

Your ref:

Our ref: B01645.1057

Dexia Crédit Local
Shackleton House
4 Battle Bridge Lane
London
SE1 2RB
(as Facility Agent as defined in the Loan Facilities Agreement)

Dexia Crédit Local
1 Passerelle des Reflets
Tour Dexia La Défense 2
TSA 92202-92919
(in its capacity as Arranging Bank and Original Lender, as defined in the Loan Facilities Agreement and Original Hedging Counterparty as defined in the Security Trust and Intercreditor Deed)

Dexia Management Services Limited
Shackleton House
4 Battle Bridge Lane
London
SE1 2RB
(as Security Trustee as defined in the Loan Facilities Agreement)

Norddeutsche Landesbank Girozentrale
71 Queen Victoria Street
London
EC4V 4NL
(as Arranging Bank, Original Lender and Original Hedging Counterparty)

23 February 2011

Dear Sirs

North West Fire and Rescue Services PFI project ("the Project") - English Law Legal Opinion (Financing Documents)

1 **PRELIMINARY**

- 1.1 We are giving you this opinion as English legal advisers to you in connection with the Project.
- 1.2 Unless otherwise stated, terms defined in the loan facilities agreement among Balfour Beatty Fire and Rescue NW Limited ("the **Borrower**"), Balfour Beatty Fire and Rescue NW Intermediate Limited ("**Intermediate**"), Balfour Beatty Fire and Rescue NW Holdings Limited ("**HoldCo**"), Dexia Crédit Local, Norddeutsche Landesbank

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Girozentrale and Dexia Management Services Limited dated on or about the date of this opinion ("the **Loan Facilities Agreement**") shall have the same meaning in this opinion.

- 1.3 In this opinion, the Borrower, Intermediate and HoldCo are together referred to as "the **Companies**" and, where appropriate, are individually referred to as a "**Company**".
- 1.4 This opinion is confined solely to the laws of England and Wales as at the date of this opinion.

2 DOCUMENTS EXAMINED AND ENQUIRIES MADE

For the purposes of this opinion we have taken the following steps:-

- 2.1 we have reviewed unexecuted versions of each of the following Financing Documents to be entered into as at the date hereof in connection with the Project :

- 2.1.1 the Loan Facilities Agreement;
- 2.1.2 the Security Trust and Intercreditor Deed;
- 2.1.3 the Borrower Debenture;
- 2.1.4 the HC Debenture;
- 2.1.5 the Intermediate Debenture;
- 2.1.6 the Account Bank Agreement;
- 2.1.7 the Direct Agreements;
- 2.1.8 each Hedging Agreement; and
- 2.1.9 the Fee Letters,

being together referred to as "the **Financing Documents**" and each of them, where appropriate, are individually referred to as a "**Financing Document**".

- 2.2 we have reviewed and relied on:
- 2.2.1 a certified copy of a legal opinion of Ashfords LLP, legal adviser to the Borrower, dated the date of this opinion in respect of the corporate capacity and authority of the Companies to enter into, *inter alia*, the Transaction Documents (as such term is defined therein);
- 2.2.2 a certified copy of a legal opinion of Prudence Yun-Lok Wong, Senior Legal Counsel – Commercial and IT of Balfour Beatty plc on the corporate capacity and authority of Balfour Beatty plc, Balfour Beatty Infrastructure Investments Limited, Balfour Beatty Investment Holdings Limited, Mansell Construction Services Limited and Balfour Beatty Workplace Limited to enter into the Opinion Documents to which they are a party;

- 2.2.3 the public records maintained in respect of each of the Companies by the Registrar of Companies as shown by a search of the Companies House Direct Filing History Screen on 21 February 2011 (the "**Companies House Records**"); and
- 2.2.4 the results of a telephone enquiry to the Royal Courts of Justice in London at approximately 10.15 hours on 23 February, 2011 in relation to any entries regarding winding up and administration petitions in respect of the Companies on the Central Index of Winding-up Petitions for England and Wales (the "**Telephone Searches**").

Except for the matters expressly referred to, we have not examined any documents entered into by or affecting the Companies or any of their corporate records or made any enquiries about them and we shall not be deemed to have knowledge of anything which such examination or enquiries might disclose.

3 **ASSUMPTIONS**

In giving this opinion we have assumed that:

- 3.1 all matters referred to and opined on in the legal opinions referred to in paragraphs 2.2.1 and 2.2.2 above are correct in all respects;
- 3.2 the signatures on the Financing Documents are genuine;
- 3.3 all documents submitted to us as originals are authentic and all copy documents submitted to us are complete and accurate copies of the originals;
- 3.4 the Companies have been duly incorporated in England and are existing as limited companies and are not insolvent nor has any Company or their directors passed a resolution for voluntary winding up or the appointment of an administrator, nor has any petition been presented or order made for the winding up of or the appointment of an administrator to any Company, nor has notice of intention to appoint, or of the appointment of, an administrator been given by any person (including either Company and/or its directors) nor has any administrator, receiver or like official been appointed to any Company or any of that Company's property or undertaking;
- 3.5 the Companies have the power to enter into and fulfil their obligations and enforce their rights under the Financing Documents;
- 3.6 each Financing Document executed by a party other than one of the Companies constitutes a legal binding obligation of such a party, enforceable in accordance with its terms;
- 3.7 the Companies have taken all necessary corporate action to authorise them to enter into and fulfil their obligations and enforce their rights under the Financing Documents;
- 3.8 the Companies entered into the Financing Documents to which they are respectively a party in good faith and for full commercial consideration, and the Companies' execution and delivery of the Financing Documents to which they are a party and the performance of their obligations under and compliance with the provisions of each

such Financing Document is (and is believed by the relevant Company's directors (or by a duly authorised and constituted committee of the relevant Company's directors) acting in good faith, to be) most likely to promote the success of the Companies for the benefit of their members as a whole in accordance with section 172 of the Companies Act 2006;

- 3.9 that any guarantee obligations or third party security given or granted in terms of any of the Financing Documents may reasonably be regarded as being in the interests of the relevant parties;
- 3.10 the Companies' entering into the Financing Documents (and fulfilling their obligations and enforcing their rights thereunder) does not constitute the provision of financial assistance for the purpose of the acquisition of shares in any Company, in terms of Chapter 2 of Part 18 of the Companies Act, 2006, or, if and to the extent that it does, the requirements of that Chapter have been complied with so as to render such assistance lawful;
- 3.11 the Companies have no chargeable interest in land;
- 3.12 the Companies were not unable to pay their respective debts in accordance with the terms of section 123 of the Insolvency Act 1986 at the time of entering into the relevant Financing Document and will not be unable to pay their respective debts in accordance with the terms of such section as a result of entering into such Financing Document; and
- 3.13 any statement as to any matter of fact provided to us in connection with this opinion in any certificate by any director or the secretary (or assistant or deputy secretary) of any Company or any other person was true and accurate when given and remains so at the date of this opinion.

4 SCOPE

We do not express any opinion as to:

- 4.1 any law other than English law;
- 4.2 the tax or accounting treatment or consequences of any document or arrangement;
- 4.3 the capacity and authority of the Companies to enter into any document;
- 4.4 the legality, validity or binding nature of any document (other than the Financing Documents, and only then to the extent set out in this opinion) or the veracity of any fact contained in any Financing Document;
- 4.5 the adequacy of any insurance cover proposed for the Project, and in this respect you are relying on the report of the Insurance Consultant;
- 4.6 the accuracy or completeness of the Initial Financial Model, and in this respect you are relying on the report of the Model Auditor;
- 4.7 the validity or enforceability of any of the obligations of the Authority undertaken in connection with the Project; or

4.8 any Junior Financing Document.

5 **OPINION**

Subject to paragraphs 2 to 3 above and paragraph 6 below, it is our opinion that under the present law of England:

5.1 **Security Documents**

Each Debenture is effective to create in favour of the Security Trustee the Security Interests expressed to be created thereby over the Security Assets (as such term is defined in Security Documents), subject to the due registration referred to in paragraph 5.4 below. The Companies House Records reveal the existence of no Security Interest which is not a Permitted Security Interest.

5.2 **Binding Obligations**

When the Financing Documents are executed and delivered, the obligations undertaken by the Companies under the Financing Documents are valid, legal, binding and enforceable in accordance with their terms.

5.3 **Non-violation**

The Companies' execution and delivery of the Financing Documents will not violate or conflict with any law, statute or regulation of English law applicable to companies generally; and nor will the exercise of its rights and the performance of its obligations under them.

5.4 **Approvals**

It is not necessary or advisable for any approvals, authorisations, exemptions or licences to be obtained from any governmental, judicial, banking, fiscal or other public or regulatory body or authority in England in order to ensure the legality, validity, enforceability or performance of the Financing Documents by the Security Trustee or (subject to the requirements of any subsequent delivery of a duly completed MG01 in relation to each Company to the Registrar of Companies pursuant to Section 860 of the Companies Act 2006) for the Financing Documents to be filed, registered or notarised with or by any such body or authority, nor is it necessary under the laws of England that any other action be taken to ensure the legality, validity, enforceability and admissibility in evidence of the Financing Documents.

5.5 **Stamp Duty, stamp duty land tax, etc**

No stamp, registration (other than that required in respect of the filing identified in paragraph 5.4) or similar tax or charge is payable in England in respect of the Financing Documents.

6 QUALIFICATIONS

This opinion is subject to the following qualifications:

- 6.1 Enforcement may be limited by bankruptcy, insolvency, liquidation, administration, reorganisation and other laws of general application relating to or affecting the rights of creditors. In particular, without limiting the foregoing generality, the right of the holder of a floating charge to appoint an administrative receiver, and the right of the holder of a fixed security to enforce such security, are limited by and subject to the restrictions and conditions imposed by the Insolvency Act 1986 as amended by the Enterprise Act 2002 (except to the extent disapplied by the Financial Collateral Arrangements (No 2) Order 2003).
- 6.2 The term "enforceable" as used in this letter means that the obligations assumed by the relevant party under the relevant document are of the type which the English courts enforce. This letter is not to be taken to imply that any obligation would necessarily be capable of enforcement in all circumstances in accordance with its terms and conditions or by or against third parties or that any particular remedy will be available. In particular:
 - 6.2.1 an English court will not necessarily grant any remedy the availability of which is subject to equitable consideration or which is otherwise in the discretion of the court. In particular, orders for specific performance and injunctions are, in general, discretionary remedies under English law and specific performance may not be available where damages are considered by the court to be an adequate alternative remedy;
 - 6.2.2 enforcement of rights may be or become limited by prescription, limitation and estoppel or may be or become subject to set-off or counterclaim;
 - 6.2.3 if a person delays in exercising any rights of action it might be prevented from exercising that right at all;
 - 6.2.4 any provision in a Financing Document to the effect that the determination by a person of any fact is conclusive (except in the case of manifest error) might not be upheld where the relevant person has acted fraudulently, unreasonably, arbitrarily or in bad faith;
 - 6.2.5 where a Financing Document includes a discretionary power in favour of a person that person might be required to exercise that discretion reasonably and any provision attempting to dis-apply this general rule will not necessarily be effective;
 - 6.2.6 any provision in a Financing Document to the effect that a particular part of a Financing Document (if void, illegal or unenforceable) should be deemed to have been severed from the other parts will not necessarily be effective;

- 6.2.7 where obligations are to be performed in a jurisdiction outside England, they may not be enforceable in England to the extent that performance would be illegal under the laws, or contrary to the exchange control regulations, of the other jurisdiction;
- 6.2.8 the enforcement of obligations may be limited by the provisions of English law applicable to agreements held to have been frustrated by events happening after their execution;
- 6.2.9 a party to a contract may be able to avoid its obligations under that contract where it has entered that contract on the basis of a mistake or has been induced to enter the contract by reason of a misrepresentation;
- 6.2.10 any undertaking or indemnity may be void insofar as it relates to stamp duty payable in the United Kingdom;
- 6.2.11 any provision of a Financing Document which purports to confer a benefit on, or impose an obligation in favour of, a third party may not be binding or enforceable where the Financing Document excludes the operation of the Contracts (Rights of Third Parties) Act 1999.
- 6.3 The provisions of a Financing Document may not be binding and enforceable to the extent that they conflict with or are inconsistent with the provisions of another Financing Document or other agreement and the first Financing Document contains a term to the effect that the provisions of the second Financing Document or other agreement will prevail in the event of such conflict or inconsistency. However, such a provision may not in all cases be effective for that purpose where (A) the parties to the Financing Document whose terms are expressed to be subservient are not also parties to the Financing Document or agreement whose terms are expressed to prevail or (B) the effect of the second Financing Document or other agreement prevailing over the first Financing Document is such that a fundamental ambiguity or uncertainty is created provided that any matters which we have been expressly asked to look at in our role of legal adviser to the Financing Parties shall not be subject to the qualification in (B) above.
- 6.4 If any provision in the Financing Documents was held to amount to a penalty under English law, it would not be recoverable.
- 6.5 An English court may refuse to give effect to any provision in an agreement (i) for the payment (or indemnification of another party) of expenses in respect of the costs of enforcement (actual or contemplated) or of unsuccessful litigation brought before a English court or where the court or the arbitral tribunal has itself made an order for costs or (ii) which would involve the enforcement of foreign revenue or penal laws.
- 6.6 It should be noted that notice of a winding-up order or resolution and notice of the appointment of a receiver or administrator may not be filed at Companies House immediately and there may be a delay in the relevant notice appearing on the file of the relevant party, information derived from a search of records at Companies House may not be complete or up to date and there is no obligation on the High Court of

Justice to advise anyone of the existence of a winding-up or administration petition presented in relation to any company incorporated in England and therefore the Telephone Searches made cannot be treated as definitive in determining whether any winding-up petition has been presented in relation to a Company as at the date and time referred to in paragraph 2.2.4 above.

- 6.7 An English court has power to stay an action where it is shown that there is some other forum, having competent jurisdiction, which is more appropriate for the trial of the action, that is, in which the case can be tried more suitably for the interests of all the parties and the ends of justice, and where staying the action is not inconsistent with Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil Commercial Matters or with the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988 as applied under the laws of England.
- 6.8 The enforceability of the obligations of each Company under the Financing Documents may be affected by the commencement of "insolvency proceedings" (within the meaning of the Council of Regulation 1346/2000/EC on insolvency proceedings (the "EU Insolvency Regulation")) against that Company by the courts of another EU member state (other than Denmark) or as a result of the English courts being required under the EU Insolvency Regulation to give effect to the law of that EU member state, or to recognise or enforce any judgment of a court of that EU member state, concerning the opening, course and closure of those proceedings.
- 6.9 The priority of the ranking of security in respect of the Security Documents may be subject to the following:
- 6.9.1 any other rights or prior security granted over the Security Assets which has been granted by the relevant Company (and not revealed by the searches referred to in paragraphs 2.2.3 and 2.2.4 of this opinion) or, if notice is required to perfect a security right, any such security notified to the relevant counterparties prior to intimation to the counterparties required by the Security Documents will rank ahead of the Security Documents;
- 6.9.2 the existence, value or marketability of the Security Assets including any restriction or condition affecting any part of the Security Assets;
- 6.9.3 certain statutory preferences, fixed charges, possessory liens, preferred creditors and other priorities arising by law may rank in priority to any security created by the Security Documents;
- 6.9.4 any security created by the Security Documents may be defeated by interests acquired by third parties without notice of the securities created thereby and to the extent that the Security Documents secure property acquired after the date of the Security Documents, the securities created thereunder may be subject to any security and other rights affecting such property on the acquisition thereof;

- 6.9.5 any clause in the Debenture providing that the floating charge shall crystallise automatically (without notice) in certain circumstances or that the floating charge will crystallise in respect of part (but not all) of the property subject to the floating charge may not be effective; and
- 6.9.6 the nature of the security created under a Debenture in particular if it creates a fixed or floating charge over the relevant Security Assets so that, for example, any fixed charges over the bank accounts contained in the Security Documents may, depending on the degree of control exercised by the Security Trustee over the chargor's power to deal with such bank accounts, be construed instead as a floating charge.
- 6.10 Powers conferred on any person in the Security Document as an attorney may not be exercisable in competition with creditors' rights or in the event of an insolvency of the grantor.

This opinion is given solely for your benefit and solely in relation to the Project. It may not be disclosed to or relied upon by any other person or for any other purpose, other than financial institutions that may become Lenders or Hedging Counterparties under the Financing Documents and their respective legal advisers. It is not to be relied upon by anyone else or for any other purpose or quoted or referred to in any public document or filed with anyone without our express consent. We accept no responsibility or legal liability to any of such parties or to any other person other than the addressees specified in relation to the contents of this opinion.

Yours faithfully



Tods Murray LLP