

FOI / 18 / 02682

“All correspondence and minutes of meetings between CMAL, Humza Yousaf, Derek Mackay, and Ferguson Marine in relation to the development of vessel 802 and the MV Glen Sannox within the last 24 months.”

1. Jim McColl meeting with Keith Brown and Humza Yousaf – 2 March 2017

PS/Ministers (an action for PS/Mr Yousaf below)

This is to record the main points of this morning’s meeting insofar as they related to ferries.

Contract 801/802 : contract status

- Mr Yousaf asked about CMAL’s assessment that delivery could be 6-7 months late. **[Redacted]**
- **[Redacted]**
- [Out of scope]
- **Action:** Mr Yousaf to meet with CMAL in a fortnight for an update on progress. PS/Mr Yousaf to take forward please.

[Out of scope]

2. Email DG Economy to Cabinet Secretary for Finance and the Constitution - 19 July 2017 – Note of meeting with Jim McColl

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

Sent: 19 July 2017 09:23

Subject: RE: Note of meeting with Jm McColl - Commercially sensitive - protect

Summary points that I can talk the Cab Sec through:

CMAL contract

- [Out of scope]
- **[Redacted]**
- CMAL do not recognise or accept the FMEL figures but we have stressed that they must work through them as per the contract in an evidence based and objective way. [Out of scope]
- [Out of scope]

3. Summary of meeting – 19 July 2017

Present

Derek Mackay, Cabinet Secretary for Finance and the Constitution
Jim McColl, Clyde Blowers Capital
Richard Rollison, Innovation, Industries and Investment
[Name], Innovation, Industries and Investment
[Name], Transport Scotland, Ferries

The meeting covered three main areas:

1. Ferguson Marine Engineering Ltd (FMEL) contracts with Caledonian Maritime Assets Ltd (CMAL);
2. [Out of scope]

FMEL

[Out of scope]

[Redacted]

[Out of Scope]

4. 28 July 2017: Email from Jim McColl to the Cabinet Secretary for Finance and the Constitution and DG Economy

From: James A. McColl

Sent: 28 July 2017 09:47

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

Subject: FMEL / CMAL

Importance: High

Dear Derek & Liz,

As you know, we are attempting to work through the cost impact areas with CMAL, however as I have outlined to you, we appear to be coming at this from different mind-sets.

[out of scope]

[Redacted]

[out of scope]

Jim

5. 6 November 2017: Letter from Jim McColl to the Minister for Transport and the Islands

Already available – published on the Scottish Parliament website:-

[http://www.parliament.scot/S5_Rural/Letter_form_Min_for_Transport - CalMac 2 new major vessels.pdf](http://www.parliament.scot/S5_Rural/Letter_form_Min_for_Transport_-_CalMac_2_new_major_vessels.pdf)

6. Meeting between the Minister for Transport and the Islands and Jim McColl – 20 February 2018

Official support: [Names redacted]

[Out of scope]

CMAL Build Programme Update

- The delivery of Glen Sannox (801) would be later than the October 2018 forecast discussed with the Transport Minister last November but would, in FMEL's view, still fall within the winter 2018/19 timescale the Minister had outlined to Parliament (letter to REC Committee of 9 November 2017). **[Redacted]**
- **[Redacted]**
- **[Redacted]**
- **[Redacted]**

Contract Issues and Cash Flow Situation

- [Out of scope]
- **[Redacted]**
- **[Redacted]**
- Mr McColl also stressed the innovative and developmental nature of the design, highlighting that as the LNG hybrid design was the first for a UK shipyard there were costs associated with that and FMEL could not continue to bear those costs alone.
- **[Redacted]**
- **[Redacted]**

Discussion

- The Minister thanked Mr McColl for the business plan and build programme updates, and said he would be engaging with CMAL soon. [Out of scope]
- [Out of scope]

[Out of scope]

7. 20 March 2018: Email from Jim McColl to the Minister for Transport and the Islands

From: James A. McColl
Sent: 20 March 2018 15:24
To: Minister for Transport and the Islands
Cc: First Minister; Cabinet Secretary for Finance and the Constitution
Subject: FMEL

Dear Humza

[Redacted]

I emphasised the urgency of resolving the issues arising out of the significant additional work required on the current contracts with CMAL for Hulls 801 & 802.

In my email to Liz Ditchburn I highlighted the fact that in the tender documentation CMAL clearly acknowledged the innovative and development nature of the vessels, with page 18 of the tender document requiring the eventual contracts for the vessels to include a clause stating:-

"49. Performance Improvement and Innovation

49.1 *The Buyer has engaged the Builder and the Builder has agreed to construct the vessel expressly on the basis of a cooperative and innovative development of the basic designs provided in the specification contained in Annex B"*

[Redacted]

Since the award of the contracts to them, Ferguson Marine has continued to engage with CMAL in a very cooperative way on the innovative development of the basic design. The ongoing collaborative engagement with CMAL on the development of these two vessels has however resulted in cost increases which have to date been borne solely by Ferguson Marine. [Out of scope]

[Out of scope]

[Redacted]

[Out of scope]

Kind regards

Jim

8. 30 March 2018: Email from Jim McColl to the Minister for Transport and the Islands

-----Original Message-----

From: James A. McColl

Sent: 30 March 2018 13:39

To: Minister for Transport and the Islands <transportminister@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>

Subject: FMEL

Importance: High

Dear Humza

[Out of scope]

We have been trying to engage with CMAL over the past year to discuss the significant cost increases resulting from the unforeseen complexities which have arisen in the construction of the vessels 801 & 802.

[Redacted]

[Out of scope]

Jim

Jim McColl

Founder, Chairman & CEO

9. 12 April 2018: Email from Jim McColl to DG Economy

From: James A. McColl

Sent: 12 April 2018 17:08

To: DG Economy <DGEconomy@gov.scot>

Cc: Minister for Transport and the Islands <transportminister@gov.scot>; Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>; First Minister <firstminister@gov.scot>

Subject: FMEL & CMAL

Dear Liz

[Out of scope]

[Redacted]

[Out of scope]

[Out of scope]

whether the contracting authorities have been faced with external circumstances which they could not foresee when they awarded the contract. [Out of scope]

We believe there have been external circumstances which the contracting authorities could not foresee at the time of the contract.

[Out of scope]

Kind regards

Jim

Jim McColl

Founder, Chairman & CEO

10. Note of teleconference, 1 May 2018

Those present:

Derek Mackay	Cabinet Secretary for Finance and the Constiution
Humza Yousaf	Minister for Transport and the Islands
Erik Ostergaard	Chair, Caledonian Maritime Assets Limited
John Nicholls	Transport Scotland
Callum McCaig	Special Adviser to the First Minister

1. Mr Mackay (DM) opened the meeting and explained that Scottish Ministers' overarching mission was the delivery of MV Glen Sannox and hull 802, [out of scope]. He noted that those broad objectives were shared by CMAL, but that their immediate focus was understandably on the delivery of the vessels. Whilst Ministers had expressed frustration on the delays with the vessels, DM confirmed that Ministers were satisfied that CMAL was acting professionally and diligently in their management of the contracts for the vessels. [Out of scope]

2. Mr Ostergaard (EO) said that the yard had faced some challenges with the construction of the vessels, and this had led to the claims FMEL had put forward. CMAL were clear that it was necessary to defend its position in order to safeguard the company's and Ministers' interests. CMAL was confident of its position in respect of the claim [out of scope].

3. [out of scope]

4. [out of scope]

5. [out of scope]

JN

1 May 2018

11. 5 May 2018: Email from Jim McColl to DG Economy

From: James A. McColl

Sent: 05 May 2018 10:20

To: DG Economy

Cc: First Minister; Cabinet Secretary for Finance and the Constitution; Minister for

Transport and the Islands
Subject: Fwd: Independent expert

Dear Liz,

[Out of scope]

FMEL's claim is that post contract there have been unforeseen complexities and circumstances which have had a significant impact on the costs of completing the contracts.

[Out of scope]

[Out of scope]

FMEL's position is that unforeseen complexities and circumstances have arisen, post contract, which would justify a price increase.

CMAL's position is that this claim is rubbish.

[Out of scope]

Jim

Sent from my iPhone

12. 9 July 2018 – extracts from letter CMAL to FMEL

- The Contract into which you willingly entered was for a "design and build"
- The Contract was for a fixed price of £97m for 2 Dual Fuel Ferries
- During the Tender Process FMEL put together a bid that was extremely detailed and held out to be competent to deliver – which we accepted leading to the Contract signing
- These 2 vessels are neither innovative or highly complex as you continually report. There are many Dual Fuel and LNG Vessels currently in operation and many more currently under construction as succinctly pointed out by **[Redacted]**

REASONS FOR NOT PROVIDING INFORMATION

Exemptions apply, subject to the public interest tests.

Section 30(b)(i) - free and frank provision of advice and exchange of views

Exemption under section 30(b)(i)(ii) of FOISA (free and frank provision of advice and exchange of views) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation and discussion. This exemption recognises the need for officials to have a private space within which to discuss issues and options with colleagues and stakeholders, in this case Caledonian Maritime Assets Ltd and Ferguson Marine Engineering Ltd. Disclosing the content of these discussions will substantially inhibit such discussions in the future, because these stakeholders will be reluctant to provide their views fully and frankly if they believe that those views are likely to be made public.

Public interest test

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing officials and stakeholders a private space within which to communicate with appropriate colleagues and external stakeholders.

We consider, therefore, on balance, that the public interest in release is outweighed by that in favour of upholding the exemptions.

Section 33(1)(b) - Commercial interests

The Section 33(1)(b) exemption applies to a small amount of the information because the release of certain financial information relating to the Clyde and Hebrides ferry service contract, Caledonian Maritime Assets Ltd's vessel procurement procedures would be likely to prejudice the commercial interests of Caledonian Maritime Assets Ltd and Ferguson Marine Engineering Ltd.

Public interest test

We recognise that there is a public interest in disclosing information as part of open and transparent government. However, we consider that there is a greater public interest in ensuring that we avoid significant harm to the commercial interests of Caledonian Maritime Assets Ltd and Ferguson Marine Engineering Ltd. There is also a strong public interest in ensuring that Transport Scotland / Caledonian Maritime Assets Ltd are able to secure best value for the public purse.

We consider, therefore, on balance, that the public interest in release is outweighed by that in favour of upholding the exemptions.