different purposes, ranging from general purposes to exceptional construction and emergency purposes.
237. The STDC parties rely on an agreement dated 29 July 1980 between British Steel and the THPA (“**the 1980 Licence**”), which they say granted the THPA a licence to use Access Route 1 as a means of access and egress from Teesport to and from the Smith Dock Road. The licence was terminated on 31 March 1981. The significance, if they are correct, is that the period of prescriptive use relied on by D has been interrupted. In light of my finding above that the period of prescriptive use began in 1953, and therefore 20 years prescriptive use established before 29 July 1980, this is now academic, but I consider it for completeness.
238. The 1980 Licence appears to have been sought by the THPA as part of the construction of the Arthur Taylor Jetty. Its key terms were as follows.
- 238.1. There was a recital that the THPA had constructed “*the access road*” on British Steel’s property “*and has requested the Corporation to grant to it the rights and privileges herein contained...*”. The access road was identified in red on the plan. It ran between Access Route 1 and a point on the riverbank called the River Tees Gateway, which gave access to the riverbank and the jetties there.

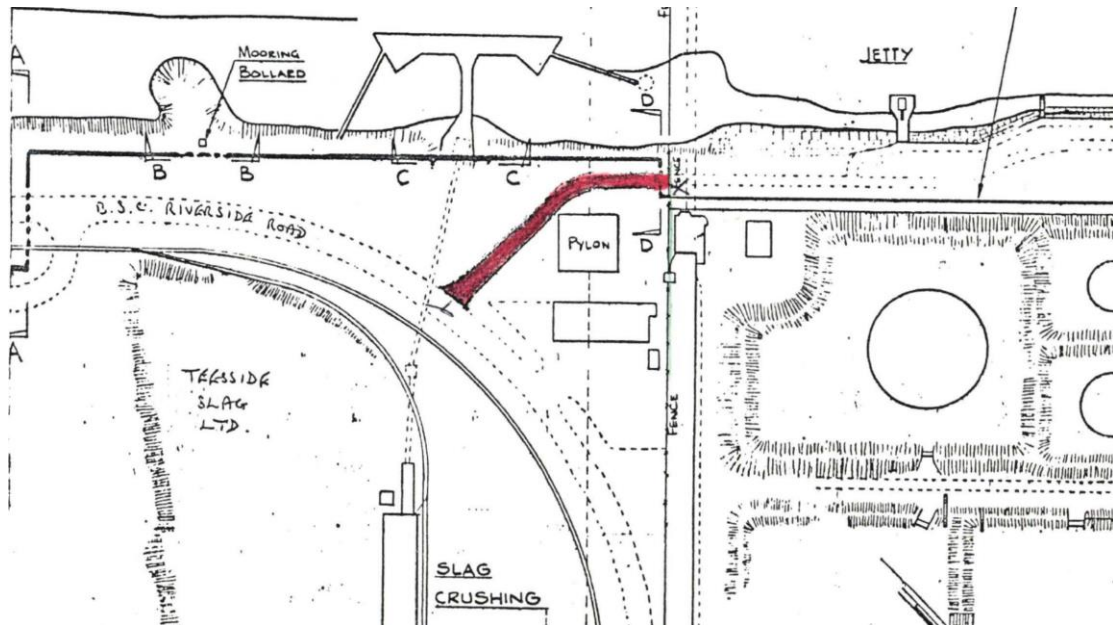


Fig 11

238.2. By cl.1(b) the THPA was granted a licence to pass between points X and Y on Access Route 1, for access to and egress from the THPA's property at point X – the River Tees Gateway – and Access Route 1.

238.3. By cl.1(c) the THPA was granted a licence:

*“to pass and repass at all reasonable times in common with all others entitled to use the same with or without vehicles laden or unladen machinery and equipment over and along [ Access Route 1 ] from the said point marked 'Y' on the said plan to the public highway known as Smith's Dock Road Grangetown aforesaid and from the said point 'Y' to the [THPA's Tees Dock Road] ...”*

239. D submits that none of the use relied on by D in support of its claim for a prescriptive right of way was permitted by the 1980 Licence. I agree. The 1980 Licence was not a licence to use Access Route 1 as a means of access to or egress from Teesport to the Smith's Dock Road. Any use of Access Route 1 other than to reach point Y and then to pass to point X was outside the permission granted and was a trespass. That trespass would still support a claim of prescription, despite the 1980 Licence.

*Conclusion – prescription Access Route 1*

240. I conclude that D has established a prescriptive right of access and egress from Teesport across Access Route 1 for all purposes excluding haulage.

**1.4 Prescription - Emergency access along Access Route 1 at South Bank**

241. The earliest evidence of use comes from Mr Taylor. Mr Taylor, who was employed by D and its predecessors from 1963 to 1995, gave evidence that during his time when Tees Dock Road flooded, which happened he estimated once to three times a year on average, he would use Access Route 1 to get in and out of Teesport. Other witnesses like Brian Dresser, Peter Johnson, Michael Westmoreland, Bernard Meynell, Paul McGrath and David Varey gave similar evidence. Paul Grainge, who joined the Harbour Police in 1997, gave evidence that when the Tees Dock Road flooded, Access Route 1 was the usual route out (with the bund being moved for that purpose). By the late 1990's, this often involved convoys of vehicles escorted in and out by the Harbour police along route 1, but it was not always as organised as this. Brian Dresser recalls there simply being a Harbour police van at the start and end of Access Route 1. Mr Johnston a harbour pilot from 1995 to 2005, docked his boat at Tees Dock when there was bad weather. The Tees Dock Road was often flooded on those occasions and so he had to exit using Access Route 1. He observed that the dock workers' shifts started and ended at different times and so sometimes there was a convoy to exit the port and sometimes there was not.

242. Towards the end of the 1990's, another route out which exited through the South Bank Coke Ovens Gate (and did not involve removal of the bund) was also used. Mr Norton's evidence is that the conditions for using that alternative route were discussed internally at British Steel as it went through a hazardous production area. D does not claim it had any right to use that other route. It is likely that the use of that route was with British Steel or Corus' permission, presumably to avoid the need to remove and replace the earth bund.

243. In 2002, D wrote to Corus requesting the re-opening of Access Route 1, saying that Tees Dock Road is "*particularly during the winter months, susceptible to flooding and can quickly become impassable*". Corus agreed. D does not rely on its use thereafter as prescriptive use, accepting that it thereafter did so with

permission. A number of Cs' witnesses gave evidence of their understanding in the period after 2002 that D's use was with permission. There were also other permissive arrangements, whereby abnormal loads which could not use the Tees Dock Road could request access through the South Bank site and would sometimes be charged for such access.

244. I am satisfied that there was open and regular use of Access Route 1 for access and egress when the Tees Dock Road was flooded between 1963 and 2002.
245. The evidential burden falls upon the STDC parties to establish that such use was with permission. This requires an overt act of grant of permission. Mere acquiescence is insufficient. It is striking that there is no evidence at all as to the basis on which emergency access and egress took place from 1963 to 2002 and in particular as to whether or not it was with the STDC predecessors' permission. None of the witnesses called could give direct evidence on the issue. There are no documents found on disclosure prior to 2002 from D or its predecessors or the STDC predecessors discussing the basis on which emergency access and egress was taking place. The STDC parties' submission that it *might* have been permissive is not sufficient to discharge the evidential burden on them.
246. I conclude that D has established a prescriptive right under the common law doctrine of lost modern grant for emergency access and egress from Teesport for all vehicles when the Tees Dock Road is impassable.

#### **J. The Roundabout and Trespass**

247. From 2016, the TVCA and RCBC were considering constructing a roundabout close to Grangetown. Works on the roundabout were completed in July 2019.
248. D says that the roundabout as constructed trespasses onto its land in the Smith's Dock Road parcel. When in 2016 the TVCA and RCBC began considering constructing a Roundabout at this site, their surveyor's plans identified a trespass unto about 3 square metres of D's land. This is now disputed as correct by the STDC parties. There is no claim by D for relief from trespass as such. Whether there is or is not a trespass is relevant to D's claim for a proprietary estoppel. The

STDC parties assert that if there is no trespass then the proprietary claim fails for an absence of detriment. It is sensible therefore to consider the discrete question of whether there has been a trespass first.

249. The issue of trespass falls to be determined by close examination of plans which were not prepared for this purpose. In view of the size of the parcel of land involved, the alleged trespass is less than the thickness of a pen line on some of the plans.
250. The correct approach to construing conveyances and similar instruments was authoritatively summarised by Mummery LJ in *Pennock v Hodgson* [2010] EWCA Civ 873 at [9] (by reference to the earlier decision of the House of Lords in *Alan Wibberley Building Limited v Insley* [1999] 1 WLR 894):

*“9. Alan Wibberley supplies the solution. From it the following points can be distilled as pronouncements at the highest judicial level: —*

*(1) The construction process starts with the conveyance which contains the parcels clause describing the relevant land, in this case the conveyance to the defendant being first in time.*

*(2) An attached plan stated to be “for the purposes of identification” does not define precise or exact boundaries. An attached plan based upon the Ordnance Survey, though usually very accurate, will not fix precise private boundaries nor will it always show every physical feature of the land.*

*(3) Precise boundaries must be established by other evidence. That includes inferences from evidence of relevant physical features of the land existing and known at the time of the conveyance.*

*(4) In principle there is no reason for preferring a line drawn on a plan based on the Ordnance Survey as evidence of the boundary to other relevant evidence that may lead the court to reject the plan as evidence of the boundary.”*

251. Unfortunately, it is not possible to start the construction process with the conveyance and its parcels clause. D acquired the Smith’s Dock Road parcel in 1998. The conveyance to it has not been found. The previous owner of this parcel of land was the Teeside Development Corporation who had owned it since 1989

and before that it was owned by Langbaugh BC. It is possible the land was vested in the Teeside Development Corporation by vesting order, but there is no vesting order or transfer document that has been found. The agreement for the sale of the land to Langbaugh Borough Council by Smith's Dock Company Ltd dated 30 March 1984 is in the trial bundle but not the transfer on 18 June 1984. British Steel had conveyed it by a conveyance dated 22 March 1976 to Smith's Dock Company Limited which is available.

252. The best evidence I have of the land which is within the Smith's Dock Road parcel is therefore the title plan filed at HM Land Registry as part of the registered title. This is the plan prepared by HM Land Registry when the conveyance to D was filed. In line with longstanding HM Land Registry practice, the title plan shows general boundaries and not the exact line of the boundaries of the land. HM Land Registry convention is to show the land in a registered title by red edging on the inside of the line of the boundaries. In other words, the red edging itself forms part of the title.

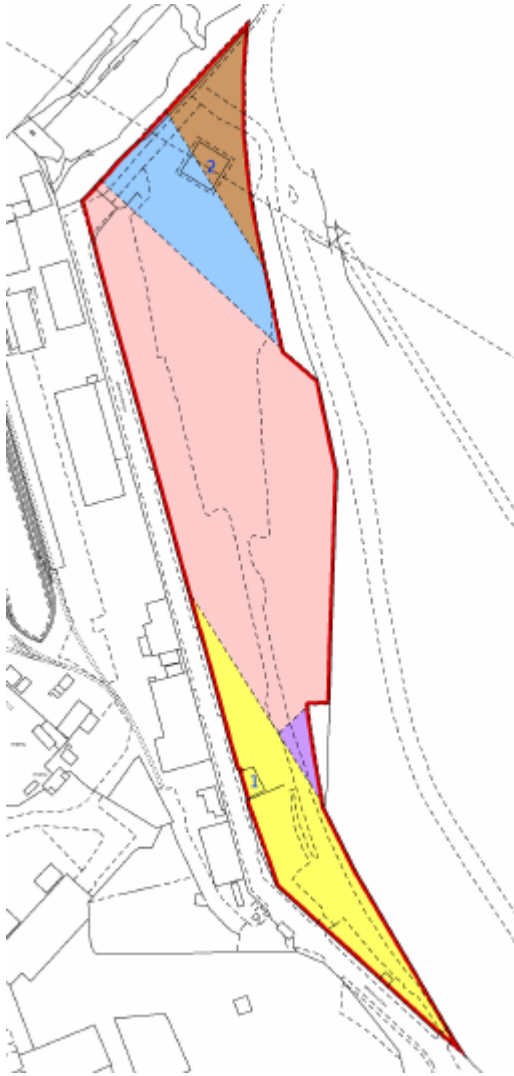


Fig 12

253. Title plans are revised from time to time but historical editions of title plans are retained by HM Land Registry. In respect of this title, in addition to the current edition held at HM Land Registry, there is an archived plan as it existed on 6 April 1992 (“the 1992 plan”). The principal noticeable difference to the naked eye is the fact that the current edition uses updated Ordnance Survey mapping. Mr Meddings was not aware of the archived copy and there was no evidence from Mr Clay that there was any material difference between the two plans.
254. Both experts agree that using the HM Land Registry plans there appears to be a trespass. Using both the current edition and the 1992 plan C’s expert, Mr Clay agrees that the roundabout trespasses onto D’s land but is of the opinion that the trespass is caused by the construction of the footpath to the roundabout and not



the road. D's expert, using the current edition of the title plan is of the opinion that the trespass is by both the footpath and part of the road. The difference between them is on how the title plans are aligned on an overlay of a Landform Survey of the roundabout. It was Mr Meddings' evidence that alignment is a subjective technique, and two different people will get subtly different answers. I do not think that is enough for me to conclude that it is more likely than not that the trespass is by *both* the footpath and part of the road.

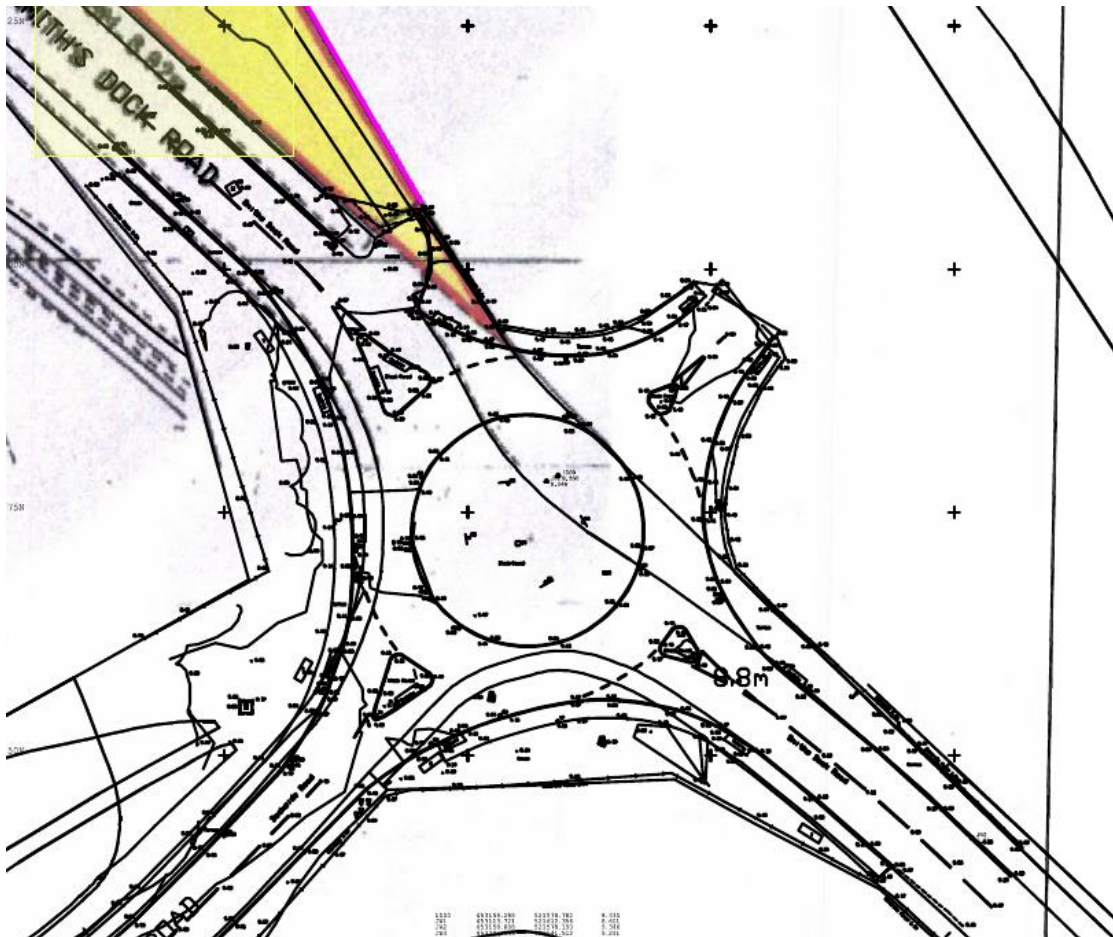


Fig 13

255. Both experts also agreed that if HM Land Registry's digital polygon, or "shape file" is used then there is a trespass which extends over the footpath and into the roadway. The 'shape files' are digitised versions of the title plan that are produced by HM Land Registry, referred to as 'index polygons'. In the technical specification for the National Polygon Dataset, the HM Land Registry state "An

index polygon is part of the Index referred to in s.68 of the Land Registration Act 2002 and r10, Land Registration Rules 2003. Its purpose is to provide an index to show the indicative location of a registered title.” In an old title like this the digital “shape file” has been prepared from the paper title plan. Both experts agreed that there is a risk of human error in the preparation of the shape file and that there might be slight discrepancies between the paper plan and the shape file. I am satisfied that the paper title plan is the most reliable evidence of title and so the different conclusion reached when the digital polygon is plotted does not seem to me to make it more likely than not that the trespass is by both the footpath and part of the road.

256. Both experts also examined a plan attached to a Deed of Grant in 2012 whereby D granted National Grid Electricity Transmission Plc the right to construct and maintain an electricity pylon on the northern part of the land. They both agree that if that plan is used there is a marginal trespass (Mr Clay says it encroaches or just touches D’s land). That plan seems to me to be largely irrelevant when I have title plans to work from, and Mr Meddings says that it is too distorted to be reliable.
257. On 30 March 1984, there was a tentative contract for the purchase of the land by Langbaugh Borough Council. It is tentative because by clause 11 the agreement became null and void if the parties were unable or unwilling to agree the exact extent of the land to be sold within 7 days. The land is described as “comprised in the area shown coloured red and in part hatched black and in other part cross hatched black on the plan annexed hereto.”

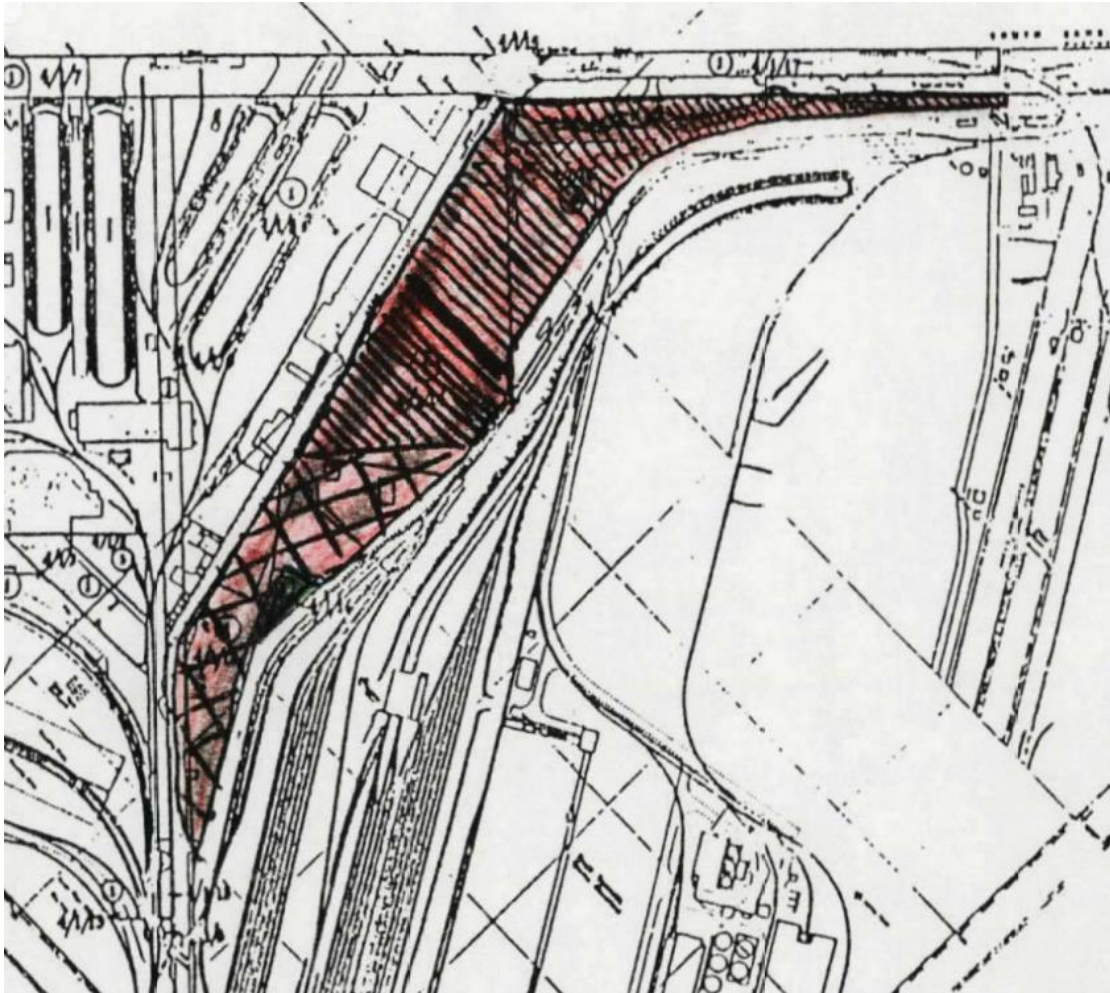


Fig 14

258. Mr Clay says that if this very crude plan is blown up, it does not seem that the red colouring extends all the way into the southern corner. He postulates that there was perhaps never a conveyance of land all the way to the southern point, and he notes that on the ground, the land is not enclosed all the way to the point but has a gate which is inset. If the conveyance stopped at the gate there is no trespass. Mr Clay accepts, however, that if D's title extends to the point, then there has been a trespass which extends into the footpath.

259. This speculative theory is without merit.

259.1. This is a hand drawn plan – looked at without enlargement it clearly conveys all the land to the southern tip. The colouring and hatching is crude and inconsistent and there are other parts where the colouring has not extended to all of the land which is indisputably part of the title. It strains

credulity that a draughtsman would have deliberately not coloured in an iota of space in the corner, so as to indicate that it is not being transferred.

259.2. In any event, that is a plan to an earlier agreement between different parties. We do not have the conveyance of the land to Langbaugh Council to which this contract relates. We also do not have the transfer to D, but HM Land Registry clearly understood it, and the plan which accompanied it, to include all the land to the southern tip. It registered the title to include the point notwithstanding the presence of the access way into that land and gate being marked on the 1992 and current title plan. The fact that it did so is clear evidence that it had a conveyance which conveyed the land all the way down to the point.

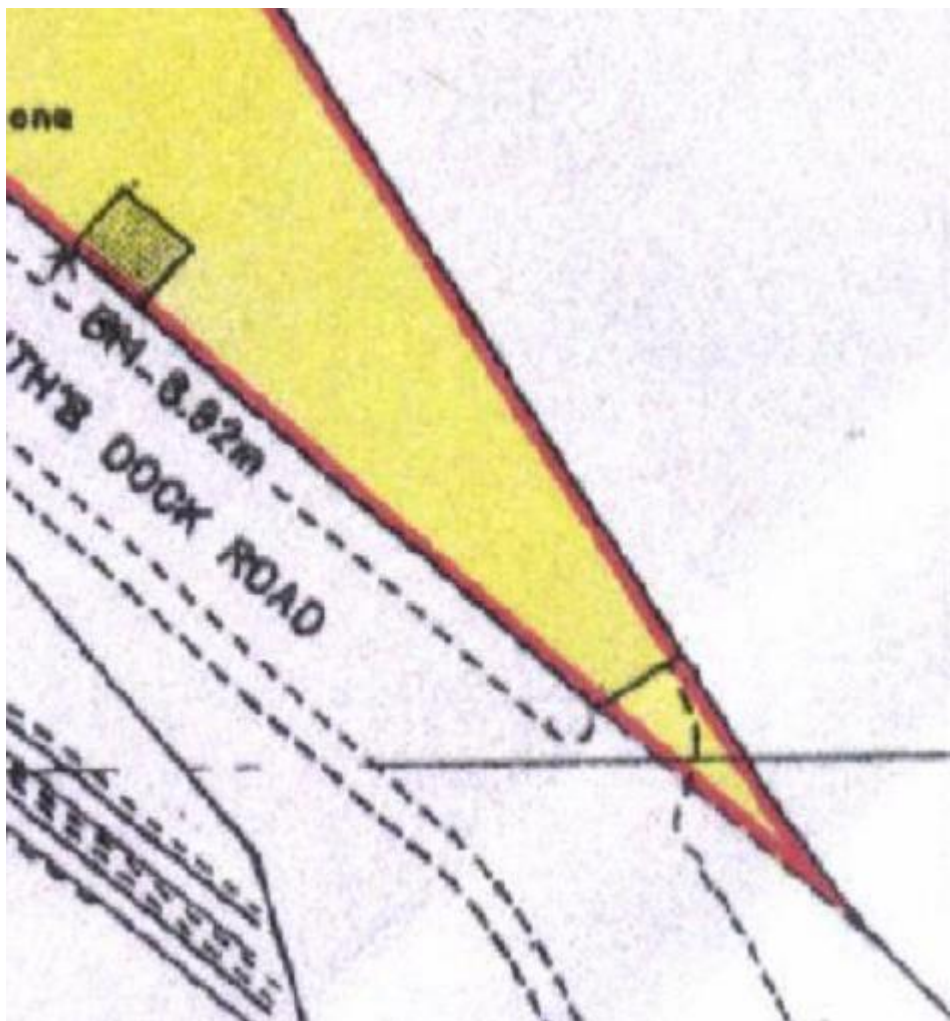


Fig 15

259.3. The inset gate was to give access to that part of the land for its use as a car park. As the pecked lines marking the road access show, that could not be



through a point of zero width. Without ownership of land up to the point, D would not be able to access the gate. So, the inset gate is not evidence of where the boundary on the ground actually lies. If it were the case that D could only access the gate by passing over somebody else's land, that would raise a host of issues. The strip of land would be a ransom strip. There is no mention of any of the consequential considerations in the 30 March 1984 agreement or on the title register which one would expect to see (bearing in mind the STDC parties' theory postulates the intentional exclusion of land to the point by not colouring it in red). Indeed, they are not even able to say who would own the ransom strip which would be created if the title did not run to the point.

259.4. Finally, Mr Clay's theory is not consistent with the 2012 Deed of Grant where the plan also asserts that D owns the land down to the point. It is also not consistent with the 1976 conveyance to Smith's Dock Company Ltd which shows the parcel of land conveyed as running to the point.

### *Conclusion*

260. I conclude that D has proven on the balance of probabilities a trespass to its land by the construction of the footpath to the roundabout. D has not proven a trespass to its land by the road.

## **K. Proprietary estoppel**

### *The relevant law*

261. The current state of the law after the decision in *Guest v Guest* [2022] UKSC 27 was reviewed by me recently in *Spencer v Spencer* [2023] EWHC 2050 (Ch) at paragraphs 23 to 33. A shorter summary of the relevant principles will suffice here.

262. There are three main elements to a proprietary estoppel (i) an assurance by B (whether by words or inferred from conduct), (ii) reasonable reliance on the assurance by A and (iii) detriment in consequence of that reasonable reliance; see *Thorner v Major* [2009] UKHL 18 at [29]. The latter two elements are often intertwined, and they are sometimes referred to together simply as "detrimental reliance", but it is important to keep in mind their constituents. If these elements

are present, they give rise to an equity which the Court will decide how best to satisfy. These are not, however, watertight compartments; *Gillett v Holt* [2001] Ch 210 at 225.

263. Although frequently seen in family contexts, proprietary estoppel claims are less frequently seen in disputes between commercial parties. The difference in approach was explained in the leading case of *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55; [2008] 1 W.L.R. 1752 by Lord Walker at [81] – [91]:

*“81. ...the court should be very slow to introduce uncertainty into commercial transactions by over-ready use of equitable concepts such as fiduciary obligations and equitable estoppel. That applies to commercial negotiations whether or not they are expressly stated to be subject to contract.*

...

*87. ...When a claim based on equitable estoppel is made in a domestic setting the informal bargain or understanding is typically on the following lines: if you live here as my carer/companion/lover you will have a home for life. The expectation is of acquiring and keeping an interest in an identified property. In this case, by contrast, Mr Cobbe was expecting to get a [commercial] contract.*

...

*91. When examined in that way, Mr Cobbe’s case seems to me to fail on the simple but fundamental point that, as persons experienced in the property world, both parties knew that there was no legally binding contract, and that either was therefore free to discontinue the negotiations without legal liability”.*

264. Lord Scott in *Cobbe* at [25] explained that no proprietary estoppel can arise in negotiations expressed to be “subject to contract”:

*“The reason why, in a “subject to contract” case, a proprietary estoppel cannot ordinarily arise is that the would-be purchase’s expectation of acquiring an interest in the property in question is subject to a contingency that is entirely under the control of the other part to the negotiations.... The expectation is therefore speculative.”*

*Witnesses*

265. I heard from Jerry Hopkinson and Michael McConnell for D. I heard from Julie Gillespie, Chris Harrison, Paul Booth, John McNicholas and Neil Thomas for Cs. All were honest, but partisan, and reconstructing events from the documents. On this aspect of the claim, there is fortunately a considerable amount of contemporaneous documentation in the form of emails, reports and minutes of meetings which give a reliable backdrop to events, and I have assessed the oral evidence against that matrix.

*The assurance*

266. As I have outlined above, when in 2016 the TVCA and RCBC began considering constructing a roundabout at this site, their surveyor's plans identified a trespass unto about 3 square metres of D's land. There were discussions in early 2017, between a Mr Bretherton and Mr McConnell, about incorporating that part of D's land into the Council's design, in return for emergency access rights to connect the roundabout to the port, but these ultimately broke down. There were tensions arising from this unsuccessful commercial negotiation, which contributed to what was described by Mr Hopkinson in a later email as an element of "reserve" in dealings between C1 and D.

267. An alternative scheme design was therefore produced which did not require D's land. The project was then handed over to STDC for delivery. Planning permission was granted in accordance with the new design in early 2018 and works commenced in December 2018.

268. The new design had a gap in the footpath due to the need to avoid D's land. There was therefore a meeting on 5 March 2019 for the purpose of exploring the possibility of using a small part of D's land to allow the footpath to be joined up. The meeting was attended by Mr McNicholas for C1 and by Mr Hopkinson and Mr McConnell for D.

269. Mr McConnell and Mr Hopkinson gave evidence, and I accept, that they reached common ground with Mr McNicholas that STDC could use D's land for the roundabout in return for a secondary means of access into the port in perpetuity. This is borne out by their manuscript notes of the meeting. Subsequent documents suggest that the deal in principle at this stage was to formalise route 1 for emergency access but accepting that it might need to be moved. Mr Hopkinson's manuscript note referred to there being a "tension point" as to the extent of the access. He could not remember why he had said that – I consider it to be a reference to his and Mr McConnell's desire (apparent from subsequent documents) to enlarge the existing emergency access arrangements into non-emergency secondary access.
270. Mr Hopkinson and Mr McConnell described what had been agreed as clear, and as far as it went, it was. There was therefore an "agreement" in the sense that the parties had orally agreed the key heads of terms. I do not, however, accept that any of these experienced businessmen thought that this oral discussion was a binding legal agreement. Mr McConnell, for example, knew that transactions involving land generally require writing to be legally binding. The grant of an easement is no exception. It is not surprising, therefore, that Mr McConnell was charged with producing a first draft of written Heads of Agreement. On 13 March 2019 Mr McNicholas reported the discussion to STDC's Planning and Infrastructure Committee and said that "an agreement is being drafted". On 29 March 2019 he chased Mr Hopkinson and Mr McConnell for progress on the drafting of the proposed agreement. Other internal documents (like the Project Manager's Monthly Progress Report for May 2019) show that while STDC took some steps between March and June, the contractors were informed that the extent of works and an application for planning permission were awaiting formalisation of an agreement with D.
271. By 11 April both sides had realised that an anticipated land deal would eventually render Access Route 1 unusable. As time went by, both D and STDC began to focus more on identifying a suitable alternative route. There was no obvious existing alternative route – each had some issue such as a height restriction which meant they were not as desirable to D as Access Route 1.



272. On 17 April 2019 Mr McConnell emailed Mr McNicholas objecting to the fact that STDC's contractors had trespassed onto D's land to erect temporary fencing. STDC dealt with it immediately by instructing its contractors to cease operations and to secure D's land with a Heras fence.
273. At some point before Mr McConnell went on his summer holiday there was a conversation between Mr McConnell and Mr McNicholas. It is likely that something was said in this conversation which encouraged STDC to proceed because by 26 June STDC had confirmed to its contractor that it had approval from D that the work could be commenced and a new application for planning permission could be made. The planning application also referred to agreement having been reached with D for the use of its land. It is also consistent that no complaints were raised by Mr McConnell about the commencement of work on the roundabout which trespassed on its land at any point before its completion on 19 July. It is improbable that Mr McConnell was not fully aware that the roundabout was being built on D's land at this time and certainly there is no record of a protest by him on discovery that the work had been carried out as one might expect if he was not so aware. Although not mentioned in his witness statement, Mr McNicholas believed there had been a call with Mr McConnell where he had agreed STDC could build the footpath on D's land, and if an agreement was not formally concluded, then it would later be removed. Mr McConnell remembered a conversation with Mr McNicholas in which he had said he would turn a blind eye to trespass by STDC as it would be over by the time it was licenced. He thought that was in relation to the trespass, he had complained about in April 2019 but that is mistaken as that trespass ceased immediately there was no need for him to turn a blind eye, or for any licence. I consider it more likely that the conversation was in relation to the commencement of work on the roundabout and that Mr McConnell agreed to turn a blind eye to the trespass in anticipation of an agreement being formalised on alternative access.
274. On 9 July 2019 Mr McConnell emailed Mr McNicholas referring to their earlier conversation and asking whether STDC's solicitors had drafted an agreement yet. His email was marked "Subject to contract" and "Without Prejudice". Further

emails were exchanged, including plans and discussion of proposed routes. However, once the roundabout had been completed on 16 July and later opened with local publicity, progress petered out. After an email on 21 August had gone unanswered, Mr McConnell expressed the view (in internal emails) that Cs were treating the resolution of alternative access as a low priority. He emailed on 5 September 2019 (subject to contract and without prejudice), asserting that STDC had trespassed and was continuing to trespass on D's land without D's consent. Mr McNicholas responded swiftly and apologetically, confirming that STDC was still willing to provide alternative access to D but saying "I consider that we did reach agreement on the proposal for PD Ports to dedicate/donate the small parcel of your land required for construction and adoption of the highway (£3.5 square metres or so), albeit conditional on us following through on the above matter...I feel the actual permanent works on your land were only executed once the agreement had been reached".

275. Further correspondence followed. On Mr McConnell's part, it generally continued to be marked "Subject to Contract" and "Without Prejudice". On 1 November Mr McNicholas sent Mr McConnell proposed Heads of Terms for the provision of alternative emergency access to Teesport. These were not acceptable to Mr McConnell for a number of reasons, and he responded to Mr McNicholas (subject to contract and without prejudice) on 6 November 2019.
276. Matters then seem to have been overtaken by STDC's proposed CPO. Internal emails suggest that Mr McConnell regarded the leverage of a potential objection to the CPO Inquiry as providing a "once in a generation opportunity to formalise rights in our favour". On 12 December 2019 Mr McConnell wrote (subject to contract and without prejudice) primarily about concerns that the proposed CPO might affect D's interests, but in his long email he criticised STDC for its heavy-handed trespass in constructing the roundabout on D's land without any form of permission or consent. Mr McNicholas responded the same day expressing surprise at Mr McConnell's comments about the roundabout. The roundabout, he said, had only been constructed after STDC and D had agreed to the use of its land conditional upon STDC entering into an agreement to preserve the current rights of emergency access/egress to Teesport which D presently benefitted from.

He recognised that he owed Mr McConnell a response on the draft Heads of Terms. On the same day, Mr McConnell pushed back insisting that it was unacceptable for STDC to enter onto its land without consent and that while D had been trying to come to some arrangement with STDC, the draft Heads of Terms did not reflect what had been discussed.

277. By mid-December, STDC had understood that D was threatening to object to the proposed CPO at the proposed CPO inquiry commencing 11 February 2020, if an agreement on alternative access was not put in place. STDC agreed to underwrite D's legal costs in attempting to progress an agreement through solicitors, and in January and February Gowling (for STDC) and Jacksons (for D) engaged on trying to reach agreement. Draft agreements were circulated and commented on. By 5 February, however, D remained unhappy with the proposed alternative route and STDC was unhappy with the extent of reciprocal rights being offered to it in respect of access to South Gare. STDC ceased to engage, possibly because it and its lawyers were preoccupied with the impending CPO inquiry. Initial representations were made by D to the CPO inquiry on 11 February 2023 objecting to the CPO and further representations followed on 17 February 2023.
278. The CPO was confirmed on 29 April 2020. It noted D's concerns, including about alternative access to Teesport, but noted that STDC did not intend to remove any existing rights of access to D's land by the CPO. It observed that that was "every reason to suppose that [D's] concerns can be overcome by further negotiation" and D's representation did not represent a reason for failing to confirm the CPO.
279. After D's late representation in the CPO relations between D and STDC deteriorated further. Until the CPO inquiry neither STDC or D were concerned to establish whether or not D had a legal right of alternative access to Teesport. The "agreement" for the dedication of part of D's land in return for formalising an agreement on alternative access was not dependant on D having pre-existing legal rights. I do not accept Mr McNicholas' evidence that he had always assumed that D would at some stage in the formalisation process prove their existing rights. This is not supported by the contemporaneous documentation. There is no record of that requirement in the documents, and it was never pursued by STDC. There

is only reference to formalising the consensual arrangements for access which D had enjoyed with STDC's predecessor. I observe there was little advantage to D in and a formal agreement as to access if D were to have to prove it was already entitled to the rights.

280. Once D made its late representation in the CPO expressing concern that its legal rights were affected by STDC's proposed CPO, focus was brought to bear on what legal rights D actually had. By 16 July 2020, Mr Musgrave had been briefed on the position, and took the view that if D had no legal rights, then a considerable price could be extracted, as the cost of providing D with alternative access. By 9 September 2020, Ms Gillespie on behalf of STDC was saying in correspondence to Brookfield, D's owners, that D had no legal rights of prescription to alternative access, but STDC was willing to negotiate the grant of rights of alternative access on commercial terms. In October 2020, Mr Booth called Mr Hopkinson to ask him to step down from the LEP. This was because TVCA/STDC believed that Brookfield was going to sell D and that the access rights provided TVCA/STDC with enormous leverage to buy D at a discount and "flip it" later a higher value. I prefer Mr Hopkinson's evidence as to this conversation to Mr Booth's evidence. Mr Hopkinson was shocked and offended by the conversation and I am not surprised he remembers the gist of it, which is supported by his contemporaneous manuscript notes of the call and his dictated note of it a few days later. Mr Booth had made no notes, had little specific recollection, and I formed the view that Mr Booth is now embarrassed by this conversation being resurrected and the things he is said to have said. I do not accept his denial of the statements attributed to him in Mr Hopkinson's notes.

### *Discussion*

281. I am prepared to accept that there was an assurance on 5 March 2019 by Mr McNicholas that in exchange for the right to build the roundabout partly on land belonging to D, STDC would grant D an alternative right of emergency access to and egress from Teesport.
282. I do not accept that it was reasonable for D to rely on that assurance. The assurance was a statement of what STDC was willing to sign up to in a formal

agreement. Although the meeting was not expressed to be either without prejudice or subject to contract, none of the participants to the meeting thought that binding obligations had arisen, and they all knew and expected that it would be subject to the drawing up and execution of a formal legal document. They also knew that that until such an agreement was drawn up either side could withdraw from the agreement. It is clearly not reasonable to rely on a conditional assurance which can be withdrawn: *Cobbe* at [25]. Nor did the assurance become unconditional when STDC began constructing the roundabout on D's land. They did so knowing that they were doing so at their own risk, if the parties were not able to finalise an agreement. Throughout the rest of 2019 Mr McConnell maintained D's strict legal rights, and that STDC was at risk as it had committed a trespass. At no point was it asserted that D had fulfilled its part of the bargain and STDC's assurance was now binding on it. Instead, Mr McConnell made clear the matter was still subject to contract and the alleged trespass was used as leverage for the conclusion of a written agreement.

283. I also do not accept that D did rely on that assurance. It was D who was maintaining throughout 2019 that no obligations had arisen from the 5 March 2019 meeting. Mr McConnell was at pains to mark most of his emails as subject to contract and without prejudice and from August 2019 he consistently maintained that STDC had built the roundabout on D's land without D's permission and that it constituted a trespass. Nor could D clearly enunciate what acts or omissions it had taken in reliance on the assurance.

284. There is therefore no detrimental reliance which could feed an equity so as to give rise to an estoppel. It is true there is a roundabout that is built partly on its land, but the building of the roundabout did not affect D's ownership of its land or its legal right to assert that this was a trespass, which is the ordinary remedy provided by the law for such wrongful action. It is also asserted that D has now lost the bargaining position it would have had before the roundabout was built. D has lost its bargaining position because it allowed STDC to build the roundabout, albeit at STDC's own risk, and failed to assert any of the legal rights available to it as the landowner to stop STDC doing so.

*Conclusion*

285. It follows that D's claim based on proprietary estoppel fails.

**L. Concluding remarks**

286. D has established that it is entitled to the following easements:

286.1. a prescriptive right of way along Access Route 1 across the South Bank for general access and egress not including haulage;

286.2. a prescriptive right of way along Access Route 1 for emergency access and egress from Teesport for all vehicles when the Tees Dock Road is impassable;

286.3. a right of way across the STDC parties' land at Redcar to access Redcar Quay for the purpose of using Redcar Quay as a quay where the primary system of loading and unloading does not generally require road access;

286.4. a prescriptive right of way along Access Route 6 for all purposes;

286.5. an express right of way along a now defunct route under the Swan Hunter Conveyance

286.6. An express right of way from the Rhombus to the Tees Dock Road under the 1964 Deed.

287. D has established a trespass to its land by the footpath to the roundabout, but its claim based on a proprietary estoppel fails. D's claim that it has further rights over Access Route 1 under the 1964 Deed pursuant to s. 62 Law of Property Act 1925 is not successful. D's claim that it has an express or implied right of way for all purposes along Access Route 6 arising from the 1891 Deed, the 1925 Deed and the 1974 Conveyance also fails.

288. There will be a further hearing listed in due course to deal with the form of order, costs, applications for permission to appeal and any other matters consequential upon this judgment.

# Plan 025

## Important

This is a layered PDF and intended to be viewed digitally, there are layers which may be turned on or off as required.

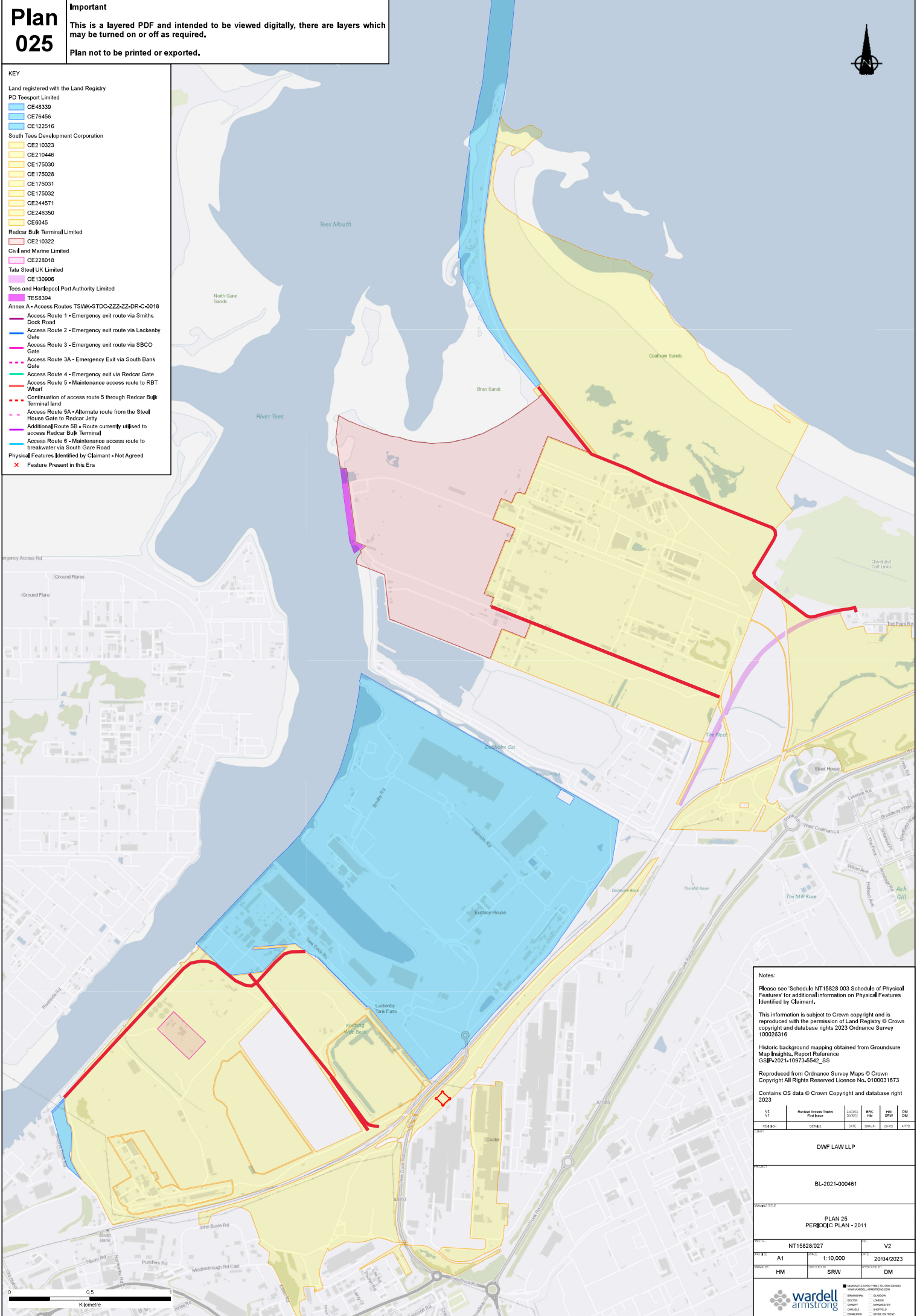
Plan not to be printed or exported.



### KEY

#### Land registered with the Land Registry

- PD Teesport Limited
  - CE48339
  - CE76436
  - CE122516
- South Tees Development Corporation
  - CE210323
  - CE210446
  - CE175030
  - CE175028
  - CE175031
  - CE175032
  - CE244571
  - CE245350
  - CE6045
- Redcar Bulk Terminal Limited
  - CE210322
- Civil and Marine Limited
  - CE228018
- Tata Steel UK Limited
  - CE130906
- Tees and Hartlepool Port Authority Limited
  - TES8394
- Annex A - Access Routes TSWK-STDC-ZZC-ZZ-DR-C-0018
  - Access Route 1 - Emergency exit route via Smiths Dock Road
  - Access Route 2 - Emergency exit route via Lackenby Gate
  - Access Route 3 - Emergency exit route via SBCO Gate
  - Access Route 3A - Emergency Exit via South Bank Gate
  - Access Route 4 - Emergency exit via Redcar Gate
  - Access Route 5 - Maintenance access route to RBT Wharf
  - Continuation of access route 5 through Redcar Bulk Terminal land
  - Access Route 5A - Alternate route from the Steel House Gate to Redcar Jetty
  - Additional Route 5B - Route currently utilised to access Redcar Bulk Terminal
  - Access Route 6 - Maintenance access route to breakwater via South Gate Road
- Physical Features Identified by Claimant - Not Agreed
  - Feature Present in this Era



**Notes:**  
Please see Schedule NT15828 003 Schedule of Physical Features for additional information on Physical Features Identified by Claimant.

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V2	Revised Access Route	2023	SEC	PM	PM	DM
REVISED	DATE	DATE	DATE	DATE	DATE	DATE

DWF LAW LLP

BL-2021-000461

PLAN 25  
PERIODIC PLAN - 2011

DATE	SCALE	DATE	DATE
NT15828/027	1:10,000	V2	20/04/2023
A1	SRW	DM	



Schedule of Rights Right Claimed  
Reference

Dropped? Judgment

Summary of Outcome

**Rights of Way to and from South Gare (Access Route 6)**

B.1.	Express right of way granted by deeds dated 14 July 1925, 7 May 1891, and 19 December 1974	No	STDC Successfully defended	The Court did not agree with PDT that the relevant land ownership position was clear enough to support their proposition that Dorman Long was a competent grantor or that the benefit of the relevant rights of way could benefit the TCC and so PDT as a successor in title. 57 - 103 & 287
B.2.	Right to pass and repass with or without vehicles, plant and/or equipment for all purposes along the land forming part of Access Route 6 granted by conveyance dated 19 December 1974	No	STDC Successfully defended	The Court considered that the 1974 Conveyance was limited and discrete, purely focusing on the conveyance of the land, and given the deliberate drafting it could not be said that there was an implied intention to grant a right of way over the diverted route. 91 - 101 & 287
B.3.	Right of prescription over Access Route 6	No	A prescriptive right of way along Access Route 6 for all purposes	The Court was satisfied that there had been open use of this route for access to the lighthouse and breakwater and associated facilities from 1974 to the date of trial 164 - 182 & 286.4

**Rights of Way to and From the Redcar Jetty (Access Route 5)**

C.1.	Rights implied into the conveyance of 26 May 1971 by way of Section 62 and/or Wheeldon v Burrows	29.09.2023	Dropped Before Trial	N/A
C.2.	Right implied into the 1971 Transfer to pass and repass with or without vehicles for all purposes across such of the Private Roadways as identified	No	A right of way along Route 5 for use as a quay where the primary system of loading and unloading does not generally require road access	The Court concluded that there was an implied right of way across the STDC parties' land at Redcar to access Redcar Quay as a quay where the primary system of loading and unloading does not generally require road access and that road access was necessary for its ordinary use as a quay. 110 - 118 & 286.3
C.3.	Right of access with or without vehicles for the purposes of exercising the right to use the Redcar Jetty in accordance with terms of Lease dated 18 July 1995	No	Not determined.	Judge did not determine as he had granted a right at C2 above. 124
C.4.	Rights obtained by prescription over various routes to the Redcar Jetty	29.09.2023	Dropped Before Trial	N/A

**Rights of Way to and from Teesport (Access Route 1)**

D.1.	Access Route 1 by Prescription	No	Prescriptive right of way along Access Route 1 across the South Bank for general access and egress not including haulage and for emergency access	The Court was satisfied on the evidence that between 1953 (when route 1 was completed) until 1997/9 there was open and continuous use of Route 1 for access and egress to land at Teesport for all purposes except for haulage for which there was no evidence. 183 - 240 & 286.1. The Court was satisfied on the evidence that between 1963 and 2002 there was use of Route 1 for emergency access when Tees Dock Road was flooded. 241 - 246 & 286.2
	Access Route 3A by Prescription	29.09.2023	Dropped Before Trial	N/A
	Private Roadways by Prescription	29.09.2023	Dropped Before Trial	N/A
D.2.	Rights obtained by proprietary estoppel across Claimant's land with or without vehicles for emergency access	No	STDC Successfully defended	The Proprietary Estoppel claim failed as (1) Whilst the Court accepted there had been an assurance they did not consider it reasonable for PDT to rely on that assurance (2) The Court did not in any event consider that PDT did rely on the assurance and (3) accordingly there was no detrimental reliance that could give rise to an estoppel. 261 - 285
D.3.	Swan Hunter Right of Way	No	An express right of way along a now defunct route under the Swan Hunter Conveyance	The Court considered that whilst the route had ceased to have utility, they did not consider the delay in asserting the right to be sufficient for refusing a declaration given the 1946 conveyance created a valid and binding easement over the identified route. 125-130 & 286.5
D.4.	Rights implied to 1955 Deed by Section 62 and/or the rule in Wheeldon v Burrows to pass and repass with or without vehicles for all purposes across such of the Private Roadways as identified.	29.09.2023	Dropped Before Trial	N/A
D.5.	Pass and repass to obtain access and egress to and from the land conveyed by the 1964 Deed of Exchange with or without vehicles over PDT's 1964 Right of Way (part of Access Route 1).	No	An express right of way from the Rhombus to Tees Dock Road.	The parties accepted that this express right existed, but it was conceded by PDT that the extent of the land benefitted was not the whole of Teesport as they had pleaded but just the Rhombus land. 131 - 136 & 286.6
D.6.	Rights implied into the 1964 Deed by section 62 across Access Route 1 from Smith's Dock Road to the entrance point to the 1964 Parcel	No	STDC Successfully defended	The Court considered it had no evidence of use of Access Route 1 that employees or visitors of Shell and ICI used Access Route 1 from Smiths Dock Road to access the Rhombus and so failed to discharge the burden of proving the claim 137 - 145
	Rights implied into the 1964 Deed by the rule in Wheeldon v Burrows	29.09.2023	Dropped Before Trial	N/A

**Miscellaneous Rights Benefitting All or Part of the Defendant's Land and/or Burdening the Claimant's Land**

E.1.	Rights of access over all and any routes existing at any time in respect of certain parcels of land to access to discharge its obligations under sections 47-48 of the Tees Conservancy Act 1858.	29.09.2023	Dropped Before Trial	N/A
E.2.	Rights to pass or repass along any roads over the burdened land to the extent it is necessary or expedient for the reclamatio or future enjoyment of adjoining foreshore land and/or to connect with roads constructed on the adjoining land or foreshore	29.09.2023	Dropped Before Trial	N/A