

[REDACTED]

On 2 Aug 2017, at 10:52, "[DGEconomy@gov.scot](mailto:DGEEconomy@gov.scot)" <[DGEconomy@gov.scot](mailto:DGEEconomy@gov.scot)> wrote:

Dear Jim

Further to our recent discussions and your e-mail of 28 July I am writing to confirm that the Scottish Government is actively considering your suggestions for addressing FMEL's significant cashflow/working capital issues and is also exploring other options to address these issues.

[Redacted]

Given the above and our shared desire to see a sustainable future for FME, I think it is important for both the Scottish Government and FME to have an in-depth and agreed understanding of FME's financial position and forecasts as the basis for jointly considering options to secure the company's long term future. The Scottish Government would be happy to quickly commission independent expert advice in this respect and would expect such work to take 3-4 weeks. I would be grateful if you could confirm that you are content for this work to be undertaken and trust that you will provide all such information and support as may be required to enable that work to provide as full and robust a picture of the company's finances and future as possible.

We are talking later today

Yours sincerely

Liz Ditchburn
DG Economy

Thanks Liz,
[Redacted] The quickest way to confirm this is to get [Redacted] and her colleagues in this afternoon or tomorrow. The quickest simplest solution lies with dealing with the guarantee.
[Redacted]

Jim

Sent from my iPhone

Director General Economy
T: [Redacted]
E: [DGEconomy@gov.scot](mailto:DGEEconomy@gov.scot)

James McColl OBE
Clyde Blowers

Email: [Redacted]

30 August 2017

FERGUSON MARINE ENGINEERING LIMITED

[Without prejudice and subject to due diligence and contract]

Dear Jim

As you are aware, we had a meeting this morning with Ministers to discuss the situation.

[Redacted] Following our meeting and your correspondence on Monday, and the useful conversations we have had subsequently, [Redacted]

At the outset, we would reiterate that we want to find a sustainable solution but need to make it clear that any package of support must be conditional on the following three points:

[Redacted]

In the light of your position during our conversations over the past few days, I would hope that these points are accepted by you. Assuming your agreement to these points, we would propose providing a commercial loan facility of up to £15m along the following key lines:

[Redacted]

We appreciate the urgency of the situation and the company's cash flow requirements and, subject to the agreement of an appropriate loan agreement, believe that we are able to introduce the loan week commencing 04 September 2017. This is subject to completion of on-going due diligence including compliance with State Aid regulations, and we trust that the company will cooperate in that exercise.

Assuming your agreement to these points, we will instruct lawyers to draw up the necessary documentation. I look forward to hearing from you as a matter of urgency.

Yours sincerely

Liz Ditchburn

From: James A. McColl [Redacted]

Sent: 31 August 2017 09:42

To: DG Economy; Cabinet Secretary for Finance and the Constitution

Subject: Ferguson Marine - REVISED

Importance: High

Dear Liz

Apologies, incorrect was sent to you. please find attached latest correct version of email.

This the one that should be considered by the Ministers.

I am extremely disappointed and frustrated at the letter received last night.

[Redacted]

Jim

Jim McColl

Founder, Chairman & CEO

James McColl OBE

Clyde Blowers

[Redacted]

31 August 2017

FERGUSON MARINE ENGINEERING LIMITED

[Without prejudice and subject to due diligence and contract]

Dear Jim

Thank you for your correspondence this morning in response to my letter of 30 August and for our subsequent discussion.

The Scottish Government remains committed to continuing to work with FMEL and CBC to resolve the situation and hopefully the points below will give us a basis for moving forwards quickly.

I believe that the loan package put forward represents a solution which is deliverable within our regulatory framework and the extremely tight timescales which you refer to. In our view the loan facility of up to £15m, [Redacted], represents sufficient comfort for the company to move forward.

[Redacted]

I greatly appreciate the offer from [Redacted] to enter into mediation with CMAL and assure you that this will be conducted in a constructive manner.

Finally, I assure you that we are fully committed to working towards the successful delivery of the loan option, taking cognisance of the above points.

Yours sincerely

Liz Ditchburn

From: Rollison R (Richard)

Sent: 01 September 2017 19:34

To: Cabinet Secretary for Finance and the Constitution <CabSecFC@gov.scot>

Cc: McAllan M (Mary) <Mary.McAllan@gov.scot>; [Redacted] Maxwell S (Stewart) (Special Adviser) <Stewart.Maxwell2@gov.scot>; McCaig C (Callum) <Callum.Mccaig@gov.scot>; Brannen R (Roy) <Roy.Brannen@transport.gov.scot>; Nicholls J (John) (TRANS) <John.Nicholls@transport.gov.scot>; [Redacted] Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; Cabinet Secretary for Economy, Jobs and Fair Work <CabSecEJFW@gov.scot>; Minister for Transport and the Islands <transportminister@gov.scot>; Evans L (Leslie) <Leslie.Evans@gov.scot>; Cabinet Secretary for Finance and the Constitution <CabSecFC@gov.scot>; [Redacted] Beattie C (Caroline) <Caroline.Beattie@gov.scot>; [Redacted] DG Economy <DGEconomy@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; First Minister <firstminister@gov.scot>; DG Economy <DGEconomy@gov.scot>; Evans L (Leslie) <Leslie.Evans@gov.scot>; Chief Financial Officer <cfo@gov.scot>; Maxwell S (Stewart) (Special Adviser) <Stewart.Maxwell2@gov.scot>; First Minister <firstminister@gov.scot>; DG Scottish Exchequer Mailbox <DGScottishExchequer@gov.scot>

Subject: RE: IMMEDIATE - COMMERCIALY CONFIDENTIAL - FERGUSONS MARINE ENGINEERING LIMITED (FMEL)

I ATTACH A SUBMISSION FROM DG ECONOMY

PS/Cabinet Secretary for Finance

IMMEDIATE - COMMERCIALY CONFIDENTIAL - PROPOSED LOAN AGREEMENT WITH FERGUSONS MARINE ENGINEERING LIMITED (FMEL)

Purpose

1. To seek your agreement to provide a commercial loan facility of £15m to Ferguson Marine Engineering Limited (FMEL) [Redacted]

Timing

2. **Immediate**

Background

3. My submission of 21 August updated you on the financial position of FMEL and our work with [Redacted] to support the company. My subsequent note of 1 September updated you on discussions and negotiations with FMEL and Clyde Blowers Capital about [Redacted]

Proposed Loan Agreement

4. Following further discussions with Jim McColl and representatives of FMEL and CBC, and with commercial and legal advice from [Redacted] and [Redacted] respectively, we are proposing to provide a commercial loan of £15m to FMEL. Subject to your agreement, we will instruct [Redacted] to finalise a loan agreement between the Scottish Government and FMEL on standard commercial terms with the following conditions

[Redacted]

Transparency

5. Although we do not publish details of individual loans I expect that details of the loan will be made public in due course because it is right that we are transparent and as a consequence of audit scrutiny of either i) a general ferries audit or other associated procurement review; or ii) an audit of Transport Scotland accounts for 2017-18 (although it is of course the SG and not TS making the payment), or; iii) audit of the SG accounts for 2017-

18. The audit process for ii and iii would of course not begin until the beginning of 2018-19. The more likely way this would be reported is in FMEL's accounts – they have reported the source of previous loans in the accounts they lodge with Companies House. These are of course available for public consumption, but like the SG this would be for the financial year covering the date of the transaction(s). This would likely not be until much further into 2018.

Budget

6. Whilst we expect the loan to be drawn down in tranches, [Redacted], there is a clear expectation that it will fall entirely within the scope of the 2017-18 financial year. In considering whether you are prepared to provide this facility, it is therefore important to consider the source of the funds and associated opportunity costs. [Redacted] There is then a clearly identifiable source of funds available at your disposal. However, as you are aware, there are significant demands on the Capital budget in the years 2018-19 and beyond, with scope to apply underspend this year against those demands through the use of the Scottish Reserve. A decision to approve the loan would therefore reduce that scope by a corresponding amount.

Risks

7. It is important for Ministers to understand that there are clear risks associated with providing a loan. [Redacted] As the Accountable Officer, I have weighed up these risks carefully, supported by the appropriate legal and financial advice and, having negotiated out a range of other additional demands being made by FMEL at this time, believe that there is a legitimate basis on which this loan can be justified to ensure delivery of the ships under contract and to safeguard the workforce. I have discussed this proposal with the Principal Accountable Officer and agreed that it can be put to Ministers for decision.

8. This advice has been agreed with the Chief Financial Officer and SGLD.

Recommendation

9. You are asked to agree to the provision of a commercial loan of £15m to FMEL as set out in para. 4 above.

DG ECONOMY

From: Cabinet Secretary for Finance and the Constitution

Sent: 01 September 2017 20:43

To: Rollison R (Richard)

Cc: McAllan M (Mary); [Redacted] Maxwell S (Stewart) (Special Adviser); McCaig C (Callum); Brannen R (Roy); Nicholls J (John) (TRANS); [Redacted] Lloyd E (Elizabeth); Cabinet Secretary for Economy, Jobs and Fair Work; Minister for Transport and the Islands; Evans L (Leslie); [Redacted] C (Caroline); [Redacted] DG Economy; Lord Advocate; Troup C (Colin) (Dr); First Minister; DG Economy; Evans L (Leslie); Chief Financial Officer; Maxwell S (Stewart) (Special Adviser); First Minister; DG Scottish Exchequer Mailbox

Subject: Re: IMMEDIATE - COMMERCIALY CONFIDENTIAL - FERGUSONS MARINE ENGINEERING LIMITED (FMEL)

Richard

The Cabinet secretary is content with the provision of the loan as set out in the submission.

Mr Mackay is speaking to Jim McColl shortly and I will feedback further information.

Thank you
[Redacted]

Sent from my BlackBerry 10 smartphone.

[Redacted]
30 January 2018

DG Economy

FERGUSON MARINE: [REDACTED]

Purpose

1. To seek your views on and potential agreement to CBC's request:
 - to enter into an intercreditor deed [Redacted]

Timing

2. **Urgent.** [Redacted]

Process and consultations

3. Ministers and senior officials have received regular updates on the financial position of FMEL, progress with the CMAL order for two LNG hybrid ferries and the contract price dispute between FMEL and CMAL since the SG loan was agreed in September (a note of the most recent meeting involving Ministers on this subject is attached at Annex A).
4. You also spoke with Jim McColl of Clyde Blowers Capital (CBC – owner of FMEL) on the proposed cash collateral release in the margins of the recent CEA meeting.
5. [Redacted]
6. The original CBC proposal has evolved through several iterations since December reflecting the input of SG's commercial and legal advisers and internal dialogue among Economic Development and SG Finance. SG Finance have reviewed this note and are content with its recommendations. SGLD are aware of its contents and have made no separate comment.
7. The detailed commentary and conclusions of [Redacted] on the commerciality of CBC's proposals is attached at Annex B. [Redacted]

Key considerations

FMEL cash flow position

8. You are familiar with the financial standing of FMEL and the reasoning behind the £15 million working capital loan SG made to FMEL in September 2017.

9. [Redacted]

The Proposal

10. [Redacted]

What are the advantages of the proposal?

11. [Redacted]

Options and recommendation

12. In light of the above and following detailed discussions with CBC, the Government's expert commercial [Redacted] and legal advisers [Redacted] we conclude that [Redacted] there is, on balance, a commercial rationale that supports SG in agreeing to CBC's proposal in its current form.

13. [Redacted]

[Redacted]

Economic Development Directorate

[Redacted]

COPY LIST

First Minister
Cabinet Secretary for Finance and the Constitution
Minister for Transport and the Islands
Cabinet Secretary for the Economy, Jobs and Fair Work
Permanent Secretary
DG Scottish Exchequer
Chief Financial Officer
Caroline Beattie
[Redacted]
Liz Lloyd
Lord Advocate
Stewart Maxwell
Callum McCaig
Mary McAllan
Colin McAllister
John Nicholls
[Redacted]
Richard Rollison
Murray Sinclair
[Redacted]
Colin Troup
Kerry Twyman

[Redacted]

ANNEX A

MINISTERIAL UPDATE ON FMEL – 16 JANUARY 2018

Attendees

Ministers: Derek Mackay (phone), Humza Yousaf

Transport Scotland: John Nicholls, [Redacted]

Finance: [Redacted]

Economic Development: [Redacted]

1. Purpose

- At the previous update meeting of 20 December it was agreed that this group should meet again for an update in January on the financial position of FMEL and the progress of 801/802, including the process of mediation.

2. Business Update

Meeting between Jim McColl and DG Economy (21 December)

- A summary of this meeting had been circulated with the agenda.
- Much of the discussion was on familiar themes but [Redacted]
- [Redacted]

Progress with vessels 801 and 802

- According to FMEL, steel fabrication work has accelerated on 802 since the launch of 801 as large sections of the second vessel are now progressing under cover in the new fabrication hall, which has many practical advantages over the uncovered slipway.
- [Redacted]
- Transport Scotland reported that work continues on preparations for the third party review (which is being organised by SG Centre of Excellence colleagues). CoE have identified some potential reviewers. Mr Yousaf expressed his preference that the team should include someone with experience in ship building.

Business development prospects

- [Redacted]

3. Discussion

- [Redacted]
- The Transport Minister would meet with CMAL the following week. Ministers would encourage CMAL to adopt a reasonable and constructive approach to the mediation with the bigger picture context firmly in mind.
- The potential for delivery delays with 801 and 802, along with challenges with developments at Ardrossan and Brodick, would require careful and appropriate public communications management. The Transport Minister advised that

revised dates are in the public domain for 801 (Winter 2018/19) and with greater clarity on dates the same process would be undertaken on 802.

- Ministers reiterated the need for regular updates from officials as this work progresses.

Actions

1. [Redacted]

Strategic Industrial Projects
Economic Development Directorate

ANNEX B

[REDACTED]

From: James A. McColl [Redacted]
Sent: 05 February 2018 13:32
To: DG Economy
Cc: [Redacted]
Subject: FMEL - Inter Creditor Deed
Importance: High

Dear Liz

Further to our conversation on Friday, I thought it was important to set out the points we discussed, [Redacted]

In the context of these discussions, it is also important for the Scottish Government to recognise that I have been highlighting the challenges and cash pressures that the contracts for 801 and 802 are placing on the business since March 2017. [Redacted]

As requested, attached to this email are two attachments which outline the forecast cash flow of the company. The company prepares, on a weekly basis, a 10-week cash flow to monitor near term cash flow planning and the most recently prepared is attached. [Redacted]

The second attachment is an extract from our business planning process and shows the forecasted 24 months to December 2019. [Redacted]

As you know, the company has recently been awarded funding for the Hyseas III project to develop a hydrogen passenger vessel, it is part of the consortium for the Type 31e for the MOD and is actively building its repair and maintenance capabilities. The market opportunity for the company is unquestionable. [Redacted]

Jim

Jim McColl
Founder, Chairman & CEO

[Redacted]

On 6 Feb 2018, at 11:47, "[DGEconomy@gov.scot](mailto:DG_Economy@gov.scot)" <[DGEconomy@gov.scot](mailto:DG_Economy@gov.scot)> wrote:

Dear Jim,

Thank you for your email, and for the attachments outlining the forecast cash flow for the company. As you will be aware from our conversation on Friday, we appreciate the urgency of the situation, and we are willing to work with you to explore ways to resolve the issues at play. We will consider the items contained within your email with our advisors as a matter of urgency.

I understand we are still to receive the further detailed information pack that officials and [Redacted] will review tomorrow (Wednesday) when they meet with the CBC and FMEL teams at the yard. It's important that we receive this material as soon as possible as it will help inform our position on the intercreditor deed.

Regards

Liz

Liz Ditchburn, Director General, Economy
[Redacted]

From: James A. McColl [Redacted]
Sent: 06 February 2018 12:20
To: DG Economy
Cc: [Redacted]
Subject: Re: FMEL - Inter Creditor Deed

Thanks Liz,
I believe you have all the information you need to sign the intercreditor deed.
[Redacted]

Jim

Sent from my iPhone

From: [Redacted]
Sent: 06 February 2018 12:22
To: [Redacted]
Cc: [Redacted] DG Economy <DG_Economy@gov.scot>; Chief Financial Officer <cfo@gov.scot>; Rollison R (Richard) <Richard.Rollison@gov.scot>; McAllan M (Mary) <Mary.McAllan@gov.scot>
Subject: SG/FMEL

[Redacted]

Can I check when we will receive the info pack for tomorrow's meeting at the yard. It's important for us that [Redacted] have time to review it and prepare notes for SG before the meeting; I believe [Redacted] was in contact with you yesterday about this.

On a couple of other points, we'd grateful for a response to the questions that [Redacted] posed yesterday about: [Redacted]

Regards, [Redacted]

From: [Redacted]

Sent: 06 February 2018 12:53

To: DG Economy <DGEconomy@gov.scot>; [Redacted] Chief Financial Officer <cfo@gov.scot>; [Redacted]

Cc: [Redacted] McAllan M (Mary) <Mary.McAllan@gov.scot>; Rollison R (Richard) <Richard.Rollison@gov.scot>; [Redacted] Brannen R (Roy) <Roy.Brannen@transport.gov.scot>; PS/Transport Scotland <chiefexecutive@transport.gov.scot>; Maxwell S (Stewart) (Special Adviser) <Stewart.Maxwell2@gov.scot>; McCaig C (Callum) <Callum.Mccaig@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Scottish Exchequer Mailbox <DGScottishExchequer@gov.scot>; Nicholls J (John) (TRANS) <John.Nicholls@transport.gov.scot>

Subject: RE: FMEL - Inter Creditor Deed

All

For info. See below latest exchanges between Liz and Jim McColl.

The two attachments cover our (and [Redacted]) exchanges today with CBC in which we're trying to close the remaining gap and explore options to improve SG's position.

[Redacted]

From: [Redacted]

Sent: 08 February 2018 08:48

To: Cabinet Secretary for Finance and the Constitution; First Minister; Minister for Transport and the Islands

Cc: Strategic Industrial Projects; Rollison R (Richard); Chief Financial Officer; Nicholls J (John) (TRANS); [Redacted] DG Scottish Exchequer Mailbox; Maxwell S (Stewart) (Special Adviser); [Redacted] McAllan M (Mary); [Redacted] Lord Advocate; McCaig C (Callum); [Redacted] Troup C (Colin) (Dr); [Redacted] Cabinet Secretary for Economy, Jobs and Fair Work; Beattie C (Caroline); Permanent Secretary; Lloyd E (Elizabeth); McAllister C (Colin); [Redacted] Nicholls J (John) (TRANS); DG Economy

Subject: RE: Urgent FMEL submission - 30 January 2018 (OFFICIAL SENSITIVE – COMMERCIAL)

First Minister

Cabinet Secretary for Finance and the Constitution

Minister for Transport and the Islands

FERGUSON MARINE ENGINEERING LTD (FMEL) – CASH COLLATERAL RELEASE

1. The First Minister and Cabinet Secretary requested an update on Clyde Blowers Capital's (CBC, owners of FMEL) request for SG to enter into an intercreditor agreement with [Redacted] and CBC.
2. This note covers: (i) FMEL's latest cash position, (ii) [Redacted] and (iv) the negotiation process and advice to Ministers.

Latest position

3. SG officials and [Redacted] visited the yard yesterday (7 February) [Redacted] We reviewed FMEL's current trading performance and cash flow, the 2018 Budget and FMEL's 5-year outlook.

[Redacted]

Longer-term growth plans of FMEL

4. [Redacted] remains very positive about the longer-term prospects of the yard and its diversification and expansion plans. [Redacted]

5. Negotiation process and advice to Ministers

6. Ministers received the advice note I submitted to DG Economy on 30 January setting out the background to CBC's request and the options under discussion. Since then officials have engaged further with CBC, including direct dialogue between DG Economy and Jim McColl, and yesterday's meeting to review the latest financial position and projections. [Redacted]

7. DG Economy will chair a meeting today with policy and finance officials to review the latest financial information from CBC with the aim of formulating a final advice note that lays out the updated financial context, the options and risks and benefits of the options, and the accounting officer and PAO considerations. The current expectation is that a submission will then come forward to Ministers for a decision.

Regards,

[Redacted]

From: [Redacted] **On Behalf Of** Cabinet Secretary for Finance and the Constitution

Sent: 08 February 2018 10:22

To: [Redacted] Cabinet Secretary for Finance and the Constitution; First Minister; Minister for Transport and the Islands

Cc: [Redacted] Rollison R (Richard); Chief Financial Officer; Nicholls J (John) (TRANS); [Redacted] DG Scottish Exchequer Mailbox; Maxwell S (Stewart) (Special Adviser); [Redacted] McAllan M (Mary); [Redacted] Lord Advocate; McCaig C (Callum); [Redacted] Troup C (Colin) (Dr); [Redacted] Secretary for Economy, Jobs and Fair Work; Beattie C (Caroline); Permanent Secretary; Lloyd E (Elizabeth); McAllister C (Colin); [Redacted] Brannen R (Roy); [Redacted] Nicholls J (John) (TRANS); DG Economy

Subject: RE: Urgent FMEL submission - 30 January 2018 (OFFICIAL SENSITIVE – COMMERCIAL)

Importance: High

[Redacted]

Thank you for providing an update so quickly on this.

Just to make you all aware, the Cabinet Secretary is meeting with Mr Yousaf at 11am to discuss this matter (just a 1-to-1). I can see from calendars that a number of you are meeting with Liz at 1230 to discuss the situation.

Liz - Mr Mackay requests by 1430 today your recommendation on this matter. This situation is clearly urgent for the company and the Cabinet Secretary would like to be in a position to make a decision today. Mr Mackay understands the background and requests only a short and clear recommendation which assures him that officials have fulfilled their duties and achieved the best overall position available. Is he available this afternoon to discuss if required.

Thank you

[Redacted]

From: Ditchburn L (Liz) **On Behalf Of** DG Economy

Sent: 08 February 2018 18:49

To: Cabinet Secretary for Finance and the Constitution <CabSecFC@gov.scot>; First Minister <firstminister@gov.scot>; Minister for Transport and the Islands <transportminister@gov.scot>

Cc: [Redacted] Rollison R (Richard) <Richard.Rollison@gov.scot>; Chief Financial Officer <cfo@gov.scot>; Nicholls J (John) (TRANS) <John.Nicholls@transport.gov.scot>; [Redacted] DG Scottish Exchequer Mailbox <DGScottishExchequer@gov.scot>; Maxwell S (Stewart) (Special Adviser) <Stewart.Maxwell2@gov.scot>; [Redacted] McAllan M (Mary) <Mary.McAllan@gov.scot>; [Redacted] Lord Advocate <LordAdvocate@gov.scot>; McCaig C (Callum) <Callum.Mccaig@gov.scot>; Sinclair MA (Murray) <Murray.Sinclair@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; [Redacted] Cabinet Secretary for Economy, Jobs and Fair Work <CabSecEJFW@gov.scot>; Beattie C (Caroline) <Caroline.Beattie@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Twyman K (Kerry) <Kerry.Twyman@gov.scot>; Brannen R (Roy) <Roy.Brannen@transport.gov.scot>; [Redacted] Nicholls J (John) (TRANS) <John.Nicholls@transport.gov.scot>; DG Economy <DGEconomy@gov.scot>; [Redacted]

Subject: RE: Urgent FMEL submission - 30 January 2018 (OFFICIAL SENSITIVE – COMMERCIAL)

PS/Cabinet Secretary Finance

Mr Mackay requested a recommendation from me on the FMEL intercreditor agreement and assurance that officials have fulfilled their duties and achieved the best overall position available.

Following consideration of the issues and taking into account advice from our commercial and legal advisers, my view as Accountable Officer is that ministers can agree to CBC's proposal subject to final legal drafting of the supporting documentation. MacRoberts have this work in hand and they do not anticipate any issues in finalising this part of the process. In recommending this, SG ministers will want to be aware that:

[Redacted]

In terms of assurance to you, I confirm that officials have fulfilled their duties in exploring all these issues and seeking to safeguard the SG's interests, and with respect to the specific intercreditor agreement, have achieved the best position available. [Redacted]

Liz

Liz Ditchburn

Director General Economy
Scottish Government

[Redacted]