

## **Acquisition of Land at South Tees Development Corporation Site**

### **Overview**

STDC Board on 15<sup>th</sup> December approved a proposal to acquire the Tata land and set up a wholly owned Special Purpose Vehicle to own the land on its behalf.

This decision is a Referral Decision in accordance with its Constitution and as such needs to be referred to TVCA for ratification.

The relevant Board Papers are included as an Annex to this Appendix for reference.

### **Decision**

TVCA is requested to approve the following:

- The acquisition of the Tata land as a Referral Decision;
- The ability of STDC to set up an SPV as a Referral Decision; and
- The funding of the acquisition as part of the Investment Plan.

*Please note that elements of this document have been redacted as they contain exempt information as defined by paragraph 3 of schedule 12A of the Local Government Act 1972.*

# ANNEX

## South Tees Development Corporation

Extraordinary Board Meeting 1.19  
15 January 2019

### Tata land acquisition

#### PURPOSE

1. This paper updates the Board on the detail of the Tata land acquisition deal and seeks approval to acquire the land.

#### Recommendations

2. The Board are recommended to:
  - a) Agree to the purchase of Tata land at a cost of [REDACTED] (including SDLT);
  - b) Agree to submit this as a referral decision to the TVCA Cabinet as per the Constitution; and
  - c) Make application to the TVCA Cabinet for funds to make this purchase, including an allocation to cover the cost, over 10 years of the operation and maintenance of the Tata liabilities.
3. The Board are asked to note the £14m commitment from central Government to support the redevelopment of the Prairie site as phase one of the development which will allow remediation and site preparation for initial investors to start early in 2019.

#### OVERVIEW

4. STDC is acquiring the Tata land (contract at **Annex A** with a range of appendices) as part of the delivery of a wider project to regenerate the former South Tees steelworks site (which also comprises sites in the ownership of, amongst others, SSI) and deliver on the Master Plan strategy for growth. **Annex B** displays the ownership site plan and photos of the land to be acquired.
5. All the Tata land is within the STDC boundary which has been designated as a Special Economic Area (to take effect before the 1 April on conclusion of the parliamentary process). This land acquisition is a necessary part in the development of the site as a whole, in line with national, regional & local strategic economic plans. The site cannot be fully and efficiently developed without it.

#### DETAILS OF THE PURCHASE

6. The structure of the deal for the acquisition of the site has developed over time. The original proposal involved the site being drawn down in phases over a period of approximately two years, with a headline purchase price subject to reduction based upon adverse ground investigation results.
7. That original structure has been superseded by what has now been agreed, namely an unconditional acquisition of the total Tata land within the STDC boundary at a lower total

fixed purchase price. Details of the deal can be found in **Annex A** and its various appendices:

- Annex A - Deed of agreement for sale
- Appendix 1 – TR5 doc - transfer of portfolio or titles
- Appendix 2 – TR1 assignment of seller lease
- Appendix 3 – assignment of shared services contracts
- Appendix 4 – Assignment of benefit of unregistered 3<sup>rd</sup> party agreements
- Appendix 5 – Deed of assignment of rent arrears
- Appendix 6 – data room including list of everything included in contract – not complete until point of sale – not circulated with these papers.
- Appendix 7 – Plans of unregistered land
- Schedule 7 – Report on occupational interests and 3<sup>rd</sup> party agreements summary
- Womble Bond Dickinson Report on Contract for sale and purchase

#### **Cost of the deal**

8. The cash cost of the deal is [REDACTED], and a potential requirement for [REDACTED] in operational and maintenance costs over the next ten years. These sums will be paid back by STDC when it is able to do so and after it has begun to return a profit.

#### **What is included in the deal**

9. All the Tata land within the STDC boundary (**see Annex B** maps and photos); a range of liabilities including shared services contracts (Appendix 3), unregistered 3<sup>rd</sup> party agreements (Appendix 4); assignment of rent arrears (Appendix 5); unregistered land (appendix 7) and occupational interests (Schedule 7). While there has been detailed analysis undertaken of the potential management and maintenance costs to be incurred in acquiring the Tata land, these were assessed on a gross basis intentionally without any recognition of revenue opportunities that would flow from the lease and easement agreements that we would take over as landlord. This revenue from such arrangements has been assessed as being potentially in the region of [REDACTED].
10. There are 4 parcels of land within Tata ownership over which SSI has an option until 2023. This is not a barrier to purchase of the Tata land and further discussions are ongoing about the option. This will be explained in detail at the meeting.

## South Tees Development Corporation

Extraordinary Board Meeting 1.19  
15 January 2019

### Setting up a Special Purpose Vehicle

#### Purpose

3. This paper seeks Board approval to establish the parameters to set up Special Purpose Vehicle(s) (SPV[s]) including one immediately to enable STDC to purchase the Tata land. The key benefits being that an SPV is a Limited Liability Co, with the ability to buy, sell, borrow in a standalone vehicle. It will also resolve the current situation regarding VAT that STDC is facing.

#### Recommendations

4. The Board are recommended to:
  - a) Agree to the broad parameters within which STDC can set up SPV's as required to purchase and develop land;
  - b) Agree to the details for the functions of the first SPV which will purchase Tata land;
  - c) Approve the shareholding of the SPV;
  - d) Approve the Directors of the SPV;
  - e) Agree to the development of Articles of Association for the SPV;
  - f) Agree to the development of a Shareholders Agreement;
  - g) Agree to the development of a Service Level/Management Agreement to enable STDC staff to deliver their day to day functions in relation to the SPV; and
  - h) Make application to TVCA Cabinet to confirm the setting up of the SPV(s).

#### Details

5. The briefing note at Appendix A was prepared by Womble Bond Dickinson to support STDC in putting arrangements for creating SPV's in place. It is likely that STDC will develop a range of SPVs with different functions eg purchase and development of "clean" land and purchase and management of "dirty" land. **The Board is recommended to agree to the broad parameters outlined in the briefing note in setting up SPVs – recommendation 2a.**
6. In determining the broad parameters it should also be noted that action has already been taken regarding setting up the first SPV, incorporated at Companies House as South Tees Developments Ltd, to be used to undertake the Tata land acquisition. The Board also need to be aware that the operation of the SPV will be seamless and, in practical terms, it will be business as usual on the ground. It will not be an entity going off unguided on its own account and without reference. From a practical point of view the Board will not notice any difference from the way it currently operates.
7. This first SPV will enable STDC to purchase the Tata land and to then take responsibility to direct the development of that land. **The Board is recommended to agree to the details for the functions of this SPV recommendation 2b.**
8. The SPV, as a separate legal entity, will be a private company limited by shares and the sole shareholder will be STDC but this does not mean that STDC would be liable for the SPV's debts and liabilities (Para 4.3.1 refers), although STDC is unlikely to walk away from a wholly owned subsidiary. The SPV would have its own corporate structure and

accounting and reporting arrangements. **The Board is recommended to approve the shareholding for the SPV – recommendation 2c.**

9. It is proposed that in the first instance that Paul Booth be the sole Director of this SPV whilst detailed arrangements are put in place for the Board, Directors and governance arrangements, including a Company Secretary. These arrangements are likely to include identification of one or two non-executive Directors for the Board of the SPV. **The Board is recommended to approve Paul Booth as the sole Director of this SPV whilst further arrangements are put in place – recommendation 2d.**
10. Articles of Association for the SPV will be developed setting out the objectives of the company eg land acquisition, development and leasing of land etc with reference to the Constitution of STDC. **The Board are asked to recommend the drafting of the Articles of Association – recommendation 2e.**
11. It is proposed that a Shareholders Agreement be put in place to restrict the decision-making powers of the SPV to a set of reserved matters and therefore aid its governance. **The Board is recommended to approve the development of a Shareholders Agreement for the SPV – recommendation 2f.**
12. A Service Level/Management Agreement also needs to be put in place to enable the employees of STDC to carry out their roles in relation to any assets owned by the SPV. **The Board is recommended to approve the development of a Service Level/Management Agreement for the SPV – recommendation 2g.**
13. Due to the nature and function of the SPV(s) this constitutes a referral decision to TVCA Cabinet. **The Board is recommended to approve the submission of a proposal to set up SPVs to TVCA Cabinet – recommendation 2h.**
14. One of the actions required in parallel with setting up the SPV is appropriate establishment of the position regarding VAT (Schedule 3 of Appendix A refers). This will be for the management team, in collaboration with advisors, to clarify as a priority.

**Paul Booth, Interim Senior non-Executive Officer**

## APPENDIX A

### BRIEFING NOTE TO SOUTH TEES DEVELOPMENT CORPORATION

8 JANUARY 2019

#### 1. INTRODUCTION

- 1.1 This briefing note has been prepared by Womble Bond Dickinson (UK) LLP (**WBD**) and is strictly private and confidential, for the sole attention of the board of South Tees Development Corporation (**STDC**).
- 1.2 This briefing note has been prepared at the request of STDC for the purpose of considering the use of a private company limited by shares as a proposed special purpose vehicle (**SPV**) owned by STDC for the acquisition of land from TATA Steel UK Limited (**TATA**) at Redcar (the **TATA Land**) and sites in the ownership of Sahaviriya Steel Industries UK Limited (in liquidation) (**SSI**) at Redcar (**SSI Land**).
- 1.3 This briefing note has not been prepared for any other recipient. If it has been received in error, please do not read any further and return it to WBD or to STDC. WBD does not, in providing this briefing note, accept or assume responsibility for any other purpose or to any other person except as expressly agreed on behalf of WBD.

#### 2. BACKGROUND

- 2.1 The contract for the sale and purchase of the TATA Land (**Contract**) provides for the TATA Land to be transferred by TATA directly to the SPV; however, the obligations and indemnities imposed in the Contract will be guaranteed by STDC.
- 2.2 The relevance and benefit of the SPV is therefore to be assessed not only in the context of the Contract, but also in relation to future negotiations with SSI for the acquisition of the SSI Land by the SPV in respect of which we presume STDC will seek to negotiate the acquisition of the SSI Land by the SPV without the provision of any further guarantees or indemnities by STDC.

#### 3. STEPS SO FAR

- 3.1 **Incorporation:** The SPV has been incorporated at Companies House with the name South Tees Developments Limited.
- 3.2 **Directors:** Currently, the only director is Paul Booth. New directors need to be appointed (their identities are to be confirmed but the current intention is to have the same directors as those in STDC). Each director will need to sign a letter confirming their agreement to be appointed as a director and to comply with the SPV's articles of association. It is envisaged that the new directors will be appointed immediately prior to the SPV acquiring the TATA Land. On request by STDC, we will prepare letters for the director appointments.

#### 4. USE OF AN SPV

##### 4.1 Introduction

- 4.2 The SPV is proposed to be a private company limited by shares. It would be established to acquire the TATA Land and SSI Land. It would also be able to hold other assets, enter into contracts with third parties and generally carry on the business of owning and managing the development of the TATA Land and the SSI Land.

### 4.3 Reasons for using an SPV

The main reasons for using an SPV are:

- 4.3.1 **Limited liability:** STDC would be the sole shareholder of the SPV and, accordingly, STDC's liability to creditors and third parties in respect of the TATA Land, SSI Land and any other assets or liabilities of the SPV would, in general, be limited to the value of the share capital which STDC holds in the SPV. In general, this applies even in the event of insolvency of the SPV. The fact that STDC would own 100% of the shares in the SPV is no reason to attribute the acts or omissions of the SPV to STDC. Therefore, STDC would not be liable to pay for the SPV's debts or liabilities. There are some rare exceptions to this protection which are raised later in this note (see paragraph 4.4.40) but we do not consider any are likely to apply to STDC and the SPV.
- 4.3.2 **Separate legal entity:** The SPV would be a separate legal entity for contracting with third parties, dealing with property, and if necessary suing in its own name and being sued in its own name.
- 4.3.3 **Recognisable structure:** The SPV would be, as a company limited by shares, an easily recognisable entity in all global jurisdictions, which may be of benefit when liaising with grant providers and investors. This should be contrasted with STDC, which, as one of the few mayoral development corporations established by statute, may not be so easily understood by funders and other third parties.
- 4.3.4 **Finance / security:** The SPV could own and hold assets in its own name, and give a floating charge as security for external finance, create charges over future assets such as debts receivable and (depending on the value of the security offered by the SPV) enable finance to be raised without recourse to the shareholder, STDC.
- 4.3.5 **Group arrangements:** As a separate company from STDC, the SPV would provide a clear corporate structure for internal group accounting and reporting.

### 4.4 Points to note in using an SPV

The main points to note in using an SPV, as envisaged in this scenario, are:

- 4.4.1 **Cross indemnities:** We understand that TATA will require cross indemnities to be given by STDC in respect of the TATA Land acquisition, which means that STDC will bear the full risk of liabilities under these indemnities, regardless of the fact that the SPV is used as the acquisition vehicle.
- 4.4.2 **Guarantee from STDC:** TATA requires a guarantee of the SPV's obligations to be given by STDC, with these provisions accordingly having been drafted into the Contract. In terms of the acquisition of the TATA Land, this erodes the benefit of STDC's limited liability through the SPV, to a significant extent and possibly entirely.
- 4.4.3 **Contractual liability for STDC:** The liabilities under the Contract as between TATA, STDC and the SPV, such as environmental liabilities, remain with STDC either directly or by virtue of the guarantee and cross-indemnities referred to above. However, in respect of the SSI Land, if STDC is able to negotiate the acquisition of the SSI Land solely in the name of the SPV, STDC would (subject to the comments at paragraph 4.4.40 below) not be exposed to liabilities arising in connection with

the SSI Land because all of the liabilities in respect of the SSI Land would rest solely with the SPV.

- 4.4.4 **STDC liability as shareholder:** As noted at paragraph 4.3.10 above, there are certain rare circumstances where STDC could incur liability, as the shareholder in the SPV. This is known as "piercing the corporate veil" so that the protection of limited liability afforded by the SPV could be removed. We were asked to comment in this briefing note on circumstances where this may happen, and we have set them out in a high level summary in **Error! Reference source not found.**, but it should be noted that we consider these highly unlikely to apply to STDC.
- 4.4.5 **Director liability:** Whilst the acts or omissions of a director in the ordinary course of business will be the acts or omissions of the SPV, such that the SPV is liable for what the director does or fails to do, there could be circumstances where directors of the SPV incur personal liability. A summary of these is set out in **Error! Reference source not found.** along with commentary on protecting directors from personal liability.
- 4.4.6 **Confidentiality:** There will be a lack of confidentiality on some aspects of the SPV's business. Forms and returns are required to be filed at Companies House in a register which is open to public inspection. Details of directors and of shareholders and audited accounts are all required to be filed annually.
- 4.4.7 **Record-keeping:** All companies are required to take minutes of all proceedings at meetings of directors. While it is not necessary to ensure that every word said is recorded, it is good practice to ensure that, at the very least, the minutes record accurately all resolutions and decisions and contain enough information for the reader to have an understanding of the background to the various decisions. Minutes of meetings of directors must be retained for at least 10 years from the date of the meeting. Failure to do so is an offence committed by every officer of the company who is in default.

## 4.5 Management of the SPV

- 4.5.1 **Constitution and governance:** At STDC's request, we set out specific advice in paragraph 0 of this briefing note on the proposed constitution and governance of the SPV. The points in paragraphs 4.5.2 to 4.5.5 below will assist in setting the background for that specific advice.
- 4.5.2 **Board or sub-committee:** Thought needs to be given to establishing the management team of the SPV and defining the parameters of the team's day to day authority. It could be that having the same board of directors of STDC is desirable. However, for practical reasons, the decision may be taken that the board should be a smaller group of directors than those in STDC, or that a sub-committee of directors be appointed with delegated authority to conduct the day-to-day practical business of the SPV. We comment on these possibilities in more detail below. The route selected will, very likely, depend on the extent to which the SPV is to be a dormant company holding the TATA Land and the SSI Land or is to be active in the development or remediation works (in which case it is likely to need a sensibly-sized practical working group of decision-makers).
- 4.5.3 **Directors:** Appointing the management team of the SPV as a board of directors will give them statutory duties of which they must be aware. These duties are

cumulative and directors must comply with each one that applies to a particular case. We can advise in further detail, if required, but directors' duties can be summarised as follows:

- (a) to act within the company's constitution and only exercise powers for a proper purpose;
- (b) to act in good faith to promote the success of the company;
- (c) to exercise independent judgment (this does not restrict a director seeking informed advice);
- (d) to exercise reasonable care, skill and diligence;
- (e) to avoid conflicts of interest;
- (f) not to accept benefits from third parties; and
- (g) to declare interests in proposed transactions or arrangements with the company.

4.5.4 **Delegation by directors:** The directors of the SPV could delegate to a sub-committee of directors. A number of relevant points arise on this topic, at the outset:

- (a) A director's ability to delegate powers would be regulated by the articles of association of the SPV. Typically, directors can delegate any of the powers which are conferred on them to individual directors or persons or committees but they will always be expected to have a broad overview of the SPV's affairs.
- (b) The following should be considered surrounding the possible delegation to individuals / a committee:
  - (i) what powers may be delegated and upon what conditions; and
  - (ii) what powers have, in fact, been properly delegated by the board, according to a resolution of the board meeting or other decision of the board.
- (c) Directors will be expected to satisfy themselves that delegation is made to an appropriate person who is discharging his functions properly. Directors should ensure that an adequate system of control and supervision is in place for any scheme of delegation. In particular, to be able to show that they have exercised reasonable care, skill and diligence when delegating responsibilities.
- (d) Any delegation of powers by directors can be revoked by the board at any time, either expressly or by the directors as a board assuming the powers previously delegated.

4.5.5 **Conclusion:** The above analysis illustrates that it is essential that the management team of the SPV understands their remit, the basis on which the SPV is to be operated and how the management relationship between them is to be conducted. As noted at paragraph 4.5.1, at STDC's request, we set out specific advice in

paragraph 5 of this briefing note on the proposed constitution and governance of the SPV.

## 5. CONSTITUTION AND GOVERNANCE OF THE SPV

5.1 **Articles of Association:** The articles of association of the SPV will be the main document which governs the SPV's constitution. In the articles of association, it will be possible to set out an agreed set of objects for the company. This is opposed to allowing the company to undertake any general business. As part of the object, it will be possible to include reference to STDC's constitution so that the SPV can only carry out acts that are consistent with STDC's constitution. The situation of conflicts of interest between directors of both STDC and the SPV can also be addressed in the articles.

5.2 **Shareholders' Agreement:** In addition to the articles of association, a shareholders' agreement could be put in place for the governance of the SPV to contain restrictions on the decision-making powers of the directors of the SPV. This would have the benefit of being a private document, unlike the articles of association which must be filed at Companies House and so are open to inspection by the public. A shareholders' agreement would have the benefit of clearly setting out the restrictions on the board of the SPV and can include the restricted matters set out in paragraph 5.3 below.

5.3 **Restriction on directors decision-making:** The main restriction on the decision-making powers of the directors of the SPV which we would recommend is a set of reserved matters, on which the directors must obtain the consent of STDC as the shareholder. We can provide a full sample list of such matters, but for illustration purposes we set out some examples below:

5.3.1 borrowing any funds or borrowing funds over a certain prescribed figure;

5.3.2 securing any of the assets of the SPV;

5.3.3 making any loan or giving credit to a third party;

5.3.4 disposing of any assets of the SPV;

5.3.5 acquiring any new assets for the SPV or taking on any leasehold interest or licence over land;

5.3.6 approving any dividend by the SPV; or

5.3.7 entry by the SPV into any contracts over a specified value.

5.4 **Service Level Agreement / Management Agreement:** To ensure that the executive employees (non-directors) of STDC can still carry on their day to day positions in relation to any assets which the SPV owns (as if they were owned by STDC), we suggest that a service level agreement or a management agreement is put in place to allow these employees to carry out these roles.

## 6. OTHER RELEVANT POINTS

A number of further relevant points arise in contemplating the use of the SPV:

6.1 **Contracts, Licences, Consents etc:** All directors, employees or other representatives who enter into contracts on behalf of the SPV or obtain licences, consents, permissions and the

like, which relate to the TATA Land and/or the SSI Land, should clearly understand that the SPV must be the named entity and not STDC. Likewise, any contracts in the name of STDC should be assigned or novated and any licences, consents or permissions and the like should be transferred to the SPV.

- 6.2 **South Tees Site Company (STSC):** The interaction with STSC should be clarified, perhaps in an agreement between STSC and the SPV, on matters relating to the planned site management of the TATA Land and the SSI Land.
- 6.3 **Tax treatment:** a note on the VAT issues pertinent to the use of the SPV is set out in Schedule 3.

We would welcome the opportunity to discuss any of the points raised in this briefing note, or to provide more detail on any of them, if STDC wishes us to do so.

## Potential shareholder liability of STDC

### **1. INTRODUCTION**

- 1.1 In limited circumstances the Courts are willing to disregard the separate legal personality of the company and look beyond the company to the shareholders ("piercing the corporate veil"), holding them responsible for a liability of the company.
- 1.2 There are also limited statutory exceptions to limited liability of shareholders, mainly under the Proceeds of Crime Act 2002 (**POCA**), as described in paragraph 3.
- 1.3 In other circumstances, the Courts can look behind the company for a specific purpose, as described in paragraph 4.

### **2. PIERCING THE CORPORATE VEIL**

- 2.1 "Piercing the corporate veil" means looking beyond the separate personality of a company to fix liability on the shareholder(s).
- 2.2 The principle could be applied to STDC if it were under an existing legal obligation or liability or subject to an existing legal restriction, which STDC deliberately evades or whose enforcement it deliberately frustrates, by use of the SPV.
- 2.3 The Court may then pierce the corporate veil solely for the purpose of depriving STDC of the advantage which it would otherwise have obtained by the SPV's separate legal personality. From our understanding of the operation of STDC and the intended use of the SPV, it seems unlikely that this will apply.

### **3. POCA**

POCA provides a statutory basis for piercing corporate the veil where criminality is involved. Again, from our understanding of the operation of STDC and the intended use of the SPV, it seems unlikely that this will apply.

### **4. "PEEPING" BEHIND THE VEIL**

The following examples are not about piercing the veil, but looking behind the company's personality for a specific purpose. They are mentioned here for convenience but none would seem to apply to the SPV and STDC:

- 4.1 The production of group accounts.
- 4.2 The transfer of control of a company under the TUPE Regulations.
- 4.3 European competition matters pursuant to certain Articles of the Treaty on the Functioning of the European Union.
- 4.4 Third party costs orders in relation to costs that a company is liable to pay under Civil Procedure Rules.

- 4.5 Looking behind the structure of the company to identify the true position in relation to its activities, such as the centre of main interests for insolvency purposes or the place of business for jurisdiction purposes.
- 4.6 Permitting shareholders to petition the court on grounds of unfair prejudice.