

DATE: 22nd JUNE 2017

**LEGAL OVERVIEW REPORT OF A
CERTIFICATE OF TITLE
IN RELATION TO THE DERA SITE BINCLEAVES, NEWTONS ROAD, WEYMOUTH**

CMS Cameron McKenna Nabarro Olswang Services Ltd.
Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
F +44 20 7367 2000
JOGU/AWR/155370.0001

To: Cairn Special Opportunities Credit Master Fund Limited, Proplend Security Limited and Proplend Limited and each successor, transferee and assignee under the Loan Document (as defined below) (the “Addressees”)

Date: 22nd JUNE 2017

Dear Sirs

Funding of the acquisition of the Property by the Company

1. DEFINITIONS

“**Certificate of Title**”: the certificate of title in the form of the CLLS Certificate of Title 7th Edition (2016 Update) prepared by the Certifier and addressed to the Addressees in respect of the Property for which it has been agreed that a Certificate of Title will be provided prior to closing;

“**Certifier**”: Glovers Solicitors LLP;

“**Charge**”: the legal charge over the Property to be entered into in favour of the Chargee;

“**Chargee**”: Proplend Security Limited (Company Registration Number 08620117);

“**Company**”: Fortuneswell Investments No. 3 Ltd (Company Registration Number 9836893);

“**Council**”: Weymouth and Portland Borough Council;

“**Listed Building Consent**”: the listed building consent reference WP/15/00875/LBC dated 22 June granted by the Council for the ‘demolition of all existing curtilage buildings within former Qinetiq Bingleaves site forming part of Bingleaves Groyne’;

“**Loan Document**”: the facility agreement to be made between the Company (as borrower) and Cairn Special Opportunities Credit Master Fund Limited (as lender) providing for the loan referred to in it, which loan is to be secured by among other things the Charge;

“**Plan 1**”: plan 1 appended to the Certificate of Title;

“**Planning Permission**”: the planning permission reference WP/15/00833/FUL dated 1 August 2016 granted by the Council for the ‘erection of Care Village comprising 195 Supported Living Units, a 60-bed care home, 34 respite hotel suites, medical support facilities, common rooms, leisure facilities and offices, a commercial restaurant, museum, café and new promenade together with improved coastal defence measures, gardens, and underground parking’;

“**Planning Report**”: the planning report attached to the Certificate of Title as appendix 1;

“**Property**”: land and buildings known as DERA Site, Bingleaves, Newtons Road, Weymouth (as detailed in Schedule 1) to be charged pursuant to the Charge as part of the Transaction;

“**Seller**”: QinetiQ Limited (company registration number 03796233);

“**Transaction**”: the funding of the acquisition of the Property by the Company; and

“**Valuers**”: Colliers International Property Consultants Limited.

2. OVERVIEW

2.1 We have prepared this overview report for you in connection with the Transaction.

2.2 We have undertaken certain legal due diligence in relation to the Property consisting only of a review of the final version of the Certificate of Title (incorporating the Planning Report). We

have not looked at any of the property documents, deeds or searches themselves, nor conducted any separate or independent investigations, searches or enquiries and this overview report makes no comment on whether the Property has the benefit of all rights necessary for the proposed development thereof. We have not inspected the Property and express no view on the physical state or condition of the Property or its history or value.

- 2.3 In this overview report, we set out the most significant issues that we consider to be important to you when considering the Property as potential security in connection with the Transaction. We have concentrated only on matters that might have a materially adverse effect to security or which may have a materially adverse effect on value (it being accepted that we are not expert valuers, so our estimate of any valuation impact is necessarily inexact).
- 2.4 This overview report is not a summary of all disclosures made in the Certificate of Title and does not obviate the need to read the Certificate of Title itself.
- 2.5 On completion we will have a solicitors' undertaking from the Certifier that the Charge will be registered at the Land Registry against the freehold.
- 2.6 We have not considered any environmental or building survey and these matters are not covered by the Certificate of Title. You therefore need to satisfy yourselves separately on such issues.

3. RELIANCE

- 3.1 This report is given for the sole benefit of the Addressees. This report may not be disclosed by the Addressees to anyone else and may not be relied upon by any other person for any purpose and we accept no responsibility for any such reliance.
- 3.2 The Addressees acknowledge that our aggregate liability to all the Addressees is no greater than the liability we would have had if the Addressees were a single person.

4. CERTIFICATE OF TITLE

- 4.1 The Company has instructed the Certifier to prepare the Certificate of Title which is addressed to you and on which you are entitled to rely in connection with the Transaction.
- 4.2 The Certificate of Title confirms that (other than where we set out in this overview report) subject to the disclosures made in the Certificate of Title:
 - 4.2.1 subject to due registration at the Land Registry of the transfer of the Property from the Seller to the Company, the Company has good and marketable title to the Property and is solely legally and beneficially entitled to the Property;
 - 4.2.2 neither the Certifier nor the Company knows of any reason why the Chargee should not be registered as proprietor of the Charge;
 - 4.2.3 all consents of third parties required before the Property can be charged to the Chargee by way of a legal mortgage or fixed charge have been obtained and are not subject to onerous or unusual conditions; and
 - 4.2.4 the Property is registered at Land Registry with freehold title absolute, with the Seller named as the registered proprietor. The Company will be named as registered proprietor following registration of the transfer from the Seller to the Company at the Land Registry.
- 4.3 Paragraph 3 of the Certificate of Title confirms that a copy of the final draft of the Certificate of Title has been sent to the Valuers and that they have been requested to confirm to you in writing

that the Property is the property valued in their valuation report and that either they have taken the final draft of the Certificate of Title into account in making their valuation or there is nothing in the Certificate of Title which causes them to alter their valuation report. We recommend that you do not proceed with the transaction until you have received the written confirmation from the Valuers.

- 4.4 You have agreed that the total aggregate liability of the Certifier for any damage, loss, cost, claim or expense arising out of, or in connection with the Certificate of Title shall not exceed the total sum of £12,000,000 (which does not include legal or other fees, costs or expenses relating to any such claims). You have also agreed that any legal proceedings arising from or in connection with the Certificate of Title must be formally commenced within 3 years from the date when the party bringing the proceedings becomes aware of the fact, matter, event or circumstance giving rise to the liability alleged and, in any event, not later than 5 years after the date of the Certificate of Title.

5. MATERIAL ISSUES REVEALED IN THE CERTIFICATE OF TITLE

- 5.1 Part of the Property (tinted blue on Plan 1) is subject to covenants and stipulations contained in an indenture of a conveyance dated 4 May 1894 made between (1) Charles Brody Forman (2) Charles Joseph Morrison Wanton and Richard Preston and (3) William Hetley (the “**1894 Conveyance**”). The Land Registry does not hold a copy of this conveyance, and so the content of the covenants and stipulations is unknown. It also cannot be ascertained who now has the benefit of these. The Seller has confirmed that it has not been notified of any breaches of any of these unknown covenants and stipulations, however we would advise that indemnity insurance is obtained to cover the risk of anybody enforcing these against the Company and/or the Chargee. The Company has agreed to this, and the terms of the proposed indemnity insurance policy are summarised below in paragraph 5.15.
- 5.2 Part of the Property (tinted yellow on Plan 1) is subject to a yearly rent charge of one shilling (if demanded) pursuant to a conveyance dated 1 May 1901 (the “**1901 Conveyance**”) made between (1) The King's Most Excellent Majesty (2) The Board of Trade and (3) The Great Western Railway Company. The Seller has confirmed that the rent charge has never been demanded. If the rent charge is unpaid for 21 days after demand, or if there is any breach of any of the covenants listed in paragraph 5.4 below, the King's Majesty (or its heirs or successors) may re-enter the land tinted yellow and "put an end to the grant hereby made". Again, indemnity insurance should be obtained to cover the risk of anybody demanding the rent charge. The Company has agreed to this, and the terms of the proposed indemnity insurance policy are summarised below in paragraph 5.15.
- 5.3 The land tinted yellow on Plan 1 conveyed by the 1901 Conveyance expressly excluded any beds, seams or veins of coal or stone or any metallic or other mineral substance, or any mines and quarries thereof pursuant to the Crown Land Act 1866. Though this Act has now been repealed, indemnity insurance should be obtained to cover the risk of anybody exercising any rights to any such substances or claiming that development of the Property is a trespass on these. The Company has agreed to this, and the terms of the proposed indemnity insurance policy are summarised below in paragraph 5.15.
- 5.4 The 1901 Conveyance also contains a number of covenants which bind the land tinted yellow on Plan 1, and which can be summarised as follows: -
- 5.4.1 not to erect or place on the land tinted yellow any building or work without obtaining the written consent of the Board of Trade;

- 5.4.2 in the event that such consent is given, to erect, place and construct the building or work in accordance with any plans, under any instructions and/or regulations approved in writing by the Board of Trade;
- 5.4.3 not to alter or extend any building or work consented to by the Board of Trade without the Board of Trade's further approval;
- 5.4.4 not to place any materials on the land tinted yellow or do anything on it which may in the opinion of the Board of Trade prejudice or obstruct navigation, or be injurious to the public interest;
- 5.4.5 to keep the land tinted yellow in a good and proper state of repair and in proper condition free from all defects; and
- 5.4.6 during any period of construction, alteration or extension works on the land tinted tallow and after completion thereof, to exhibit and keep burning every night from sunset to sunrise such lights (if any) as the Board of Trade shall require.

The 1901 Conveyance does not stipulate whether these covenants benefit the Board of Trade's successors.

The 1901 Conveyance stipulates that the King's Majesty (and its heirs and successors) and the Board of Trade may enter onto the land tinted yellow and remove all buildings, works or materials which have become dilapidated or abandoned or which were constructed without the consents or approvals required. The owner of the land tinted yellow must then pay to the King's Majesty (or its heirs and successors) and/or the Board of Trade the expenses incurred by them.

These covenants could have a significant impact on the proposed development of the Property. The Seller has confirmed that it has received no notice of any breach of these covenants. In addition, the Certifier has advised that the Seller's opinion is that the covenants are unenforceable due to the principle of unity of seisin. This principle states that if the freehold interest in the whole of the land burdened by and the whole of the land benefited by a restrictive covenant becomes vested in one person in the same capacity (free from any leasehold or other interest which might have the benefit of the covenant), the covenant will automatically come to an end. Given that unity of ownership is very difficult to verify we cannot comment on this assertion from the Seller (and this is only the Seller's opinion). We would advise for completeness that indemnity insurance is obtained to cover the risk of anybody enforcing these covenants against the Company and/or the Chargee. The Company has agreed to this, and the terms of the proposed indemnity insurance policy are summarised below in paragraph 5.15.

In addition, the land tinted yellow is subject to rights of way and access to and over it in favour of the King's Majesty, his heirs and successors and the Board of Trade by means of any public road, footpath, bridge or other means made or intended to be made. The Certificate of Title confirms that it is apparent the Property is not currently subject to any public rights of way.

- 5.5 Finally, the 1901 Conveyance contains a provision stipulating that if the King's Majesty, its heirs or successors or the Board of Trade wish to acquire the land tinted yellow then the owner of the land tinted yellow is to sell the property to them at a price to be agreed upon (assessed at arbitration if it cannot be agreed). The Certifier confirms in the Certificate of Title that the land tinted yellow was acquired by the Crown pursuant to a conveyance dated 31 March 1919 made between (1) The Great Western Railway Company and (2) The Commissioners for executing the Office of the Lord High Admiral of the United Kingdom of Great Britain and Ireland.

- 5.6 The land tinted pink on Plan 1 was conveyed on 26 August 1901 (the "**August 1901 Conveyance**") subject to all rights of road and other easements as the Commissioners for executing the office of Lord High Admiral had at that time. These rights and easements are unknown, and as such indemnity insurance should be obtained to cover the risk of anybody exercising any unknown rights and having a negative impact on the Property and/or the proposed development. The Company has agreed to this, and the terms of the proposed indemnity insurance policy are summarised below in paragraph 5.15.
- 5.7 Pursuant to a conveyance dated 18 January 1905 made between (1) Arthur Taylor Penny and (2) The Great Western Railway Company any right that Her Majesty the Queen or any person claiming under her or her predecessors might have to the mines and minerals or substances under the land hatched blue was reserved, as was the public right of way over a footpath expressed to be shown by dotted lines on a plan. We have not been provided with this plan. It is possible that any development work to the land hatched blue could constitute a trespass to the mines and minerals thereunder, the remedies in respect of which could either be damages for loss, or an injunction preventing development. The Company has agreed to insure against the risk of any such claim, and the terms of the proposed indemnity insurance policy are summarised below in paragraph 5.15.
- 5.8 Conveyances of the land tinted brown and mauve on Plan 1 dated 4 September 1922 (the "**1922 Conveyance**") and 30 September 1930 (the "**1930 Conveyance**") made between (1) The King's Most Excellent Majesty (2) The Board of Trade and (3) The Commissioners for Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland contain exclusions similar to that contained in the 1901 Conveyance and summarised in paragraph 5.3. The Company has agreed to procure indemnity insurance in respect of these exclusions, and the terms of the proposed policy are summarised below in paragraph 5.15.
- 5.9 The Property is subject to a covenant not to do or permit anything to be done thereon which is likely to result in the subsidence or collapse of any land forming part of the property conveyed by a conveyance dated 17 April 1950 made between (1) The Commissioners for the Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland and (2) The Mayor Aldermen and Burgesses of the Borough of Weymouth and Melcombe Regis (the "**1950 Conveyance**"), which is shown tinted pink and green on Plan 3. This same conveyance provides that in the event of a proposal to erect buildings of a height greater than thirty feet on the land between the road known as Newton's Road and the eastern boundary of the land tinted pink on Plan 3, the purchasers under the conveyance must be provided with plans showing the siting and elevations of such buildings. Due consideration must be given to any objections and representations made in relation to the buildings. The Certificate of Title advises that it is clear from inspection that there are no buildings currently on the Property exceeding 30 feet situated between Newtons Road and the eastern boundary of the land conveyed. A defective title indemnity policy will be placed on risk upon completion to cover this potential liability, and the proposed terms of this are summarised below in paragraph 5.15.
- 5.10 The Certificate of Title states that the Property is subject to rights in respect of a storm water drain granted by a deed dated 17 May 1991 made between (1) The Secretary of State for Defence (2) Bellwinch Homes Limited (3) Bellwinch Plc (4) Shiregables Management Company Limited (5) United Dominions Trust Limited and (6) Wessex Water Services (the "**1991 Deed**"). The Land Registry does not hold a copy of this deed, and so the content of the rights granted is unknown. The Seller has provided a plan (Plan 2) which shows the location of the stormwater drain marked 51426. The Company has confirmed that the presence of the

stormwater drain close to the entrance of the Property will not affect the proposed development pursuant to the Planning Permission, nor will it be affected by the proposed development. This stormwater drain is not adopted. Nevertheless, the Company has agreed to procure indemnity insurance in respect of the unknown rights contained in this deed, and the terms of the proposed policy are summarised below in paragraph 5.15.

- 5.11 Pursuant to a deed dated 12 December 1996 made between (1) The Secretary of State for Defence and (2) Portland Port Limited (as supplemented by a deed dated 22 July 2011 made between (1) the Seller and (2) Portland Harbour Authority Limited, the Property is subject to the following rights: -
- 5.11.1 the right to pass and repass with or without vehicles over the road shown coloured brown on Plan 5, the grantee contributing a fair and proper proportion to the maintenance and repair of this road; and
 - 5.11.2 the right to maintain, enhance, enlarge and upgrade pipes, wires and cables on or under the Property at the date of the original deed serving the 'Breakwater' (meaning the land edged red on Plan 6), subject to various restrictions, the grantee contributing a fair and proper proportion to the maintenance and repair of any pipes, wires and cables.
- 5.12 The local search result procured by the Company dated 9 March 2017 advises that it is the local council's intention to make a tree preservation order on the Property. Tree preservation orders can prevent the cutting or lopping of trees, which may in turn have an impact on development of the Property depending on the location of the protected trees.
- 5.13 The sale of the Property by the Seller to the Company will not be a transfer of a going concern, and as such value added tax will be payable on the purchase price.
- 5.14 There is no Energy Performance Certificate for the Property, on the basis that all buildings thereon have been decommissioned and are no longer used for operational purposes. The buildings contained 15 walled mounted air-conditioning units, which have also been decommissioned. None of these units have been operational or serviced since July 2007.
- 5.15 The Company has agreed to procure a title indemnity policy to address a number of potential risks summarised above. The key terms of the proposed policy are as follows:-
- 5.15.1 The insured is defined as being the Company and future owner(s) of the Property, their lessees and any bank, building society or other similar lending institution holding a mortgage or charge on the Property.
 - 5.15.2 The insurer is Stewart Title Limited (company registration number 2770166).
 - 5.15.3 The policy will exist in perpetuity from the date that it is placed on risk.
 - 5.15.4 The defects insured are:-
 - (a) the unknown covenants and stipulations contained in the 1894 Conveyance;
 - (b) the restrictive covenants, mining/mineral rights, exceptions/reservations and rent charge liability contained in the 1901 Conveyance;
 - (c) the rights and easements specified in the August 1901 Conveyance;
 - (d) the mining/mineral rights and exceptions contained in the 1922 Conveyance and 1930 Conveyance;
 - (e) the provisions contained in the 1950 Conveyance; and

- (f) the unknown rights, covenants and provisions contained in the 1991 Deed.
- 5.15.5 The limit of indemnity on the policy is £82,800,000, which you have confirmed represents the gross development value of the Property.
- 5.15.6 The insured use is the proposed development and use of the Property as a care village comprising 195 supported living units, a 60 bed care home, 34 respite hotel suites, medical support facilities, common rooms, leisure facilities and offices, a commercial restaurant, museum, cafe and new promenade with improved coastal defence measures, gardens and underground parking pursuant to the Planning Permission.
- 5.15.7 The premium (which will be paid by the Company) is £53,760 (inclusive of Insurance Premium Tax).
- 5.16 Planning**
- 5.17 We have reviewed the Planning Report and summarise below the material planning issues that are disclosed in the Planning Report.
- 5.18 The Property has the benefit of the Planning Permission and the Listed Building Consent. The Company has confirmed that there are no buildings within the Property that are listed; the only listed structure being the Grade II listed breakwater (Bingleaves Groyne), which is located at the south eastern end of the Property and is outwith the redline boundary of the Planning Permission. A copy of the redline plan consented by a condition attached to the Planning Permission is attached to this overview report.
- 5.19 The Planning Permission has been granted subject to a number of planning conditions including 15 pre-commencement conditions which must be discharged by the Council prior to commencement of development. The Listed Building Consent also includes a pre-demolition condition that must be complied with before demolition of any buildings at the Property can begin. The Planning Report annexed to the Certificate of Title includes a full list of the pre-commencement conditions attached to the Planning Permission so we have not reported further on the planning conditions in this report.
- 5.20 The Planning Report confirms that:
- 5.20.1 neither the Planning Permission nor the Listed Building Consent have been implemented. The Company has advised that it expects to implement the Planning Permission within 12 months following completion of the acquisition of the Property;
- 5.20.2 the pre-demolition condition attached to the Listed Building Consent and the pre-commencement conditions attached to the Planning Permission have not been discharged by the Council and no applications have been submitted to the Council to discharge the pre-commencement conditions;
- 5.20.3 the development must be begun no later than the expiration of three years from the date of the Planning Permission (i.e. by 1 August 2019).
- 5.21 The Company has advised that no further applications for planning permission have been made or are awaiting determination. The Company has also confirmed that the Property has not been the subject of any enforcement action by the Council; no notice in respect of any such enforcement action has been received by the Company; and the Company are not aware of any circumstances which would result in any enforcement action being commenced or a notice served.

5.22 The Property is subject to a Section 106 Unilateral Undertaking between (1) QinetiQ Limited, (2) New Care Horizons (The Pinnacle Weymouth) Limited and (3) Weymouth and Portland Borough Council, dated 18 July 2016. The agreement was entered into in connection with the Planning Permission. In the agreement the owner covenants that it will:

- (a) not permit the Property to be used for any purpose except as a continuing care retirement community for occupation by a 'Qualifying Person' (defined as a person aged 55 or above in need of care and support) and their spouse following medical assessment of their care needs;
- (b) ensure the public have access to the promenade to be constructed pursuant to the Planning Permission;
- (c) pay the operator of the museum the sum of £125,000 payable in five annual instalments beginning on the day the museum opens to the public; and
- (d) pay the Council £5,00.00 towards the costs of any works to remedy contamination on the Property if requested by the Council.

5.23 The Company has advised that there are no other agreements binding on the Property including highway agreements under s38 and section 278 of the Highways Act 1980.

6. APPLICABLE LAW

This overview report is limited to English law as applied by the English Courts and is given on the basis that it will be governed by and construed in accordance with English law.

Yours faithfully



CMS Cameron McKenna Nabarro Olswang Services Ltd.

Cannon Place

78 Cannon Street

London EC4N 6AF

Ref: JOGU/AWR/155370.00001

SCHEDULE 1

THE PROPERTY

Land and buildings known as DERA Site, Bincleaves, Newtons Road, Weymouth registered at the Land Registry under freehold title number DT287170