Richard Rollison

Directorate for Economic Development
21 August 2017

Cabinet Secretary for Finance and the Constitution

FERGUSON MARINE ENGINEERING LIMITED (FMEL)

Purpose

1. To update you on the current financial position of Ferguson Marine Engineering Limited (FMEL) and our urgent work with them to address anticipated serious cash flow problems at start September and, if these can be overcome, even deeper cash flow problems expected towards the end of this year and again in around May 2018.

Priority

2. Immediate

Background

3. Both yourself and DG Economy have had a number of discussions with Jim McColl regarding FMEL's work for CMAL and the company's financial position. As you are aware, following a procurement exercise, FMEL was commissioned by Caledonian Maritime Assets Ltd (CMAL) to provide two ferries, the 801 and 802, for a total contract cost of £97m. The contract payments incurred to date are c.£74m. However, remaining costs to complete the work are estimated by FMEL at £37m. CMAL's estimate is higher.

4. The two ferries account for nearly all of FMEL's revenue and their completion will occupy FMEL for the rest of 2017 and most of 2018. FMEL currently has no other significant contracts or sources of revenue[1].

5. Throughout the contract negotiation and delivery period, following requests from FMEL, CMAL has taken various steps within the parameters of the procurement process to support FMEL's cash flow management. This includes, for example: a substantial early payment and reducing the final payment from £40m to £25m; replacing the original refund guarantee with a surety bond; and re-phasing payments which further reduced the final payment to below £10m. There is limited room for CMAL to make any further changes of this type and further consideration of this option is provided in Annex A.

6. FMEL have continued to press for action on two fronts to support their cash flow management:

[1] The Cabinet Secretary for the Rural Economy and Connectivity and the Minister for Transport and the Islands have approved in principle, subject to funding and affordability, a Transport Scotland proposal for a new major vessel **to be procured** for Islay services. The contract value will be c. £40m.

(i) *A mechanism to enable release of the £15m held in an escrow account relating to the surety bond provided by Tokio Marine HCC (HCC).* This surety bond ensures that should FMEL enter into administration and be unable to deliver the 801 and 802 CMAL would receive £24.5m to enable completion of the vessels. The need for a surety bond is part of the contract between CMAL and FMEL but the requirement for FMEL to place £15m in an escrow account is part of the terms set by HCC for provision of the bond. HCC are also a secured creditor in terms of the assets of FMEL, including the shipyard itself along with relevant equipment.

(ii) *An increase of £13.8m to the contract price to be paid by CMAL.* FMEL claim that the contract price for the 801 and 802 should be increased by £13.8m to reflect the unforeseen complexity of the work. However, they have provided little evidence to CMAL to support this claim. Furthermore, **any agreement on a price increase will require formal and lengthy adjudication.** Even then, it seems unlikely that any price increase will be the full £13.8m claimed by FMEL.

7. On 10 August we commissioned PwC to provide a robust assessment of FMEL'S financial situation and consider options for public sector support. We have been liasing with PwC on a daily basis and they provided an interim report on FMEL's short term financial situation and outline options for possible public sector support on 17 August. PwC have discussed and shared this report with FMEL.

8. PwC are now doing further urgent work to drill down in to FMEL's short term financial situation, to consider and assess medium term cash projections and viability and, with SG officials and FMEL, to examine options for public sector support.

Issues and Next Steps

9. PwC's Interim Report indicates that, assuming payments of approx. £1.9m to critical suppliers to end August, FMEL's cash balance at start September will be approx. £20k. **PwC considers this insufficient in terms of the continued operation of the business and that it would quickly precipitate insolvency and administration.**

10. The Interim Report also points to an anticipated significant cash shortfall for FMEL further down the line. Under the best case for FMEL scenario (i.e all £13.8m additional contract claimed by FMEL paid quickly and vessels delivered on schedule) **the short fall is £16.9m in May 2018**. Under another scenario (i.e only a small proportion of the price increase claimed by FMEL being realised and the vessels being delivered according to CMAL's rather than FMEL's assessment of when, in reality, that is likely) **the short fall is £27.3m in May 2018 and £25.7m in Dec 2018.**

11. **The cash gap which FMEL is looking to the Government and/or its agencies to help close is approx. £20m - 30m depending on scenario outcome**. In considering how to address this we are very alive to the implications of possible administration in terms of the 400+ jobs at FMEL and

the future of shipbuilding in Scotland; the significant real and process costs to CMAL in terms of delivery of the vessels; and the likely political and media spotlight at a time when we are stepping up our work on the economy and future industries. At the same time, our room for manoeuvre is constrained by procurement and state aid rules and by the fact that FMEL's principal assets are the shipyard and the CMAL contracts. Our position is constrained further given HCC are a secured creditor in terms of the assets of FMEL.

12. Annex A outlines the potential options for public sector intervention to address these issues and, following discussion between PwC and officials (SGLD, Finance, Transport Scotland, Economic Development) on 18 August and consideration of state aid and procurement issues, the viability or otherwise of these options.

13. It is clear that any of the options which might address the deeper cash flow problems further down the line require considerable further work and that the associated process and due diligence, including possible Parliamentary process, will require further external expertise and take some time, probably months, to deliver.

14. We are taking this forward but **our immediate focus is on those options which can potentially address FMEL's cash flow problem at start September**. These options are:

(i) Further changes to the phasing of payments by CMAL (though if there is any room for manoeuvre the scope for this may be extremely limited); and

(ii) Provision of a bridging loan linked to the launch of the 801 which releases further payments by CMAL and approx. £5m from the escrow.

15. We are continuing to liaise with PwC on a daily basis and will be meeting with PwC and FMEL over the next few days to work through the immediate and medium term options. As part of that we will emphasising that any public sector support will need to be met by some financial commitment by FMEL, Clyde Blowers Capital or an alternative private sector source to sharing the cost and risk with the Government and/or its agencies.

Recommendation

16. You are asked to note the above and agree that officials are to continue to explore options for possible public sector intervention.

Richard Rollison
Directorate for Economic Development
21 August 2017

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Finance and the Constitution	X				
Lord Advocate					X
First Minister					X
Cabinet Secretary for the Rural Economy and Connectivity					X
Cabinet Secretary for Economy, Jobs and Fair Work					X
Minister for Transport and the Islands					X

DG Economy
Permanent Secretary
Gordon Wales, CFO
DG Finance
DG Scottish Exchequer
Mary McAllan, Director DED
[Redacted], DED III
David Anderson, State Aid
[Redacted], State Aid
[Redacted], TS
Roy Brannen, CE TS
Richard Rollison, DED III
[Redacted], DED III
[Redacted], TS
[Redacted], Finance
Murray Sinclair, Director SGLD
[Redacted], SGLD
[Redacted], SGLD
Colin Troup, LSA
[Redacted], Procurement
[Redacted], TS
[Redacted], TS
Mike Baxter, TS
[Redacted], TS
[Redacted]
[Redacted], FMPU
Liz Lloyd
Colin McAllister
Stewart Maxwell

ANNEX A

Options for possible public sector intervention

PwC's Interim Report identifies a range of potential options to help FMEL address cash flow and working capital issues. The viability of pursuing these options has been assessed as follows:

Red – absolute or very significant barriers to implementation and/or unlikely to be realised quicin the medium term.

Amber - challenging but worth further exploration.

Green – viewed as possible and most likely to address issues in short term at least

Option	Initial Evaluation	Viability

CMAL agree to change phasing of payments	• Initial conversations with CMAL have indicated that there may be potential to re-profile milestone payments to provide FMEL with immediate working capital.
	  ○ This would exclude the 10% final contractual payment (already reduced from 25%).
	  ○ It would also have to be approved by the CMAL Board.
	• The FMEL-CMAL contract is subject to procurement regulations. Shifting the contract in favour of the contractor could contravene these regulations.
		Amber

CMAL agree to contract uplift	• FMEL rationale of increased complexity of work necessitating significant contract uplift is likely unsustainable.
	• Any variation in the contract would have to meet the requirements set out in regulations 72(1)(b) or 72(1)(c) of the Public Contracts (Scotland) Regulations 2015. Namely:
	  ○ That significant additional work is required that was not accounted for in the original contract.
	  ○ That the need for modifying the contract has been brought about by circumstances that the authority could not have foreseen.
	• In both these instances, FMEL would have to set out robustly and precisely the reasons for the contract variation.
	• Irrespective of above, this dispute would ultimately be settled via an adjudication process which CMAL are only contractually obliged to pay at the conclusion of the contract unless they chose to exercise flexibility.
		Red

HCC agree to amend surety bond value or timing of fund release	• This is considered **significantly** unlikely to happen. HCC are in a favourable position currently, and there are very few commercial reasons that would motivate them to make any amendments to this arrangement.	Red
Grants	• Grants can generally only contribute a specified percentage of the costs of specific company investment projects rather than company running costs. This mechanism of support	Red

	would necessitate a substantial investment from FMEL themselves. • The General Block Exemption Regulation 651/2014 for State Aid mentions in Article 13 (a) that scope of regional aid will not apply to aid which favours activities in the steel sector, the coal sector, **the shipbuilding sector** and the synthetic fibres sector.	
Loan	• A bridging loan of £5m would alleviate the immediate acute cash flow problems, and provide working capital for September. • The terms of the loan could be linked to the launch of 801 (at which point CMAL and HCC are both due to release milestone payments). • This option offers benefits if considered in relation to the status quo option (i.e. if nothing is done and FMEL enter administration). • PwC have been requested to provide further detail on the commercial terms under which this loan would have to be provided.	Green
Equity	• To avoid state aid implications, it would be necessary to show that FMEL have a viable five year business plan and that there is the potential to offer protection / return on public sector investment • This could be provided with a debt element (i.e. loan to equity) • There is also the potential to secure the loan against the outcome of the FMEL-CMAL arbitration process in relation to the contract variations. Subject to the arbitration process deciding in favour of FMEL, the loan could at that point be converted to equity.	Amber
Guarantee	• We are unable to give a guarantee where the beneficiary of the guarantee is a firm in financial difficulty. This may preclude us from providing a guarantee to HCC if their borrower was a firm in difficulty. • We can only provide a guarantee up to 80% of the value (for example, in the case of the surety bond, 80% of the £24.5m). Another partner would have to cover the balance of the value. • The guarantee would have to be on commercial terms, and these would need to be calculated. ○ These terms are also linked to the long term viability of the business. • The achievability of this option in the immediate term is unlikely given the significant procurement, state aid and legal sensitivities that would need to be worked through. However, it is likely worth exploration as a potential medium term solution. • A guarantee would be classed as a contingent liability that would need to be approved by the Scottish Parliament Finance Committee.	Amber

From: Mary McAllan
22 June 2018

Cabinet Secretary for Finance and the Constitution
Minister for Transport and the Islands

NEW LOAN AGREEMENT WITH FERGUSON MARINE ENGINEERING LTD

Purpose

1. To seek your approval for a £30 million commercial loan facility for Ferguson Marine Engineering (Holdings) Limited (FMEL).

2. The purpose of the loan is to improve the liquidity of FMEL. This will deliver benefits including support for delivery of vessels for Caledonian Maritime Assets Ltd (CMAL), improved security for SG's existing loan to FMEL, protection for employment, and provide a platform for the shipyard to thrive in the longer-term.

Timing

3. Urgent. The Directors of FMEL have indicated they require access to new funding immediately if severe cost-cutting measures and further significant delays to the CMAL order are to be avoided.

Contents and structure of the advice

4. This advice presents the terms of the proposed loan agreement; it summarises the independent commercial and legal advice taken in negotiating the loan and the key accountability considerations underpinning the recommendation.

5. The advice is structured as follows:

6. The material below is supplemented by further detailed information held in the annexes to this paper. A due diligence report produced by PricewaterhouseCoopers LLP (PwC) (see executive summary at Annex A) and the loan agreement are contained in separate documents.

I) Consultation

7. The work leading to the loan agreement reflects input and advice from my Directorate, Transport Scotland, Finance, Procurement and SGLD. The recommendation has been approved by DG Economy (Accountable Officer), the Chief Financial Officer and the Permanent Secretary (Principal Accountable Officer).

8. The Accountable Officer, Liz Ditchburn, has provided the following statement:

> "I am content that this proposal goes forward to Ministers for decision. Having considered carefully the options to achieve Scottish Ministers objectives and the risks associated with these options, and supported by the appropriate legal and financial advice, I believe that the loan agreement as negotiated represents a legitimate basis for action, and on balance, the most appropriate mechanism to achieve our objectives. The Accountable Officer considerations of regularity, propriety, and value for money have been considered and I believe are satisfied on the basis of the evidence and advice available to me. Appropriate protections of SG interests have been built into the agreement and unreasonable demands from CBC/FMEL have been negotiated out. **[Redacted]**. Close oversight and monitoring, including through securing appropriate expert advice on FMEL's progress against their resourcing plan, will be important, particularly during the critical first months of significant drawdown of the facility."

9. The Lord Advocate has been briefed by SGLD during the preparation of the proposed loan and has had the opportunity to ask questions and received replies. **[Redacted]**

i. **[Redacted]**

ii. **[Redacted]**

iii. **[Redacted]**

10. The first point will be covered by a statement that MacRoberts will provide confirming that: (a) the transaction documents reflect the heads of terms and extensive discussions which have taken place over the course of the recent weeks, (b) the transaction documents are in the kind of form that we would generally expect for a transaction of this nature based on the heads of terms and discussions among the parties, (c) we believe that the transaction documents reflect the agreed position among the Scottish Ministers, CBC, and the surety and accordingly are in a form suitable for the entry into by the Scottish Ministers. The second point is covered by a combination of the final version of the PwC report that accompanies this submission (full report attached by covering email and summarised at Annex A) and by the commentary below at section VI. The final point is addressed in the submission below at paragraphs 112 and 113.

II) Background

11. Ministers are well acquainted with the financial circumstances of the FMEL shipyard and the ongoing contract dispute between FMEL and CMAL concerning the

costs of completing two vessels for the CalMac fleet (see Annex B). Officials have briefed Ministers extensively on these topics at regular intervals over many months; a range of contingency options for handling the financial situation of the business and for protecting the interests of SG have been developed and reviewed by officials and Ministers.

12. The proposed loan is not contractually tied-in with the CMAL-FMEL contract. SG is not a direct party to the vessels contract or directly involved in the contract dispute process but, given Ministers' clear priorities (see below), the loan agreement contains some links with vessel delivery and the contract dispute issue (see Loan Agreement Summary below).

13. In considering a second loan to FMEL, SG is acting in the capacity of a lender and acting on a commercial basis. SG has already provided a loan to FMEL (£15 million) and we receive information on the financial position of the yard on a confidential basis for monitoring purposes. The nature of the information disclosed to SG is clearly sensitive and confidential and therefore places us under a common law duty of confidentiality. We do not have the permission of FMEL to disclose any of its financial information to CMAL or to discuss the proposed loan in any detail. As agreed between CMAL and the Minister for Transport and the Islands, we have however engaged with CMAL to understand their perspective on different options of support for FMEL while maintaining the appropriate confidentiality. FMEL is aware that we have had that conversation.

14. It is important to note too that the proposed loan is not a remedy for the contract dispute between FMEL and CMAL but it would afford breathing space to enable work on the CMAL contracts to continue which, in turn, would provide a platform for the business to secure other work and to diversify while FMEL decides how or whether to pursue its claim.

15. A longer term successful commercial future for the yard relies on FMEL winning other work. FMEL's forward pipeline includes a promising consortium tender for the MOD's Type 31e frigates, decommissioning work and advanced bids for small fishing trawlers. FMEL remains keen to acquire a repair and maintenance capability through the acquisition of a dry dock though the business case for this investment has not yet been approved. FMEL has begun to explore the potential of ship repair work by undertaking repair and maintenance work through deployable resources – small teams who can be dispatched to work on location – which has been very successful and profitable recently according to the business.

Financial position of FMEL

16. The Directors of FMEL have informed officials that without either (i) a positive and substantially full settlement of the contract dispute in their favour or (ii) an alternative source of fresh funding, they will be forced by their Companies Act duties to take early action to preserve the solvency of the shipyard by slashing costs.

17. FMEL presented a cash flow dated 11 May 2018 which showed that there would be less than £0.1 million cash in FMEL's accounts at the end of May (though we understand that money for wages, for perhaps two months, has been set aside). FMEL's projected cash deficit for the end of June is £4.6 million.

18. The business has managed its cash in various ways since it drew the £15 million SG loan agreed by Ministers last September – for example, via supplier stretch (i.e. not paying suppliers on due dates), reducing staff overtime, cutting contracted labour and postponing sub-contractor work. These strategies have now reached their limits.

19. Without access to a further SG loan or other finance, the next planned step for FMEL's Directors is to issue redundancy notices to the bulk of the core staff at the yard – around 230 from a total headcount of 280. Under this plan only a skeleton staff would be retained to undertake limited work on the CMAL order – indeed, due to the deployment of various resources in repair and maintenance work CMAL believe this situation already to be the case.

20. Reducing headcount would buy the FMEL Directors limited time to consider their options while the business remained solvent but, crucially, it would further set back the delivery dates for the CMAL vessels (known as MV Glen Sannox and 802). This is an outcome Ministers and CMAL are keen to avoid.

21. An administration of the business at the instigation of FMEL's Directors or by creditor action is now a real risk; such an event could damage the business, even further delay vessel delivery and risk generating significant job losses.

Ministers' objectives

22. The Cabinet Secretary for Finance and the Minister for Transport restated their three principal policy objectives at a meeting with officials on 10 May – vessel delivery, employment and the shipbuilding capacity of the yard:

- Vessel delivery – The Minister for Transport wrote to the Rural Economy and Connectivity Committee in November 2017 stating that 801 (MV Glen Sannox) would be delivered in winter 2018/19. Since then, and since the launch of the MV Glen Sannox in November 2017, work on both vessels has slowed significantly, in particular in the last few months when labour has been substantially cut back. Cash flow challenges, including aggressive cash flow management, have been a factor in the delayed delivery schedule. Affected island communities in Arran and the Western Isles, where the vessels will be deployed, are concerned at the impact of delays given the capacity and reliability benefits that these new vessels are intended to bring, particularly in light of recent well-publicised disruption on the Clyde and Hebrides network due to mechanical breakdowns.

- Employment – FMEL has already ceased overtime and shed 100 contractor posts from its workforce. Without new funding FMEL Directors plan to cut the yard's directly-employed workforce to 50 within weeks.

- Shipbuilding capacity of the yard – FMEL is a unique asset as the last commercial shipyard on the Clyde and the only Scottish yard that has the physical capacity to build the larger ferries in CalMac's fleet. FMEL is also keen to place itself at the forefront of the development of alternative maritime propulsion technologies such as electric hybrids and LNG hybrids and

innovative technologies around hydrogen-powered vessels (e.g. HySeas III project[1]).

23. In pursuit of these three objectives Ministers sanctioned negotiations between officials and FMEL/CBC with a view to developing a commercial proposition to support the business (see update note of 11 May at Annex C).

Due diligence

24. PwC are our independent commercial advisers and MacRoberts LLP are our external legal advisers covering the transaction.

25. PwC, MacRoberts and Brodies (acting for FMEL) led work on the drafting of the Head of Terms (see Annex D) and the final suite of legal documents. Both PwC and MacRoberts have provided assurance that the loan agreement and associated documents in their final form are commercial, legally robust and conform to SG's intentions and duties. MacRoberts and PwC will conduct a final check of the documents and signal their satisfaction to us before execution of the loan.

III) Loan Agreement Summary

Purpose

26. The purpose of the loan is to fund FMEL to "assist with the long term viability and enhanced capabilities of the businesses carried on at the Property" and for "other general working capital purposes of FMEL, all as identified in the Business Plan and/or Financial Model" (Clause 2.2). Use of the facility for any other purposes other than that specified in Clause 2.2, without the prior written consent of the Scottish Ministers, would be an event of default.

Term and interest

27. The loan agreement is a £30 million facility on a 10 year repayment term with scope for the loan to be converted to equity. Draw down is available from the date of the loan agreement until **[Redacted]** after that date, and a full review and renegotiation of the key terms of the loan agreement is scheduled after **[Redacted]** .

28. Interest is payable at a fixed rate of **[Redacted]** on monies drawn against the loan facility until share warrants are issued to SG. **[Redacted]**.

29. **[Redacted]**

[1] FMEL was part of a successful application for EU Horizon 2020 funding, generating £2.7m for FMEL.

30. **[Redacted]**

Scheduled review

31. A review of the loan – an opportunity for renegotiation – is scheduled to take place **[Redacted]**. This review will consider all key terms of the loan including the rate of interest and after the review **[Redacted]**.

32. The basis of the scheduled review is set down in the loan agreement. **[Redacted]** ". In the absence of agreement to a different rate, interest will be charged at the **[Redacted]** .

33. In terms of the review mechanics, discussions will commence in May (i.e. 30 business days before the June review date).

Equity conversion

34. The share warrants will allow Ministers to take a shareholding in the business or to hold the debt. The loan will remain in place until it is repaid or the warrants associated with the loan are exercised – i.e. the loan can be repaid unless the warrants have been exercised to convert the loan to shares. The warrants carry no rights other than the right to convert to shares in Ferguson Marine Engineering (Holdings) Limited (immediate parent company of FMEL shipyard). At the end of the full 10 year term of the loan if any of the share warrants have not been exercised (i.e. converted to shares in FME Holdings Ltd) the value they represent – that is, the principal amount of the loan drawn – will be repayable in full to SG along with the accrued interest.

Conversion rate

35. Scottish Ministers will gain a right to be issued new shares in FME Holdings Ltd at a rate equivalent to the value of CBC's existing equity on a pound-for-pound basis. PwC considers this loan conversion rate to be reasonable on the assumption that "FMEL has a viable future and SG recognises the value brought by the CBC management team in light of CBC's commitment to invest further cash in the business". PwC also notes that "SG should regularly review if / when it should exercise the share warrants. The review mechanism should include an understanding of **[Redacted]**.

[Redacted]

36. **[Redacted]**

37. **[Redacted]**

i. **[Redacted]**

ii. **[Redacted]**

38. **[Redacted]**

CBC investment

39. The agreement provides that CBC will inject fresh funding into the business alongside the new SG loan on equivalent terms by subscribing for new shares in FME Holdings Ltd. CBC commits to inject £8.5 million of new funding into FMEL as part of this agreement, structured in two tranches and with the following conditions:

- Tranche 1: up to £3 million (10p from CBC for each £1 of SG loan) when cash released from a current business disposal comes into CBC Fund III **[Redacted]**

- Tranche 2: a further £5.5 million when cash released from a current business disposal comes into CBC Fund III and an investment case for capital expenditure is approved **[Redacted]**. There is a 12 month long stop date for this tranche of investment to be made.

40. CBC's £8.5 million investment is predicated on the sale of another business owned **[Redacted]** – an event over which we can have some visibility but no control. We understand from CBC that an adviser-led disposal process is well-advanced and a preferred bidder for the business concerned has been identified. We requested evidence about the sale process and the expected profits it will generate. To preserve commercial confidentiality, PwC has reviewed this material on our behalf and are content that the planned disposal is well-advanced and this sale, if concluded soon, has the potential to generate the quantity of funds necessary to resource CBC's £8.5m equity commitment. Whilst the sale process is expected to complete before autumn (with funds flowing at that time) there is always a risk that the process is delayed.

41. We had sought the input of CBC's funds to coincide with the start of SG's loan. CBC Fund III holds a minimal cash balance however, as all funds are allocated to existing investments. CBC has evidenced this by providing a copy of their quarterly investor update report to PwC.

SG right to buy

42. In the event that CBC has not invested £8.5 million of new funding within 24 months of the date of the loan agreement (regardless of whether the Fund has available cash), then SG will have the option to acquire all shares in the issued share capital of FME Holdings Ltd held by CBC at fair value (as determined by an independent expert in the absence of agreement between the parties).

43. SG will also have the right to buy:

- all shares in the issued share capital of the borrower for £1 in the event that the business is about to enter insolvency;

- the shares held by CBC at fair value[2] in the event of a proposed distribution of the shares to members of CBC Fund III relative to the scale of their individual investments (this is termed a 'distribution in specie');

- the shares at the price agreed between CBC and a third party buyer in circumstances where the auto conversion of warrants would otherwise apply (i.e. a sale under the waterfall arrangements referred to above).

Security

44. The £15 million SG loan to FMEL agreed by Ministers on 4 September 2017 was unsecured (see submission from DG Economy at Annex E). It is a standalone agreement but as part of the new loan agreement, we have negotiated:

- second ranking standard security[3] (after the surety bonds provider, HCC International Insurance Company plc (HCCI)) over the yard for all sums due or to become due to SG under both the £15m loan agreement and the £30m loan agreement;

- second ranking floating charges[4] from FME Holdings Ltd, FMEL and MacKellar in security of all sums due or to become due under the £15m loan agreement and the £30m loan agreement; and

- cross guarantees from FME Holdings Ltd, FMEL and MacKellar.

45. The security has negligible monetary (£s) value at this stage whilst the insurer's debt is greater than the asset values. However PwC make the point that:

> "The value to SG [of security] will increase as its loan will become first ranking when the performance guarantee insurer does not have any debt, after the delivery of 802. However holding the security has some value now for the lender in terms of its awareness of, and input to, any insolvency process that might take place in the future. For SG, whose objectives include retaining the yard, the assets covered by the security may have a greater value than the market value." (see page 6 of PwC report)

46. **[Redacted]**

Link with the contract dispute process

[2] If not otherwise agreed between SG and CBC, fair value will be assessed by an independent accountant who has 7 calendar days to perform a valuation of the investment using generally accepted industry standard accounting methods. If an expert cannot be agreed and identified within 2 days, ICAS will be asked to nominate an expert within 2 days.
[3] Standard Security: The only method in which a fixed security can be taken over land and buildings in Scotland. In the event of default the creditor has the power to sell the property, enter into possession of the property, carry out any necessary repairs, or apply for a decree of foreclosure.
[4] Floating Charge: A charge/security that floats above specific, or all of the assets/property that the company has. The company is free to transfer property and assets whilst the charge floats, although a letter of non-crystallisation is normally asked for to show that the charge hasn't attached.

47. In the event that there is an outcome in FMEL's favour with respect to the contract dispute around the CMAL vessels, an equivalent amount of the loan which, at that time, is unutilised will be cancelled.

48. In the event that FMEL receives proceeds in respect of a final resolution of the contract dispute between FMEL and CMAL after the £30 million loan has been fully drawn, the 'surplus amount' will be repayable to SG. In practice, a 'surplus amount' will arise if FMEL gains proceeds from the resolution of the contract dispute in excess of £3 million.

Undertakings and conditions precedent

49. The proposed loan agreement contains a number of undertakings that, for example, place restrictions on FMEL in terms of **[Redacted]**

50. There is also an undertaking in the agreement that provides the right for SG to appoint a Director to the business. **[Redacted]**, achieved through the conversion of share warrants to equity.

51. Scottish Ministers are also entitled from the commencement of the agreement to appoint one person to act as an observer at the quarterly meetings of Directors of FMEL. This person will be entitled to receive notice of, and attend and speak at, all quarterly meetings of Directors of FMEL and to receive copies of all board papers as if they were a Director, but shall not be entitled to vote on any resolutions proposed.

52. Conditions precedent to the loan include:

Date of signing

- the Business Plan, incorporating projected cash flow, profit and loss and balance sheet figures together with any associated financial models/projections; the Completion Financial Model and a Certificate, in Acceptable Form, from PWC as financial advisers to the Scottish Ministers;

First and subsequent utilisations (loan drawdown)

- satisfaction that the cash balance held by the Group will be at least the amount set out in the table in Part 3 of the Schedule (Minimum Cash Balance). This is a control to ensure cash is not drawn into the business at a rate faster than we expect (see Annex G);

- satisfactory assurance from the Scottish Ministers' independent operational expert that progress of the build of the vessels known as 801 and 802 is proceeding in accordance with the overall resource program presented by FMEL on 28 and 29 May 2018 at Port Glasgow, taking account of factors that are outside FMEL's control.

Technical diligence and assurance

53. Given Ministers' policy priorities it is essential that the agreement takes account of the risks surrounding the CMAL vessel delivery schedule and seeks to address them.

54. The adequacy of FMEL's resource mobilisation plan relative to the updated vessel delivery schedule and cashflow projections has been reviewed and verified by an independent shipbuilding expert and a programme/project management expert (see Annex H). The independent experts appointed to undertake the mobilisation review were: (i) external maritime consultant Commodore Luke van Beek[5]; and (ii) independent project reviewer and former OGC Managing Consultant, Bert Niven.

55. We have identified the need for ongoing expert advice to monitor FMEL's performance against the vessel delivery programme, cash flow and resourcing plan in order to provide assurance that loan conditions and expectations are being met. This will supplement regular updates on progress from CMAL as client for the contracts. Our appointed experts will also liaise with CMAL before reporting to Transport Scotland but would not share any commercially sensitive information with CMAL. Subject to availability and the agreement of the individual involved, we propose to retain our lead consultant (Luke van Beek) for this ongoing task.

IV) Previous Interventions to Support FMEL

56. Following a competitive procurement exercise, FMEL entered into a contract with CMAL in October 2015 to provide two dual-fuel (marine diesel and liquefied natural gas) ferries, the 801 (now named MV Glen Sannox) and 802 (yet to be named), for a total contract price of £97 million.

57. The contracts were 'design and build' which in practice means that the builder takes on the risk of challenges emerging from the design. The original contractual delivery date for the MV Glen Sannox was end May 2018 and for 802 it was end July 2018. Neither vessel will be delivered on time.

58. As a condition of the contract FMEL was required to provide **[Redacted]**

59. In addition, after it became clear that FMEL was experiencing difficulties in delivering the contract, CMAL took various steps within the parameters of the procurement process to support FMEL's cash management. This included, for example, re-phasing and accelerating milestone payments. There is now no scope for CMAL to make any further changes of this type as £82.3 million of the total contract of price of £97 million has already been paid out to FMEL as of 28 May 2018. The majority of remaining payments are for 802 (and one remaining payment of £4.85m on delivery of 801) and will not come into the business soon. These will be paid at or around launch and on delivery; there are currently no agreed dates for these milestones.

60. In September 2017 Ministers agreed to make available to FMEL a commercial loan facility of £15 million to support completion of the CMAL order and assist with

[5] Luke van Beek CBE is a former Royal Navy Commodore and Cabinet Office accredited reviewer.

business stability. Alongside this agreement CBC provided a side letter that made a non-binding and conditional commitment to inject £8.5 million into FMEL (see letter at Annex I).

61. In February 2018 CBC asked SG to enter into an intercreditor agreement with HCCI (the surety bonds provider) to release some of FMEL's own resources to ease cash flow pressure. HCCI agreed to weaken its security position by releasing £10.7 million of FMEL's cash collateral in return for: (i) an additional fee paid by FMEL; and (ii) an intercreditor agreement with SG. The agreement makes clear that HCCI's debt ranks in priority to SG's debt and it blocks loan repayments to SG until any liability to HCCI is discharged in full.

62. In signing the intercreditor agreement SG also agreed that repayment on the £15 million loan would not begin until both CMAL vessels were completed (and the bonds released) or 6 March 2020 – whichever came first[6].

63. In her recommendation to Ministers on the intercreditor agreement DG Economy noted that it would only allow the company to remain cash positive until April 2018 and there remained no credible path through to the completion of the contracts. DG Economy's advice also stated that any further Government consideration of potential future support for FMEL would need to be accompanied by an injection of CBC / private sector capital too.

64. To satisfy the commerciality test for any new intervention we believe it is essential that CBC invest new monies alongside SG. Parallel investment would demonstrate CBC's continuing shareholder confidence in FMEL's business plan, show faith in the ability of the business to build a pipeline of orders, and become a strong and sustainable operation in the medium-term.

V) Intervention Case, Options and Risk Assessment

Case for intervention

65. The value for money and strategic arguments for the intervention proposed are strong: the deal secures commitment, albeit conditional, to new private investment in FMEL by bringing in shareholder money alongside SG's loan; it reduces the risk of further delay to the CMAL vessel programme; it prevents the immediate risk of insolvency; it creates some security for SG's existing loan; allows time for the business to implement a diversification plan; and it preserves optionality.

66. The case for intervention would look very different if the Scottish public sector were not the major customer of the business with a specific and important contract in place for the CMAL vessels – the intervention is therefore strongly influenced by our supply chain interests. Without these interests we would in all probability make a different judgement on the merits of the intervention proposed. The PwC report

[6] Final Repayment Date following the February amendment: "Final Repayment Date" means, subject to the terms of this Agreement, the first to occur of (i) 6 March 2020 or (ii) provided such date is not prior to the 6 September 2019, the Bond Discharge Date (as defined in the Intercreditor Deed). Where the Bond Discharge Date (as defined in the Intercreditor Deed) is prior to the 6 September 2019, the "Final Repayment Date" shall be 6 September 2019."

highlights SG's customer interest (via CMAL) as a central element of the commercial case for the transaction.

67. CMAL procured the larger ferries from FMEL to replace ageing vessels in the CalMac fleet and also to increase capacity on lifeline services to Arran and the Outer Hebrides, in line with the priorities identified in Transport Scotland's Vessel Replacement and Deployment Plan. Recent disruptions on the network have reinforced the need for new tonnage as soon as possible. Affected island communities and their elected representatives are expressing concern at these delays and the potential impacts of congestion on growth, particularly of tourism, and disquiet about the absence of up to date information on realistic delivery dates.

68. FMEL currently employs a workforce of approx. 280 and is the largest single manufacturing employer in Inverclyde. Adding indirect and induced effects, the shipyard supports around 500 jobs.

69. Inverclyde performs relatively poorly against the Scottish average on unemployment, and has lower rates of economic activity and employment than Scotland as whole. Inverclyde also has a relatively high share of deprived areas (see economic data in Annex J).

Contingency options

70. Since last autumn we have worked across Government and with external advisers to compile and compare a long list of contingency options for addressing the financial circumstances of FMEL and the challenges of completing the CMAL order.

71. The loan agreement proposed is the most deliverable and commercial option available to SG, according to PwC. It does not conflict with or preclude any of the other contingency options; indeed, it keeps all avenues open and allows time to develop further and refine alternatives in case they are needed. The loan agreement specifically creates a path to full nationalisation in the event that that becomes Ministers' preference.

72. A series of contingency planning workshops were held between November and February, identifying a long list of alternatives to enhance business stability and secure vessel delivery. The early outputs of the first phase of this work were presented to Ministers on 20 December and the set of options subsequently refined with illustrative costings calculated.

73. The final comparative analysis prepared by PwC focussed on four options:

i. loan agreement with share warrants (**recommended option**)

ii. **[Redacted]**

iii. **[Redacted]**

iv. **[Redacted]**.[7]

74. We asked PwC to conduct a comparative funding analysis of the four options above – this is shown below. The analysis is necessarily high level and the margin of error around the estimates of costs is likely to be wide, but the headline message is that all options are costly to SG within the broad range of circa £30 to £50 million.

75. The table that follows is based on the assumption that the funding requirement to complete the CMAL order is £32.2 million, though CMAL believes the actual shortfall in funding is now something over £40 million. This illustrates the risk that the proposed loan and investment agreement may not be the end of the story for funding the CMAL vessels.

76. The SG loan with CBC's investment however should be sufficient to get to a point where MV Glen Sannox is delivered and 802 is in the water, and therefore able to be removed for completion elsewhere. Once that point is reached the assessment of options will have changed substantially – and FMEL may also have secured cashflow from other work.

Insolvency costs

77. **[Redacted]**

78. **[Redacted]**

[7] **[Redacted]**

PwC analysis – Table 1

Sources of funding

	R&R	Loan Proposed	National-isation	Insolvency Low	Insolvency High
Funding requirement	(32.2)	(32.2)	(32.2)	(32.2)	(32.2)
Amendments for insolvency*	-	-	-	1.5	(17.5)
	(32.2)	**(32.2)**	**(32.2)**	**(30.7)**	**(49.7)**
SG funding					
Rescue aid from SG	25.0	-	-	-	-
Restructuring aid from SG	3.6	-	-	-	-
Other SG funding	-	30.0	32.2	30.7	49.7
CBC funding					
Funding from CBC	-	8.5	-	-	-
Funding used for capex	-	(5.5)	-	-	-
Additional headroom	-	(0.8)	-	-	-
Restructuring aid from CBC	3.6	-	-	-	-
Surplus / (deficit)	**-**	**-**	**-**	**-**	**-**
Total SG funding to June 19	**28.6**	**30.0**	**32.2**	**30.7**	**49.7**
Future funding	Unknown	Unknown	Unknown	£nil	£nil

* as noted in the contingency planning report dated 23 April 2018

Risk assessment criteria

79. Risks are inherent in the nature of the transaction proposed but these have been anticipated, analysed and mitigated as far as possible. Risks appear greatest in the scenario where the business enters insolvency.

80. Ministers' policy priorities (vessels, jobs and yard) have been foremost in our thinking throughout the negotiations and are captured in the options assessment. The frame of reference also included costs to SG and deliverability.

81. The summary table below is illustrative of our thinking about the risks of the shortlisted options as they stand now. The text below the table provides greater detail of the assessment.

[Redacted]

82. The analysis suggests that the main choice for Ministers is between the option of an SG loan with share warrants **[Redacted]**.

83. The particular mechanics of the loan agreement we are proposing can lead us to either destination depending on the progress of the business and, importantly, the willingness of CBC to continue to invest in FMEL. **[Redacted]**.

84. **[Redacted]**

i) Loan agreement with share warrants

85. Of the options available, an SG loan has the best potential to put money into FMEL quickly **[Redacted]**. It also secures new private investment alongside public funds **[Redacted]**.

86. **[Redacted]**

87. **[Redacted]**

88. **[Redacted]**

89. **[Redacted]**

ii) **[Redacted]**

90. **[Redacted]**

91. **[Redacted]**

92. **[Redacted]**

iii) **[Redacted]**

93. **[Redacted]**

94. **[Redacted]**

95. **[Redacted]**

96. **[Redacted]**

97. **[Redacted]**

iv) **[Redacted]**

98. **[Redacted]**

99. **[Redacted]**

100. **[Redacted]**

Other risks

Controlling use of funds

101. Ensuring that SG funds are used in a manner consistent with the purpose of the loan and Ministers' objectives is important. Monitoring by an operational expert

(see above at paragraph 54 and 55) will provide visibility on the progress of vessel construction and costs. This oversight will be most intense during the period in which the loan is being drawn and on quarterly review basis thereafter.

102. In addition to FMEL's financial accounting information, SG will receive on a monthly basis a build update report on the build out of vessels 801 and 802 plus details of cost estimations, information on cost overruns and any such other information as relevant to the delivery of the vessels and to the running of the business. This material will be reviewed by SG's operational expert.

103. Moreover, each subsequent drawdown against the loan facility (i.e. for all drawdowns after the first payment) requires prior "satisfactory assurance from the Scottish Ministers' independent operational expert that progress of the build of the vessels known as 801 and 802 is proceeding in accordance with the overall resource program presented by FMEL on 28 and 29 May 2018 at Port Glasgow, taking account of factors that are outside FMEL's control" (mentioned above at paragraph 52). Drawdown cannot take place without such satisfactory assurance.

[Redacted]

104. **[Redacted]**

VI) Market Economy Investor Principle (MEIP)

105. Article 345 of the Treaty on the Functioning of the European Union requires neutrality in the treatment of public and private undertakings and one of the implications of that provision is that public authorities are free to invest in undertakings and extend loans, guarantees, inject capital, subscribe to shares or purchase outright any company. Equally, they must behave in the same way as a private investor would behave in similar circumstances to avoid there being state aid present in any state intervention.

106. Application of the MEIP requires analysis of the financial and economic position of the project, taking account of the level of capital investment, the risk profile, the profitability and the future return on investment. The test for MEIP is therefore an economic one and not a legal one.

107. At its most basic the test for MEIP is whether in similar circumstances a private investor, having regard to the foreseeability of obtaining a return, and leaving aside all social and regional policy conceptual considerations, would have subscribed the capital in question. The only considerations that can be taken into account in this context are profitability and optimisation of return of capital.

108. PwC is satisfied that the terms of the loan agreement are in line with market conditions: "We consider that the proposed terms of the loan are broadly in line with those that would be required by a commercial provider" (page 3). On commerciality, PwC conclude as follows: "On balance, the loan is likely to be considered commercial because: (i) The shareholder is demonstrating confidence in the business plan through its cash injection; (ii) SG gains strategically important loan security over the yard; (iii). Overall costs are likely to be lower through a loan to complete 801/2 than through other routes." (page 4).

VII) Accountable Officer Considerations

109. The Public Finance and Accountability (Scotland) Act 2000 requires of Accountable Officers the need to demonstrate the regularity and propriety of the finances under their stewardship and for the economic, efficient and effective use of all related resources.

110. This latter consideration should also take into account the sustainability of the proposal in the context of the wider public finances, that is, the extent to which it affects cumulative future financial commitments and risk. These are personal responsibilities that require decisions to be consistent with the proper performance of the functions of the PAO and Accountable Officers are answerable directly to the Scottish Parliament.

Regularity (legal competence)

111. Regularity concerns whether there are underlying legislative powers with which to commit expenditure.

112. Section 7 of the Industrial Development Act 1982 provides the necessary enabling 'statutory authority'[8] for selective financial assistance to be given to promote industry which will safeguard or develop jobs. The shipyard is in an assisted area: Ward 2 of Inverclyde is listed as an assisted area in terms of Schedule 2 to the Assisted Areas Order 2014.

113. The purpose of the loan is to fund FMEL to "assist with the long term viability and enhanced capabilities of the businesses carried on at the Property" and for "other general working capital purposes of FMEL, all as identified in the Business Plan and/or Financial Model". By supporting the viability of the business through the business plan and associated cash flows, the loan will deliver the benefits envisaged in the Act including protection for employment and creating a platform for the shipyard to thrive and diversify in the longer-term.

Propriety

114. Propriety is concerned with meeting high standards of public conduct, including robust governance and the relevant parliamentary expectations, especially transparency.

115. The written agreement between SG and the Finance Committee specifically requires Ministers to seek the approval of the Finance Committee where they are proposing a transaction that gives rise to a contingent liability (e.g. a guarantee). On the basis that this transaction is a loan we do not consider that there is a need for specific Finance Committee approval. However, we recommend that the Finance Committee is informed at an early stage (see next section on Parliamentary handling below).

116. Provisions relating to the disclosure of information are covered in Section 15 of the loan agreement, including for example:

[8] The term used by the Scottish Public Finance Manual to describe legislative powers.

- "…each party shall treat the other party's Confidential Information as confidential"

- "The Borrower [FMEL] acknowledges that the Scottish Ministers are subject to the requirements of the FOISA and the EISR and the Borrower shall assist and cooperate with the Scottish Ministers to enable them to comply with their information disclosure obligations"

- "The Scottish Ministers shall be responsible for determining in its absolute discretion whether information is exempt from disclosure in accordance with the provisions of the FOISA or the EISR".

117. We have undertaken appropriate due diligence of the loan agreement proposal and alternatives to establish costs and benefits, identify risks and develop mitigations. External commercial and legal expertise has been applied via consultancy services delivered by PwC and MacRoberts to shape an acceptable agreement that balances benefits against risks. Additionally, there will be monthly reporting arrangements in place, twinned with analysis to scheduled review points from professional advisors, to ensure on-going monitoring of risks.

Value for money and affordability

118. Ensuring the economical, efficient and effective use of resources is concerned with demonstrating value for money, that is, whether the benefits to be gained from agreeing to the proposal can be assessed as being appropriate to the level of financial risk that is being taken on by the Government. It is also important to consider affordability, opportunity cost and overall financial sustainability.

119. Current spending plans indicate that the loan can be accommodated from existing financial transactions (FT) allocations, assuming that loans to farmers are repaid in line with expectations during 2018-19. However, advancing the loan will limit the flexibility and scope to engage with other spending or investment options that may arise during the year.

120. As noted previously, PwC made a comparative assessment of the projected relative costs of each of the short-listed contingency options. Their report notes that: (i) if the loan is not provided SG's existing loan will likely not be repaid; and (ii) the cost of delivering 801/2 will likely be greater than the new loan exposure. Given this, they conclude the loan agreement is the most deliverable and commercial option.

VIII) Parliamentary Handling and Communications

121. The Cabinet Secretary wrote, in confidence, to the Finance Committee on 24 April 2018 to note that there had been a £15 million loan to FMEL.

122. In the interests of consistency and transparency, if the new loan agreement is approved, we recommend that Ministers take the same course (i.e. writing to the Committee).

123. It is worth noting that in Section 16 of the agreement the Borrower (FMEL) agrees "there shall be no publicising of this Agreement nor a disclosure of the role of the Scottish Ministers in the provision of the Facility without the prior written consent of the Scottish Ministers." MacRoberts have advised that we are not bound by the same commitment, as the onus is on the Borrower (FMEL). Our preference is to coordinate any activity to publicise the agreement alongside FMEL, CBC and CMAL.

Overarching messaging

124. **[Redacted]**:

i. **[Redacted]**.

ii. **[Redacted]**.

iii. **[Redacted]**.

125. As above, preferably any agreed deal might be announced via a joint statement between SG and FMEL / CBC. This statement might briefly outline the features of the deal, reinforcing that it is a strategic investment intended to strengthen FMEL's working capital and support the shipyard towards future work wins and diversification **[Redacted]**

126. **[Redacted]**

127. Separately we will provide detailed communications and handling advice to Ministers. This will take into account the broader issues on ferries services, delivery timing of 801 and 802 as well as the proposed FMEL support. We have to consider the interrelationships between some of these issues and seek to avoid heightening the risk of challenge from competitors to FMEL.

IX) Completion

128. Pending Ministerial approval the remaining steps to execution of the loan agreement are final checking of legal documentation and confirmation by SG's commercial and legal advisers that all conditions precedent are satisfied.

129. All the necessary legal documentation is agreed. The loan agreement will only come into effect once all the necessary documentation has been signed.

X) Recommendation

130. We have taken a commercial approach with our independent legal and commercial advisors to negotiate an option that delivers Ministers' policy priorities.

131. The proposed loan agreement has been thoroughly scrutinised and tested against a range of alternatives to bring forward a package that benefits the Scottish economy and manages risk to SG.

132. Our independent advisers (PwC and MacRoberts) are satisfied the loan agreement is in line with market conditions.

133. **The recommendation is that:**

- **Ministers review the contents of this submission and agree that we proceed to offer the proposed loan to FMEL/CBC.**

Mary McAllan
Director of Economic Development

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
First Minister					X
Deputy First Minister					X
Cabinet Secretary for Economy, Jobs and Fair Work					X
Cabinet Secretary for the Rural Economy and Connectivity					X
Minister for Business, Innovation and Energy					X
Lord Advocate					X
Permanent Secretary DG Economy DG Scottish Exchequer DG Organisational Development and Operations Chief Financial Officer **[Redacted]** Roy Brannen John Nicholls Mike Baxter Liz Lloyd Colin McAllister Callum McCaig Stewart Maxwell Kate Higgins **[Redacted]** Ainslie McLaughlin **[Redacted]** Kerry Twyman Fran Pacitti **[Redacted]**					

ANNEX A

PWC REPORT SUMMARY

Executive summary and conclusions

SG is considering providing a £30m loan to FMEL. We consider that the proposed terms of the loan are broadly in line with those that would be required by a commercial provider, in particular by considering how a customer might support a key supplier within its supply chain. For the reasons set out above, we consider this to be a relevant comparator for the current position of SG. The key matters that we have considered in reaching this conclusion are:

- Partial matching of funds: Clyde Blowers Capital Fund III LP's ("CBC's") proposed investment of £8.5m of new equity, over and above the £25m already invested, demonstrates that this is a business plan that a private sector financial investor is willing to support. It is important that this investment is significant in financial terms; it is clearly preferable if more of the CBC cash can be obtained earlier; and it be subject to as few conditions as possible;

- Security: FMEL is granting SG second ranking security on all monies (i.e. including the current £15m loan) which (subject to the hardening of the new floating charge in respect of the existing loan) will gain first ranking, effectively, when 802 is delivered;

- Pricing: The rate of return (as measured by actual interest charged and costs avoided as a result of avoiding an insolvency of FMEL) is representative of the level of financial risk;

- Conversion rights: The debt is convertible to equity depending on whether certain events happen – warrants will be made available but the timing of conversion of these warrants to equity will be in the control of SG;

- Other rights: SG should have the power to appoint an operational expert to monitor the delivery of 801/2 by FMEL immediately to ensure its interests are safeguarded on a timely basis;

- Alternative scenario: As noted above, if SG does not provide the funding, the alternatives will require funding by CMAL (and therefore SG) of at least the same quantum as the commercial loan in order to deliver 801/2;

- Value achieved: If SG does provide the loan requested, based on current projections, these funds will be largely exhausted on completing 801/2 and so, as the loan is drawn down and utilised, value will have been achieved by progressing the completion of 801/2 by those amounts – there is private sector precedent for customers providing funding in similar situations to protect their supply chain to ensure contract delivery and avoid the worse financial outcome that an insolvent supplier would bring about.

Inevitably, there remain further risks for FMEL which may result in FMEL requiring further funding in the future, such as (a) further delays in the build out of 801/2 or (b) fewer and / or timeline slippage on new orders than are currently forecast by FMEL management. There is also the risk that CBC does not comply with its obligations to inject the contracted equity. If further funding is required in the future, SG retains the same options as exist today, whilst also having obtained value for the £30m provided in the form of value transferred into 801/2. If CBC does not deliver on its obligations then there are equity transfer arrangements that can be exercised.

On balance, the loan is likely to be considered commercial because:

i. The shareholder is demonstrating confidence in the business plan through its cash injection;

ii. **[Redacted]**

iii. Overall costs are likely to be lower through a loan to complete 801/2 than through other routes.

PricewaterhouseCoopers LLP
13 June 2018

ANNEX B

LATEST POSITION ON THE FMEL-CMAL CONTRACT PRICE DISPUTE

In July 2017, FMEL presented CMAL with a claim for Contract Price Increases (CPI) of £17 million, in excess of the £97 million price for the 2 shipbuilding contracts. This claim has since increased to £27 million with further increases not being ruled out. FMEL say that this would reflect complexities with the innovative design of the ships which could not have been foreseen during the tendering process. CMAL's position is that FMEL knowingly entered into the contract, and that FMEL have put forward no contractual basis that would justify a price increase. Both parties have indicated to SG that they consider their respective positions to be robust.

Following unsuccessful attempts to encourage the parties to undertake a mediation process under the terms of the contracts, as proposed by FMEL, SG sought to facilitate a resolution to the dispute through the contractual provision on Expert Determination. This requires the agreement of both parties, which CMAL were unwilling to give, preferring to see the matter resolved through the courts.

In support of its original c.£17 million claim against CMAL for contract variations, FMEL had previously commissioned a report from maritime consultants BCTQ. This report was forwarded to SG and CMAL. It broadly supported FMEL's case.

At a meeting brokered by SG, it was agreed between FMEL and CMAL that CMAL would commission their own report from an independent consultant, mirroring FMEL's commission to BCTQ. CMAL contracted with naval architect **[Redacted]** . An executive summary of this report was forwarded to SG and CMAL. It broadly supported CMAL's case.

FMEL's case, as set out in the BCTQ report, has focused on these vessels being innovative and complex and that the difficulties encountered in building them were unforeseeable at the time of tendering and would have been encountered by any shipyard. **[Redacted]** report concludes that in the European shipbuilding context these vessels are not innovative and that the design issues were foreseen or foreseeable at the time of tender.

During a recent phone call following receipt of the **[Redacted]** report, Jim McColl agreed with the Cabinet Secretary for Finance and the Constitution that the divergence between the 2 reports meant that they did not provide a basis for an early resolution between the parties. Mr McColl indicated that he would continue to pursue the CPIs though indicated he hoped to avoid court proceedings. He agreed with the Cabinet Secretary that priority should now be given to aiming to conclude the investment agreement.

ANNEX C

Mary McAllan
Director of Economic Development
11 May 2018

First Minister
Cabinet Secretary for Finance and the Constitution
Minister for Transport and the Islands

DISCUSSIONS ON POSSIBLE PUBLIC INVESTMENT INTO FERGUSON MARINE ENGINEERING LTD (FMEL)

Purpose

1. To provide a summary of the meeting on this topic held on 10 May between the Cabinet Secretary for Finance and the Constitution, the Minister for Transport and the Islands, and officials from Economic Development, Finance and Transport Scotland.

2. To seek confirmation of the proposed next steps– principally, that Ministers are content that negotiations be commenced exploring scope for a commercial transaction with FMEL with the aim of developing head of terms (see recommendation at paragraph 8 below).

Timing

3. Urgent. It would be helpful if Ministers could respond by Monday 14 May to allow negotiations to commence next week.

Meeting summary

4. Economic Development officials took Ministers through a range of proposals for a commercially focussed joint venture to support delivery of the two CMAL vessels currently on order from FMEL, to preserve employment and enhance the facilities of the shipyard. The investment envisaged is in the form of a convertible loan and this would be predicated on a 5-year business plan prepared by the Directors of FMEL.

5. A potential commercial structure had been developed by our commercial advisers, PwC, as a device for testing FMEL/Clyde Blowers Capital's (CBC) appetite for co-investment and for assessing the acceptability of certain terms. These initial discussions, conducted with no formal status or commitment by either side, had proceeded sufficiently well to provide enough confidence that a commercial arrangement might be reached through negotiation though this remains to be tested.

Emerging features

6. We reviewed with Ministers the key features of the potential commercial structure discussed between PwC and FMEL/CBC. These are as follows:

- *Convertible loan* – The Scottish Government's proposed financial commitment may need to be in the region of £30 million, on the basis of received cash flow forecasts, in addition to the existing £15 million SG loan to FMEL agreed by Ministers last September. The precise quantum would depend on up-to-date cash-flow information and the scale of CBC's commitment to new funding alongside any SG loan. This new funding would be expected to address FMEL's short-term liquidity challenges, allow for investment in shipyard facilities to enhance the longer-term commercial prospects of FMEL and could deliver a range of strategic opportunities in marine engineering to the Scottish economy moving forward. This could be achieved via diversification into new market segments such as military shipbuilding (e.g. MOD's Type 31e) and regular ship servicing and repair work.

- *New investment from CBC* – This would greatly enhance the commercial basis for any SG loan-to-equity transaction and is likely to be a prerequisite for SG involvement in a commercially focussed deal so that risks and rewards are shared appropriately.

- *Use of funds* – The matter of how new SG loan funding would be applied within the FMEL business is a key consideration for SG; namely, the proportion of any SG monies to be focussed on completing the CMAL vessels versus the proportion directed to the opportunity to restructure the business and invest in assets necessary to its longer-term viability. The distinction between different types of usage (short or long term) is difficult to determine exactly although the completion of current activity is itself a necessary platform to win future work.

- *Equity conversion* – It is currently proposed that SG's preference would be to receive share warrants, with the option, but not the obligation to convert some or all of the Government's funding to equity in FMEL during the life of the loan. If any conversion of loan to equity was to occur and if the business performed in line with the Directors' forecasts – that is, by winning new private sector work and by meeting milestones on the CMAL order – we would expect the Scottish Government to wish to hold only a minority interest in FMEL. There are budgetary advantages in limiting the level of the Government's potential shareholding in FMEL to avoid ONS classifying the business as being under public control sector.

- *Security* – At present the Government is an unsecured creditor of FMEL. Achieving secured status would assist the commercial case for further public investment and we would expect that any new SG loan would be supported by security over the assets of the business; albeit that in the first instance this security would be a second-ranking.

- *Staging of drawdown and performance incentives* – The new SG loan could be arranged to be drawn down in tranches rather in one payment and these tranches might be linked to the fulfilment of certain conditions or measures of performance – for example, the injection of CBC funds or FMEL winning other business.

All of the above is in pursuit of a commercial option but we continue preparatory work on other contingency options including nationalisation, rescue and restructuring aid and administration will be continued should a commercial arrangement not prove possible.

Recommendation

7. We recommend Ministers agree to officials commencing negotiations on the basis of the proposals above with a view to developing draft heads of terms designed to deliver a commercial joint venture.

8. Ministers should note that any draft agreement which may be developed would be subject to all normal processes of commercial diligence, financial and legal scrutiny (including State Aid considerations), Accountable Officer sign-off and Ministerial approval. This note has been agreed with the Chief Financial Officer.

Mary McAllan
Director of Economic Development
DG Economy

ANNEX D

HEADS OF TERMS

Updated 21st June 2018

Lender	Scottish Ministers ("**SG**")	
Borrower	FME(H)L	
Loan Amount	£30.0m	*Loan Agreement – definition of "Available Facility"*
Purpose	To fund FMEL to assist with the long term viability/enhanced capability of the yard, and for other general working capital purposes of FMEL	*Loan Agreement – Clause 2.1*
Availability Period	**[Redacted]**	*Loan Agreement – definition of "Availability Period"*
Drawdown schedule	• Fully committed facility to be drawn down as required. • Unlimited number of drawings except no more than 2 per calendar month. • Payment will be within 5 Business Days of service of drawdown notice provided CPs to drawdown met (see below).	*Loan Agreement – Clause 2 and Clause 3*
Costs	Set up and exit fees will be £nil and each paying own professional fees	*Loan Agreement – Clause 8.1*
Interest	• Existing SG unsecured loan at 15%. New loan at **[Redacted]** as that second ranking security is provided. Interest payable on repayment of principal sum. • Default rate is **[Redacted]** • **[Redacted]**. • **[Redacted]**. • **[Redacted]**. • **[Redacted]**.	*Loan Agreement – Clause 5*
Repayment	Bullet (can repay when funds are available; but not re-drawdown). Upon repayment of any principal amount of the loan, the corresponding amount of related share warrants (see further below), if issued but not yet exercised, shall be cancelled.	*Loan Agreement – Clause 7.1 Clause 6.3*
Voluntary Prepayment	Repayment in full or in part, without fees or penalty, upon giving appropriate notice.	*Loan Agreement – Clause 7.2*
Mandatory Prepayment	Mandatory prepayment events (both £15m loan and the £30m Loan): At any time prior to exercise by SG of their right to convert share warrants to equity or before the Relevant Date (as defined below), an Exit occurs; or "**Exit**" means a Share Sale (except where shares are transferred to a permitted transferee), Business Disposal or Listing in relation to the Borrower and/or FMEL. [*Note: where an Exit occurs after the later of (i) 1st June 2021 and (ii) in the event the members of CBC have resolved to extend the life of the CBC fund, 90 days prior to the expiry of such extension ("**the Relevant Date"),** the Warrant Instrument provides for auto-conversion of the Warrants to shares so repayment of the Loan would be satisfied by issue of the Warrant Shares to SG. See below under "Debt to Equity for more commentary on auto-conversion]* In the event that proceeds are received by FMEL in respect of a final resolution of the dispute between FMEL and CMAL in relation to a contract price increase for the vessels known as 801 and 802 ("**CPI**") and such proceeds results, on their receipt by FMEL, in the creation of a Surplus Amount, the Borrower shall, provided the CBC Subscription (£3m equity investment) has been made, pay an amount equal to the Surplus Amount to the Scottish	*Loan Agreement – Clause 7.6 and related definitions of "Share Sale", "Business Disposal" and "Listing"* *Warrant Instrument – clause 4.2 and "Relevant Date" definition*

	Ministers in prepayment of the Loans and FMEL will make the Surplus Amount available to the Borrower for the purpose of such payment. For the purpose of this Clause 7.3, "**Surplus Amount**" means the amount by which (i) the aggregate of all proceeds received by FMEL in respect of a CPI (less all independent third party fees, costs and/or expenses reasonably and properly incurred by FMEL in connection with such contract price increase) plus (ii) all loans which are outstanding as at that date, exceeds the sum of £33,000,000 less the amount of all CBC Subscription paid by CBC to the Borrower.	
Term	Final repayment due within 10 years of first drawdown.	*Loan Agreement – Clause 7.1 and definition of "Final Repayment Date"*
Review	Key financial terms of the loan (**[Redacted]**) to be reviewed 3 years from the date of signing of the loan agreement, provided always that the terms following such review **[Redacted]**) at the original rate of **[Redacted]** in the absence of agreement to a different rate. **[Redacted]**.	*Loan Agreement – Clause 5.5*
Conditions Precedent to entry into of Loan Agreement	Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to SG and the Borrower, being: - Corporate authorisations - The Business Plan / cash flow - Accountants Certificate from PwC as financial advisers - The most recent management accounts of the Borrower - Signed equity conversion documentation being: o resolution of the directors of the Borrower and of the shareholders of the Borrower approving and authorising the allotment and issue of the appropriate number of Warrant Shares (see below) in favour of SG; o warrant instrument; o new articles of association of the Borrower; o certified copy register of members; o shareholder resolution adopting articles of association; and o shareholders' agreement among, inter alia, the Borrower, CBC and SG.	*Loan Agreement – Part A of Schedule 1*
Conditions Precedent to drawdown	• Signed drawdown notice. • No Potential Event of Default or Event of Default. • Executed security and guarantee documents (detailed below). • Intercreditor agreement executed by the Scottish Ministers, the Borrower, FMEL, MacKellar and HCC International Insurance Company plc. • Satisfaction on maximum cumulative drawdown amounts in respect of each month in which proposed utilisation will be made (by reference to a table appended to the loan agreement). • Evidence that CBC has subscribed for, and paid for in full in cash, shares in the issued share capital of the Borrower as required in terms of the SSA, in the amount prescribed in the SSA (if such obligation has arisen) (see further below). • Legal report in respect of the property showing no adverse entries (other than in respect of existing security), clear personal searches and no other advance notices. MacRoberts to order legal report and lodge advance notice.	*Loan Agreement: Part B of Schedule 1 for first drawdown* *Loan Agreement: Part C of Schedule 1 for first drawdown*

	• In respect of all utilisations save for the first utilisation, satisfactory assurance from the Scottish Ministers' independent operational expert that progress of the build of the vessels known as 801 and 802 is proceeding in accordance with the overall resource program presented by FMEL on 28 and 29 May 2018 at Port Glasgow, taking account of factors that are outside FMEL's control.	
Debt to Equity	• Facility agreement to contain mechanics such that warrants will be issued giving SG the right to be issued new shares ("**Warrant Shares**") in the Borrower as noted below. • Warrants will be issued at the end of each quarter (end of March, June, September and December), with the first issue to occur on 30 September 2018. **[Redacted]** • Such principal amount of loan shall remain outstanding as a loan upon the issue of the share warrants, until such time as the share warrants are exercised. Exercise of the share warrants shall extinguish a corresponding principal amount of the loan outstanding. • Upon repayment of any principal amount of the loan, the corresponding amount of related share warrants (see further below), if issued but not yet exercised shall be cancelled. • Number of share warrants to be issued to be calculated using agreed straight-line formula based on £ for £ conversion, provided always that for every £10 of principal amount of loan "converted" a share warrant in respect of one Warrant Share shall be issued, and the share warrants will be in respect of Warrant Shares to be issued at £10 per £1 share i.e. a share premium of £9 per share (in line with current CBC equity position in the Borrower). • Exercise of the share warrants will be at the sole option of SG except that share warrants shall convert into shares automatically in the event of an Exit in the period following the Relevant Date (defined above) in which case a waterfall arrangement applies (under the Articles) so that the proceeds of the Exit would be used: - First, to repay the £15m SG loan and interest to the extent not paid; - Second, to pay the interest on the £30m SG loan to the extent not paid; - Third, in a proportion calculated by reference to the level of equity injected for A Shares and B Shares (the amount realised on the Exit will determine whether CBC equity injected prior to the date of the £30m will be counted or not) until SG get an amount equivalent to the outstanding loan; - Fourth, to CBC until CBC have received their A capital (which will either be £25,800,000 or £34,300,000 if they have injected £8.5m) - Fifth, in the fixed proportion based on equity participation. *[Notes: given the importance of the Waterfall provisions, we have attached as an Appendix an extract from the relevant provisions of the Articles and Shareholders' Agreement for ease of reference. We recommend SG understand how the Waterfall works.]* CBC shall consult with SG in advance of any proposed exit and SG shall give due consideration to any alternative solutions proposed by CBC in connection with the exit arrangements and	*Loan Agreement - Clause 6.1 and definition of "Relevant Date"* *Loan Agreement - Clause 6.2* *Loan Agreement - Clause 6.2* *Warrant Instrument – "Subscription Price" definition* *Warrant Instrument – clauses 2.4; 4.1 & 4.2* *Articles – article 19 (see Annex also)* *Shareholders' Agreement – Clause 14* *Comfort letter also sets out intention*

	the timing and manner of exercise of warrants as well as engaging with SG on the exit process SG have a right to give consent to the appointment of financial advisers (not to be unreasonably withheld or delayed).	
Tranche 1 CBC equity funding	Subject always to CBC Fund III having released free cash from a disposal or refinance of a subsidiary undertaking of CBC of an aggregate net amount at least equal to 10% of drawndown amount of the loan received by the borrower at each utilisation (the "**Fund III Condition**"), following each loan drawdown CBC will subscribe for, and pay for in full in cash, shares in the issued share capital of the Borrower of a principal amount (including premium) equal to 10% of that loan drawdown (at a price of £10 per £1 share). In the event that loan drawdowns are made before the Fund III Condition has been fully satisfied, upon the Fund III Condition being fully satisfied CBC will subscribe for, and pay for in full in cash, shares in the issued share capital of the Borrower of a principal amount (including premium) equal to 10% of the principal amount of loan drawn down up to that point (at a price of £10 per £1 share). In the event that, at any time, the aggregate amount of Tranche 1 investment and Tranche 2 investment (see further below) made by CBC is £8.5m, then CBC shall have no further obligation to subscribe any Tranche 1 amounts. The sole remedy of SG should these monies not be invested when obliged is to acquire CBC's stake for fair value.	*Shareholders' Agreement – "Condition" & "Realised Profits" & "Tranche Subscription Amount" definitions* *Shareholders' Agreement – clause 3* *Shareholders' Agreement – clause 3.4* *Shareholders' Agreement – clause 9.3*
Tranche 2 CBC equity funding	Subject always to the Fund III Condition being fully satisfied, upon the earlier to occur of: • the CBC Investment Committee approving investment in the Borrower for projects which enhance the capabilities of the FMEL business such as dry docks or support the business development initiatives of the FMEL business; and • the date falling 12 months after the date of the loan agreement CBC will subscribe for, and pay for in full in cash, shares in the issued share capital of the Borrower of a principal amount (including premium) equal to £8.5m less the aggregate amount of all Tranche 1 investment made by CBC up to that point (at a price of £10 per £1 share) provided that if less than £8.5m is realised, whatever sum has been so realised shall be used to subscribe for a *pro rata* number of shares. The sole remedy of SG should these monies not be invested when obliged is to acquire CBC's stake for fair value.	*Shareholders' Agreement – clause 4* *Shareholders' Agreement – clause 4.3* *Shareholders' Agreement – clause 9.3*
SG right to buy	In the event that CBC has not invested £8.5m (regardless of whether the Fund III Condition has been satisfied or not) by the date falling 24 months from the date of the loan agreement, then SG shall have the option to acquire all shares in the issued share capital of the Borrower held by CBC at fair value (as determined by an independent expert in the absence of agreement between the parties). SG shall also have the ability to acquire all A shares in the issued share capital of the Borrower for fair value in the event of the insolvency of the Borrower except that this right will not apply if the insolvency is as a result of a breach or default by SG under the Finance Documents or SG or the holder of B shares withholds its consent to a matter which is reserved to its consent under the Shareholders' Agreement which requires to be approved in order to avoid such event happening.	*Shareholders' Agreement – clause 9.3.3* *Shareholders' Agreement – clauses 9.1; 9.2 & 10.8* *Shareholders' Agreement – clause 9.3.4*

	SG shall also have a right to buy at fair value the shares in the Borrower held by CBC in the event a distribution of the shares to members of CBC Fund III is proposed. SG shall also have the right to buy the shares at the price agreed between CBC and a third party buyer in circumstances where the auto conversion of warrants would otherwise apply (ie a sale under the Waterfall arrangements referred to above). If not otherwise agreed between SG and CBC, fair value will be assessed by an independent accountant.	*Shareholders' Agreement – clause 9.3.5*
Security	• Second ranking standard security from FMEL over the yard in security of all sums due or to become due under the £15m loan agreement and the £30m loan agreement. • Second ranking floating charges from the Borrower, FMEL and MacKellar in security of all sums due or to become due under the £15m loan agreement and the £30m loan agreement • Cross guarantees from the Borrower, FMEL and Mackellar.	*Loan Agreement: Clause 12 and definition of "Security Documents"*
	• Revised Intercreditor deed to reflect (i) all SG debt and security and guarantees ranking postponed to HCC and (ii) inter-company debt between FMEL and the Borrower ranking postponed to SG debt. ICA includes: - Express permission from the surety for SG to take action in relation to conversion of warrants, and acknowledgement of the surety in relation to the SG right to buy shares in the Borrower. - a permitted payment for CPI realisations, provided that CBC has subscribed for £3m of shares (to reflect balance sheet need); - 10 day standstill period during which HCC cannot take action; - Ability for SG to issue repayment demands (noting the terms of the ICA) when the surety has taken enforcement action and for SG to issue reservation of rights letters under declaration of the ICA at any time to protect their position. - In an insolvency of the group, SG may prove in an administration or winding-up. - If and when SG becomes a shareholder of the Borrower, SG may not sell/transfer a "controlling interest" in the Borrower without the consent of the surety.	*Intercreditor Deed Clause 2.1 and Clause 2.2* *Intercreditor Deed Clause 1.3* *Intercreditor Deed carve outs from restrictions in clauses 2.1(e), 3.1(a) 3.1(b), 4.1(a), 4.1(c) 8.2(a) and definition of "Permitted Payment"* *Intercreditor Deed Clause 4.2, 4.4, 8.1 and 10.1.* *Loan Agreement – Clause 12*
	• Forms of security documents based on those currently in place with HCC, but updated as appropriate for the current transaction. • On full exercise of share warrants to equity and payment of all sums due under the existing £15m loan, all SG security will be released. • Security release to be subject to the 3 year review. • SG consent required to further indebtedness with, and security in favour of, a third party provider of a bond/guarantee facility and/or third party providing debt finance, such consent to not be unreasonably withheld or delayed – postponement terms to be on the same terms as for the current surety provided SG provide consent to such intercreditor terms, such consent to not be unreasonably withheld or delayed.	*Loan Agreement – Clause 5.5* *Loan Agreement – Clauses 11.9 and 11.12 and definitions of "Permitted Financial Indebtedness" and "Permitted Security Right"*
Undertakings	- negative pledge; - restrictions on other borrowings and guarantees; - restrictions on loans and credit; - compliance with laws;	*Loan Agreement Clause 11*

	- maintain adequate senior management team, commensurate with current position; and - restrictions on dividends and distributions. - Restriction on disposal of shares in MacKellar Undertakings to be on terms mutatis mutandis as those agreed in the £15m loan agreement, with an additional undertakings	
Information undertakings	Standard information undertakings for a transaction of this nature, being: - monthly financial reports including a profit and loss, balance sheet and actual cashflow against budget; - annual audited accounts within nine months after the end of the relevant financial year; - updated Business Plan and an updated Financial Model within 30 days after start of each financial year satisfactory to the Scottish Ministers (acting reasonably); - Monthly management accounts accompanied by commentary in reasonable detail on the financial performance of the Group, a build update report on the build out of vessels 801 and 802 plus cost overruns and other issues, details of cost estimations in connection therewith and any such other information as relevant to the delivery of the vessels and to the running of the business; - an annual operating budget consistent with the Financial Model within 30 days after the beginning of each financial year; and - notification as soon as practicable of any and all material changes in the financial condition or business of the Group. The Group must deliver to the Scottish Ministers such information as the Scottish Ministers may reasonably require, including the above. Save for above, undertakings to be on terms mutatis mutandis as those agreed in the £15m loan agreement. SG will have the immediate right to appoint a board observer (subject to FMEL's agreement that this observer is not conflicted, such agreement to not be unreasonably withheld). The Board observer will not be a director (but note SG will have power to appoint a director at 25% shareholding) Board observer will attend board meetings as scheduled quarterly. This observer is in addition to the SG financial monitoring. Observer must not be a director or other officer of, or employed by Transport Scotland, Transport Scotland Limited (company number SC350085), CMAL, or Caledonian MacBrayne Limited (company number SC308636) or any subsidiary of any of these entities, and must be subject to prior approval by the holder of a majority of the A Shares (as defined in the Articles) (such approval not to be unreasonably withheld). Appointment will terminate upon the appointment by SG of a B director or the final repayment date of the £30m loan. On reasonable request, following the expiry of a reasonable period of notice and no more than (i) once in any rolling period of 20 Business Days until the loan is fully drawn and (ii) once per quarter until the loan repayment date, FMEL shall (a) allow an independent operational expert nominated by the Scottish Ministers to meet with the Chief Executive Officer of the Group (whether by telephone conference or otherwise) and (b) provide such independent expert with information as may be reasonably requested by him, provided that (i) such meeting/call or information is in connection with the vessel build progress for the	*Loan Agreement Clause 11.1* *Loan Agreement Clause 18.6* *Loan Agreement Clause 11.2* *Loan Agreement Clause 13.1.3*

	vessels known as 801 and 802, and (ii) such meeting/call is for no longer than one working day in duration;	
Events of Default	Standard events of default for a transaction of this nature, including but not limited to: • non-payment; • misrepresentation; • cross-default (in particular, the original SG facility agreement); and • insolvency, insolvency proceedings and creditors' process. • default under any other provision of the loan agreement or any other Finance Document and, if capable of remedy, the default is not remedied within 15 Business Days after notice to the Borrower requesting action to remedy the same. Events of Default to be on terms mutatis mutandis as those agreed in the £15m loan agreement.	*Loan Agreement Clause 13*
Share rights	• Warrant Shares to be a separate class of ordinary £1 shares. • SG right to appoint a non-executive director independent of CMAL when shareholding greater than 25%, the identity of such appointee being subject to the consent of CBC (not to be unreasonably withheld). • The aggregate percentage of voting rights attaching to all the Warrant Shares held by SG at any time shall be restricted to a maximum of 49%, notwithstanding the percentage of the fully diluted share capital in the Borrower held by SG. • Minority protection rights (once SG is a shareholder) to be included, such as: (a) right to information on the ongoing business (as set out above); (b) pro-rata pre-emption right on issue of new shares; (c) right to consent to non-ordinary course business; (d) right to consent to non-arm's length contracts/contracts with connected persons; (e) right to prevent changes to articles of association; and (f) right to prevent material changes to the nature of the business. Some of the consent matters apply regardless of the number of shares held by SG, others apply once the percentage reaches 25% or more. Shares held by SG may be transferred "intra-group" or offered round to existing shareholders, but otherwise any transfer requires the prior consent of CBC. For these purposes, neither CMAL nor CalMac will be considered group companies. CBC, as majority shareholder, will have a standard drag-along right in respect of SG shares, and also a tag-along right in respect of any transfers of SG shares to third parties.	*Warrant Instrument – clause 2.1 Articles – article 11.1 & Shareholders' Agreement – clause 6.3* *Articles – article 22.2 & Shareholders' Agreement – clause 5* *Shareholders' Agreement – clause 7 & Schedule; Articles – article 14.4;* *Shareholders' Agreement – clause 7* *Articles – article 16.4* *Articles – articles 17 & 18*
Financial Covenants	None	
Governing Law	Scots	
Confidentiality	These terms are for discussion only.	

Existing loan	It is not currently envisaged that the existing £15m facility is affected by this loan save for amendments above. SG will issue an amendment letter covering the following matters: - Inclusion of "Exit" provisions replicated from the £30m facility agreement - **[Redacted]** - Aligning of the position on "Permitted Financial Indebtedness" and "Permitted Security Rights". - Other adjustments to align definitions across both documents.	
Comfort letter	SG will issue a comfort letter confirming the following: - current intentions, where consent is sought to any third party indebtedness in respect of any third party bond, guarantee or debt facilities required to support the award of a material new order for the Group or the delivery of the Business Plan and proposed intercreditor terms in relation thereto, (i) to enter into negotiations with the Group in good faith without undue delay and (ii) in the course of discussions around consent to those matters, to give due regard to the support necessary for FMEL in order to deliver the Business Plan, it being recognised that the Scottish Ministers are supportive of commercially acceptable additional funding, Security and intercreditor arrangements being made available to and entered into by the Group and/or the Scottish Ministers to help achieve the Business Plan. **[Redacted]**	

ANNEX E

SUBMISSION FROM DG ECONOMY ON THE FIRST LOAN AGREEMENT (1 SEPTEMBER 2017)

PS/Cabinet Secretary for Finance

IMMEDIATE - COMMERCIALLY 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) to provide working capital support to enable completion of the 801 and 802 and to support FMEL's stabilisation and medium to long term business objectives.

Timing

2. Immediate

Background

3. My submission of 21 August updated you on the financial position of FMEL and our work with PwC to support the company. My subsequent note of 1 September updated you on discussions and negotiations with FMEL and Clyde Blowers Capital about FMEL's request for the existing surety bond with HCC to be replaced with a Parent Company Guarantee from FMEL Holdings; FMEL's position on a Contract Price Increase in respect of the contracts for the 801 and 802 vessels; and the possibility of the Scottish Government providing a commercial loan of £15m to FMEL. No further action is being taken in relation to the surety bond though we have advised Mr McColl that we are willing to consider any further legal argument he wishes to disclose on the matter.

Proposed Loan Agreement

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

i. A two year term with no capital repayments
ii. Interest on a Payment in Kind (PIK) basis at a rate to be determined with reference to State Aid regulations;
iii. At the end of the two year period we expect full and final repayment. (It is our current intention to see that loan be repaid by way of an appropriate amortisation schedule and/or through alternative approaches such as conversion of some of the loan to equity and/or security over the yard).
iv. Commitment from FMEL that the loan introduced will be entirely utilised in the construction of vessels 801 and 802;
v. A covenant that CBC cannot pay dividends or take equity from FMEL while the loan is in place;
vi. Loan to be introduced in tranches in accordance with the company's cash flow forecast and subject to financial monitoring and verification; and
vii. FMEL to use all reasonable endeavours to secure further equity investment in the company and to keep Ministers informed of their actions and progress in this respect.

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, with a first payment of £6m likely on Monday 4 September, there is a clear expectation that it will fall entirely within the scope of the 2017-18 financial year. **[Redacted]**.

Risks

7. **[Redacted]**.

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

ANNEX F

FMEL 5-YEAR BUSINESS PLAN

The table below sets out the 5 year plan as presented by FMEL management in February 2018. The key variations from the previous PwC review dated 4 September 2017 are:

i. The overall costs to complete for 801/2 have increased by £14m as set out by management in its presentation of 7 February 2018. These costs were not previously notified by management.
ii. The timetable for delivery of 801 has moved from June 2018 to March 2019 (and the cash flow provided in May 2019 notes June 2019), and for 802 from August 2018 to June 2019 (2020 in the cash flow)
iii. The overall funding requirement has increased by £15m (from that assumed to arise from the August 2017 requirement of £30m less the SG £15m loan) to a total of c.£30m
iv. The new work pipeline has changed in mix and is delayed by approximately 3-4 months However management is expressing increased confidence in secure future orders (see below).

FMEL 5 year plan as at February 2018

£ in m	2017 Flash	2018 Budget	2019 Forecast	2020 Forecast	2021 Forecast	2022 Forecast
Orders	2.2	20.6	93.3	66.8	57.3	111.8
Revenue						
801/2	41.8	38.3	4.0	-	-	-
CPI	-	17.3	10.1	-	-	-
Ships	-	-	11.7	24.0	36.3	38.9
MOD	-	0.7	10.0	21.6	22.5	22.3
Fabrication	0.1	9.6	23.7	23.3	24.6	26.9
Total revenue	**41.9**	**65.9**	**59.5**	**68.9**	**83.4**	**88.1**
Contribution margin	**3.4**	**7.8**	**11.7**	**16.6**	**19.6**	**22.7**
CM%	8%	12%	20%	24%	23%	26%
Production overhead	(3.5)	(5.6)	(6.3)	(6.9)	(7.4)	(7.6)
PO%	-8%	-8%	-11%	-10%	-9%	-9%
Gross margin	**-0.1**	**2.2**	**5.4**	**9.7**	**12.1**	**15.1**
GM%	0%	3%	9%	14%	15%	17%
SGA	(2.0)	(2.4)	(3.4)	(4.4)	(4.7)	(5.3)
SGA%	5%	4%	6%	6%	6%	6%
Depreciation	0.9	1.0	1.1	1.1	1.2	1.2
EBITDA	**(1.2)**	**0.8**	**3.2**	**6.4**	**8.6**	**11.0**
%	-3%	1%	5%	9%	10%	12%

Relative to the previous 5 year plan (dated September 2017) it can be seen that FMEL is forecast to have £83m of revenue (previous 5 year plan £94m) and EBITDA of £8.6m (previous 5 year plan £8.3m) in FY21. As with the previous plan this is based on diversification of revenue and improved margins.

ANNEX G

CONDITIONS PRECEDENT FOR FIRST AND SUBSEQUENT UTILISATIONS

Minimum Cash Balance

Date	Minimum cash £ (in thousands)
June 2018	(7,043)
July 2018	(11,028)
August 2018	(14,544)
September 2018	(18.986)
October 2018	(22,864)
November 2018	(26,104)
December 2018	(29,048)
January 2019	(33,404)
February 2019	(35,283)
March 2019	(34,940)
April 2019	(37,990)
May 2019	(38,639)
June 2019	(28,485)

ANNEX H

VATIS Ltd
18 Crofton Way
Swanmore
Hampshire
[Redacted]

Mary McAllan
Director of Economic Development
Scottish Government
5 Atlantic Quay
150 Broomielaw
Glasgow G2 8LG

dated 31 May 2018

Construction Review
Reference: VATIS/8/31052018

As part of the consideration of a proposed funding package for Ferguson Marine Engineering Limited (FMEL) QI Ltd were invited by Scottish Government Economic Development Directorate (EDD), to undertake a review of specific aspects of the current FMEL plan for completion of their contract for the construction of two ferries for CMAL.
Initial discussions were held with **[Redacted]**, in the role of Senior Responsible Owner, and the following remit was agreed for the review:

"Verification of the adequacy of the updated resourcing plan – that is, the labour input – for the two vessels currently under construction for CMAL by Ferguson Marine Engineering Limited (FMEL)."

The review was undertaken by Luke van Beek (Team Leader) and Bert Niven. After appropriate planning, visits to the shipyard were undertaken and, given the time available, a review of the infrastructure at the FMEL shipyard, the two builds in process and the planning system were completed. The current situation and the year ahead were discussed with senior management including the CEO, Operations Director and the Head of Planning. They all came across as knowledgeable and with a good understanding of the challenges they have faced, the lessons learnt and the future issues.

The yard is impressive for a small commercial shipyard. The recent work on improvement of infrastructure has included a build shed where a greater proportion of work can be carried out undercover and a relocated office building, which freed up additional yard space. A new approach to planning has been introduced and there has been a significant addition of new senior management. The addition of the build shed has allowed a different approach to ship build to be adopted, significantly reducing the time and manpower required. These reductions are reflected in the declared manpower numbers.

A detailed examination was undertaken of the buildup of the minimum workforce level. This number is defined by trade and skills and split between direct and indirect

labour. It also recognizes the work necessary to complete Ship 1(under the previous build strategy) and the new work associated with Ship 2.

Construction of Ship 1 clearly suffered from being first and the numerous changes that were found to be required to the design. The build programme also spanned the period of rebuild of the yard infrastructure. We had good evidence that lessons learnt from the Ship 1 construction have been incorporated in the design and build of Ship 2.

The manpower numbers given in the attached appendix, are declared as a minimum and, whilst refinement might reduce them marginally, a slight increase is more likely. This review team is confident in the declared numbers. The updated resourcing plan is considered adequate to complete the work currently planned by the Yard to fulfill their contract with CMAL.

The sustainability of FMEL is dependent on future work. Their strategy for winning this work is developing.

It is recommended that:

The minimum resourcing plan is accepted;

A Quarterly Review, linked to loan drawdown, is undertaken to monitor build progress against the declared plan;

Assistance is offered to progress and improve their future strategy.

Luke van Beek
VATIS Ltd
Review Team Leader

ANNEX I

SIDE LETTER FROM CBC TO ACCOMPANY EXISTING LOAN

CLYDEBLOWERSCAPITAL

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The Scottish Ministers
Victoria Quay
Leith
Edinburgh
(the "Scottish Ministers")

5 September 2017

Dear Sirs

Letter of Intent

We refer to the loan facility agreement to be entered into between The Scottish Ministers (the "**Lender**") and Ferguson Marine Engineering Limited (the "**Company**") on or around the date hereof (the "**Facility Agreement**") pursuant to which the Lender will make available to the Company a loan of up to £15,000,000 (the "**Facilities**").

Subject to the satisfaction of (a) the Facilities being fully drawn down and (b) the final conclusion of the dispute between CMAL and the Company regarding the increase to price for the contracts to build the Euro Class B Dual Fuel Passenger Ferry with Builder's Hull Number 801 and the Euro Class B Dual Fuel Passenger Ferry with Builder's Hull Number 802, we hereby confirm our intention to arrange the investment from the private sector (being investors such as Clyde Blowers Capital Fund III LP and/or other non-Scottish governmental private sector investors) (whether by equity or loan) in Ferguson Marine Engineering (Holdings) Limited of an aggregate amount of £8,500,000, being £4,000,000 by April 2018 and £4,500,000 by May 2018, to be used to provide funding to the Company.

This letter of intent is not legally binding.

This letter is to be governed by and construed in accordance with Scots law.

CLYDE BLOWERS CAPITAL FUND III, LP)

acting by its General Partner,

CLYDE BLOWERS CAPITAL GP III LP,

which in turn acts by its General Partner,

CLYDE BLOWERS CAPITAL GP III LIMITED,

[redacted]

ANNEX J

INVERCLYDE – LOCAL ECONOMIC INFORMATION

Inverclyde performs relatively poorly against the Scottish average on unemployment, and has lower rates of economic activity and employment than Scotland as whole. Inverclyde also has a relatively high share of deprived areas. Table 1 presents some indicators of deprivation. On these selected metrics the performance of Inverclyde trails the Scotland average, with variances up to 40%.

Percentage Resident Population aged 16 to 64 – Main Benefit Claimants (November 2016)

Metric	Inverclyde	Scotland	Variance
Total claimants	18.2%	13.0%	+140%
Employment and Support Allowance and Incapacity benefits	11.6%	7.8%	+149%
Job Seekers	1.5%	1.4%	+107%
Main out-of work benefits	14.5%	10.3%	+141%

Source: NOMIS

	Indicator	Inverclyde	Scotland
Economic	Business start-up rate (per 10,000 resident adults)	35	**50**
	3-year business survival rate (%)	60%	**62.1%**
	R&D per head (£) 2016	41	**198**
	GVA per head, 2015 (£)	18,999	**23,685**
	% change in GVA per head, 2007 to 2015 (%)	13.4%	**14.3%**
Labour market access	Unemployment rate (%)	5.5	**4.3**
	Econ. activity rate (16-64) (%)	77.8	**77.3**
	Female employment rate (%)	72.7	**70.7**
	Economically inactive who want a job (%)	27.8	**24.6**
	Economically inactive long-term sick (%)	43.8%	**28.1%**
	Jobs density 2015	0.66	**0.79**
	% of LA datazones within Scotland's 15% most deprived (SIMD)	36	**15**
Fair work	Median weekly Earnings - full-time employees (£) - 2017	533	**525**
	% of employees (18+) earning below the Living Wage - 2017	24.2%	**18.4%**
	Median hourly full-time gender pay gap (%) 2017	+7.4%	**-6.6%**
	Employment in "high skilled" occupations (%)	41.7%	**43.2%**
People	Individuals self-reporting health as 'very good' (%) 2011 Census	50.4%	**52.5%**
	Working age (change by 2029)	16.6%	**4.4%**
	Degree qualification (%)	22.0%	**28.9%**
	No qualifications (%)	14.2%	**9.9%**
	% of school leavers in positive destinations 2015/16	91.1%	**91.4%**
	% of children in poverty (AHC)	28%	**28%**
	Life expectancy (male) 2013-15 (years)	75.4	**77.1**
	Life expectancy (female) 2013-15 (years)	80.4	**81.1**
Place	Households with home internet access (%) 2015	76%	**80%**
	People living within 500m of a derelict land site (%)	54.0%	**30.3%**
	Fuel poverty (% of households)	41%	**34%**
	% of dwellings not "energy efficient" 2012-2014	39%	**34%**
	Homes that fail the Housing Quality Standard 2012-2014 (%)	56%	**47%**
	Sense of belonging to community 2015 (%)	82%	**77%**

FREEDOM OF INFORMATION REQUEST – INFORMATION RELATING TO THE APPOINTMENT OF WILLIE WATT

The following information is held and is listed below, some of which has been redacted. Please see the Annex to the covering letter for more details on why we have applied exemption(s).

Document number	Document(s) title
1	Candidate application letter, CV and declaration
2	Candidate interview summary
3	Candidate references
4	Invitation to interview (12/9/19) – email, letter and annex
5	Interview questions
6	Invitation to meet Cabinet Secretary – letter
7	Submission (22/10/19) to Cabinet Secretary for Finance, Economy and Fair Work, and annex
8	Note of meeting between Mr Mackay and Willie Watt (30/10/19)
9	Various emails between officials and Ministerial offices confirming choice of candidate (includes Cabinet Secretary's minute to First Minister of (6/11/19)
10	Scottish Government News Release "Appointment of the Chair of the Scottish National Investment Bank" (15/11/19)

Document 1 Candidate application letter, CV and declaration

[withheld]

Document 2 Candidate interview summary

[withheld]

Document 3 Candidate references

[withheld]

Document 4 Invitation to interview – email, letter and annex

From: [REDACTED] @gov.scot
Sent: 12 September 2019 15:07
To: [REDACTED] @outlook.com
Cc: Work for SNIB <WorkforSNIB@gov.scot>; **[REDACTED]** @odgersberndtson.com
Subject: Scottish National Investment Bank - Chair interview

Sent on behalf of Benny Higgins, Chair of the Selection Panel

Dear Willie,

Please see attached a letter confirming your interview for the Chair of the Scottish National Investment Bank. Also attached is some additional information on what to expect.

If you have any questions please don't hesitate to get in touch with us or with **[REDACTED]** at Odgers Berndtson.

We look forward to meeting you.

Kind regards,
[REDACTED]
Team Leader, Governance and Public Appointments
Scottish National Investment Bank : **Scottish Government**
1st Floor North, Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG
Tel: 0131 244 **[REDACTED]** Mobile: **[REDACTED]**
Want to know more about the Bank? Read about it on our website

Scottish National Investment Bank Programme Team
T: 0131-244 **[REDACTED]**
E: workforSNIB@gov.scot

By Email

Willie Watt**[REDACTED]**

12 September 2019

Dear Mr Watt

Thank you for submitting your application for the Chair of the Board of the Scottish National Investment Bank.

As you know this is an exciting development for Scotland, one that will impact greatly on our economic landscape.

The interview panel have carefully considered all applications received based on the information you have provided us in your CV and supporting letter, against the skills criteria set out in the application pack.

As you will have already been notified by Odgers Berndtson, I am pleased to confirm that the panel would like to invite you to interview. Further details are below.

Date:	Tuesday 17 September 2019
Time:	4:00pm (by video conference)
Location:	Odgers Berndston 95a George Street, Edinburgh, EH2 3ES

Please prepare in advance of your interview to give a verbal response to the following question, which is in three parts:

- *Why do we need a Scottish National Investment Bank?*
- *What should we be looking for in its Chair?*
- *Why are you the best candidate for this role?*

Your response should last no more than 5 minutes and you will not have access to PowerPoint or any other aids. The selection panel will ask you questions on the points you make before they go on to ask further questions to test further aspects of the essential and desirable criteria for the Chair role.

You should aim to arrive around 15 minutes before your interview. On arrival please use the entry system to call reception, a member of staff will collect you and take you to the waiting area. Should you have any problems with access, or need to contact us on the day of your interview, please call **[REDACTED]** at Odgers Berndston on **[REDACTED].** If you have any specific access requirements please let us know as soon as possible so that reasonable adjustments can be made.

You may be able to claim travel expenses to enable you to attend the interview, with the expectation that they are reasonable and travel can be completed in one day as far as possible. More information can be provided, please contact us by email WorkforSNIB@gov.scot.

Should you have any questions or concerns please do not hesitate to contact us at the email address above.

I look forward to meeting you to discuss your application in more detail.
Yours sincerely
BENNY HIGGINS
Strategic Adviser to First Minister

Annex

What to expect

During the interview you will be asked a series of questions through which the panel will gain a deeper understanding of your skills and experiences, and how they relate to the skills criteria for the role:

- Values (essential)
- Economic context (essential)
- Strategic leadership (essential)
- Board management (essential)

- Stakeholder engagement (essential)
- Industry experience (desirable)

These are questions intended to explore your skills and knowledge, and how you have used them to approach problems, tasks and challenges in more depth, none are set out to trip you up or disadvantage you in any way.

The methods used to assess applicants will provide applicants with fair and equal opportunities to demonstrate their merit.

The selection panel will also ask you to give more information based on the detail you have provided within the Declaration form which you returned with your application. For example where you have indicated a potential conflict of interest or that you have a current public appointment. These questions form part of the 'Fit and Proper Persons Test'.

The Fit and Proper Person's Test' is part of the process for all appointment to public bodies in Scotland will provide sufficient information and evidence to Scottish Ministers to assure them the person they are appointing is a fit and proper person to take up the appointment.

The interview will last around 45 minutes to one hour.

After the conclusion of interviews the panel will make a decision on which candidate(s) will be recommended to Mr Mackay the Cabinet Secretary for Finance, Economy and Fair Work for possible appointment. Prior to meeting with Mr Mackay your references will be contacted.

During the interview there will be six people present – the four members of the selection panel and two members of the Directorate for the Scottish National Investment Bank secretariat. These are as follows:

Selection Panel:

- Benny Higgins, Strategic Adviser to the First Minister on the Scottish National Investment Bank and former Chief Executive of Tesco Bank.
- Dame Susan Rice, Chair of the Scottish Fiscal Commission and President of the Scottish Council for Development and Industry.
- Professor Sir Anton Muscatelli, Principal of the University of Glasgow and a member of the Council of Economic Advisers.
- Liz Ditchburn, Director-General Economy for the Scottish Government. Secretariat:
- David Wilson, Programme Director
- **[REDACTED]**, Governance & Public Appointments

<u>Document 5 – Interview questions</u>

Scottish National Investment Bank – Chair of the Board Interview Questions

Preparatory Question – BENNY
Candidates will be asked in advance to prepare to give a verbal response to the following question, which is in three parts:

- *Why do we need a Scottish National Investment Bank?*
- *What should we be looking for in its Chair?*
- *Why are you the best candidate for this role?*

(They will be advised their response should last no more than 5 minutes and they will not have access to PowerPoint or any other aids.)

Question 1

Strategic leadership (essential) **- BENNY** (merged with/ follow on from above)

- What has been your most significant leadership challenge in terms of scale and complexity? What did you learn?

Question 2

Economic context (essential) - **ANTON**

- How would you describe the role of the Scottish National Investment Bank, and where do you see it having the biggest impact in the Scottish economy?

- (ADDITIONAL QUESTION if time allows) Can you tell us about any experience you've had of mission-based finance and what impact you think the work of SNIB can have on the economy here?

Question 3

Board management (essential) - **SUSAN**

- Describe your previous *ex*perience of building a well-functioning Board. How would you apply that here?

Question 4

Industry experience (desirable) **- SUSAN** (merged with/ follow on from above)

- UPDATED - Can you shed further light on how your professional experience would translate into the mission of SNIB, and feel free to touch on regulatory experience, culture, planning, risk, any elements you think most relevant?

Question 5

Stakeholder engagement (essential) **- LIZ**

- SNIB has a very particular constitutional position – independent of Government but with Government as sole shareholder. Can you reflect for us on what that might mean for the Chair, and for what the role requires?

Question 6

Values (essential) **- BENNY**

- What does it mean for you to have a commitment to diversity and inclusion? How have you demonstrated that commitment in previous roles and how would you demonstrate it here?

Fit and Proper Person Test questions - DAVID

<u>Time Commitment</u>
- UPDATED - The time commitment for the role is an estimated 48 days per year, around 4 days per month. Can you confirm that you can meet that commitment and that you have flexibility in your diary to manage this?

<u>Conflict of Interest</u>
- Do you foresee any conflict of interests if you are appointed? If so, how would you propose to manage this?

<u>Conduct</u>
- Are you aware of any matter relating to your conduct (past or present) which could possibly embarrass the Scottish Government, Scottish Ministers or Scottish National Investment Bank if you were appointed?
- The nine principles of public life were listed in the applicant pack. Do you understand them and agree to uphold them if appointed?

INTERVIEW ENDS

Document 6 Invitation to meet Cabinet Secretary - letter

Scottish National Investment Bank Programme Team
T: 0131-244 **[REDACTED]**
E: workforSNIB@gov.scot

Mr W Watt
[REDACTED]

By email - **[REDACTED]**outlook.com

Dear Willie

Thank you again for your interest in the Chair of the Board role at the new Scottish National Investment Bank.

Thank you for taking the time to attend your interview on 17 September.

We are delighted to inform you that you will now progress to the final stage of the selection process.

A meeting has been arranged with Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work on Wednesday 30 October at 13:30 in his offices at the Scottish Parliament.

On arrival at the Parliament please progress through security before signing in at the reception where you will be escorted to the Cabinet Secretary's office. It is advisable to arrive around 15 minutes before to allow time to pass through security.

Your references will be contacted ahead of this meeting.

In the meantime should you have any questions please do not hesitate to contact us by email at WorkforSNIB@gov.scot in the first instance.

Yours sincerely

BENNY HIGGINS
Strategic Adviser to the First Minister
Chair of the Interview Panel

Document 7 Submission to Cabinet Secretary for Finance, Economy and Fair Work, and annex

From: [REDACTED]@gov.scot> **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work
Sent: 23 October 2019 09:10
To: [REDACTED]@gov.scot>; Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: First Minister <firstminister@gov.scot>; Minister for Public Finance and Digital Economy <MinisterPFDE@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; DG Economy <DGEconomy@gov.scot>; **[REDACTED]**gov.scot>; **[REDACTED]**gov.scot>; **[REDACTED]**gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>
Subject: RE: Scottish National Investment Bank - Chair Appointment (Official-Sensitive)

[REDACTED]

The Cabinet Secretary has noted the discussion and would welcome a discussion on this. We have a slot in next Tuesday with David so it can be picked up then.

Thanks

[REDACTED]
Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government
St Andrew's House **|** Regent Road **|** Edinburgh **|** EH1 3DG | **T:** 0131 244 **[REDACTED]**

From: [REDACTED]@gov.scot>
Sent: 22 October 2019 11:55
To: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: First Minister <firstminister@gov.scot>; Minister for Public Finance and Digital Economy <MinisterPFDE@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; DG Economy <DGEconomy@gov.scot>; **[REDACTED]**@gov.scot>; Wilson D (David) (SNIB) **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>
Subject: Scottish National Investment Bank - Chair Appointment (Official-Sensitive)

PS/ Cabinet Secretary for Finance, Economy and Fair Work

Please find attached a submission on behalf of David Wilson, Programme Director on the Appointment of the Chair of the Scottish National Investment Bank.

Kind regards,
[REDACTED]
Team Leader, Governance and Public Appointments
Scottish National Investment Bank : **Scottish Government**
1st Floor North, Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG
Tel: 0131 244 **[REDACTED]** Mobile: **[REDACTED]**
Want to know more about the Bank? Read about it on our website

OFFICIAL - SENSITIVE

David Wilson
Scottish National Investment Bank
22 October 2019

Cabinet Secretary for Finance, Economy and Fair Work

SCOTTISH NATIONAL INVESTMENT BANK: APPOINTMENT OF THE CHAIR

Purpose

1. To seek your agreement to:
   - agree the Selection Panel's recommendation for the appointment of the Chair-designate of the Scottish National Investment Bank;
   - confirm you are content to meet the recommended candidate before making the final appointment decision;
   - confirm that all potential conflicts of interest have been appropriately managed and mitigated;
   - the arrangements to publicise the appointment and provide feedback to other candidates, once your final decision is made; and
   - seek the First Minister's approval of your decision.

Priority

2. **Urgent**. *A meeting with recommended candidate has been arranged for 30 October 2019, which will allow this meeting to be confirmed.*

Appointment Process

3. Following the submissions of 29 March 2019 and 7 June 2019, the Cabinet Secretary:
   - approved the Selection Panel for the appointment of the Chair of the Scottish National Investment Bank;
   - agreed the appointment plan including the application and assessment methods and the publicity strategy;
   - confirmed you were content to delegate the completion of the fit and proper person tests to the Selection Panel; and
   - confirmed you would be content to proceed without a choice of candidates should the outcome of the appointment round result in a single recommended candidate.

4. The selection panel comprised of Benny Higgins (Chair), Dame Susan Rice, Professor Sir Anton Muscatelli and Liz Ditchburn. The Panel met on 11 September to shortlist the applications, and on 17 September to interview five candidates (two women and three men) for the role of the Chair of the Scottish National Investment Bank.

5. In order to help attract as diverse a pool of candidates as possible, the recruitment process was supported by a search agency, Odgers Berndtson. A total of 18 applications were received, and a further 72 individuals were approached and did not apply. The search was supported by a promotional film which has been viewed 13,000 times.

6. Candidates were assessed by the Selection Panel at shortlisting and at interview stages against the agreed skill criteria for the role – Values (essential), Economic context (essential), Strategic leadership (essential), Board management (essential), Stakeholder engagement (essential) and Industry experience (desirable).

7. Information on the selection process and the selection panel's recommendations are at Annex A, and a copy of the person specification can be found at Annex B.

8. At each stage of the process the Code of Practice for Ministerial Public Appointments has been closely followed.

Selection Panel Recommendation

9. As you are already aware, it is a requirement of the Code of Practice that in cases where one candidate clearly meets the criteria for selection more closely than others, and a single position is being filled, the selection panel must only recommend this candidate to Ministers as suitable for appointment. Therefore, following the discussions detailed in Annex A, the selection panel concluded that only one candidate should be recommended as the most able to meet the requirements of the role and needs of the Board:

Willie Watt

10. The Cabinet Secretary is asked to consider the comments of the Selection Panel and confirm that you are content to accept the recommendations and appoint Willie Watt as the Chair-designate of the Scottish National Investment Bank.

11. The Cabinet Secretary will also be aware that the Ethical Standards Commissioner is encouraging Ministers to meet candidates prior to deciding whom to appoint, especially for high profile appointments. For this reason, we are recommending you meet with the recommended candidate before making your final decision.

[REDACTED]

Conclusion

12. You are asked to:

- agree the selection panel's recommendation for the appointment of the Chair-designate of the Board of the Scottish National Investment Bank;
- confirm you are content to meet the recommended candidate before making your final decision;
- confirm that all potential conflicts of interest have been appropriately managed and mitigated; and
- agree to publicise the appointment and provide feedback to candidates once your final decision is made.

13. Benny Higgins, the Selection Panel chair, Liz Ditchburn and/or I would be happy to discuss the recommendations and any other issues relating to the appointment round if you would find this helpful.

David Wilson
Scottish National Investment Bank
Programme Director, 0131 244**[REDACTED]**

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
First Minister		X			
Minister for Public Finance and Digital Economy			X		
Minister for Parliamentary Business and Veterans			X		

DG Economy **[REDACTED]**

Annex A

Summary of the Applications and Shortlisting Process

1. The Selection Panel held the shortlisting meeting on 11 September 2019 and considered 18 applications. The Selection Panel comprised:
   - Benny Higgins, Strategic Adviser to the First Minister on the Scottish National Investment Bank and former Chief Executive of Tesco Bank;
   - Dame Susan Rice, Chair of the Scottish Fiscal Commission and Scottish Water, and President of the Scottish Council for Development and Industry;
   - Professor Sir Anton Muscatelli, Principal of the University of Glasgow and a member of the Council of Economic Advisers; and
   - Liz Ditchburn, Director-General Economy for the Scottish Government.

2. Following consideration of the applications, the selection panel agreed that five applicants should be invited to the interview stage (in alphabetical order):

- **[REDACTED]**
- **[REDACTED]**
- **[REDACTED]**
- **[REDACTED]**
- Willie Watt

3. A summary of the selection panel's assessment of each of the 18 applications received can be provided if required.

Assessment

4. The interview assessments were held on 17 September 2019. The Cabinet Secretary may find it helpful to note that candidates were asked to prepare an answer to one specific question ahead of the interview, which was in three parts:
   - *Why do we need a Scottish National Investment Bank?*
   - *What should we be looking for in its Chair?*
   - *Why are you the best candidate for this role?*

5. The interview questions were then structured around the skills criteria for the role outlined in Annex B of this submission.

Fit and Proper Person Tests

6. In terms of the fit and proper person tests, the candidates had all confirmed in their applications that they:
   - understood the work of the body and the nature of the appointment and were not aware of having committed any offence or performed any act incompatible with the position;
   - were not disqualified on any grounds from being appointed; and
   - had read, and understood the Principles of Public Life.

7. Candidates were also asked to provide details of any political activity within the past five years and to highlight any potential conflicts of interest for consideration by the selection panel in the context of their ability to perform the role.

8. **[REDACTED]**

9. **[REDACTED]**

Selection Panel Recommendation

10. As detailed at paragraph 9 of the submission, the selection panel has recommended Willie Watt unanimously as the most able candidate, based on merit, for this role. The **[REDACTED]**other candidates were considered to not be appointable to the role.

11. A candidate summary for the candidate being recommended is attached to this report in **Appendix 1**. Copies of the candidate summaries for the four candidates the Selection Panel has not recommended can be provided if required.

Appendix 1 [redacted – in effect document 2, candidate summary]

Appendix 2

CONFLICT OF INTEREST ADVICE

1. This appendix summarises
   - the obligations and requirements on conflicts of interest;
   - the role of the Selection Panel in providing advice;
   - the details of the potential conflict of interest declared by Mr Watt;
   - the issues raised in this case; and
   - the advice on behalf of the Selection Panel**.**

The obligations and requirements on conflicts of interest

1. The legal requirements with regard to the potential for a conflict of interest, either real or perceived (in law there is not really a difference drawn between an actual conflict of interest and a perceived one, because perceived conflicts of interest can have just as much impact on say reputation of an institution and sometimes more than actual ones (if not exploited improperly)) are covered in the following paragraphs.

2. The Bill provides that the Scottish National Investment Bank is to be constituted as a Public Limited Company with the Scottish Ministers being its sole shareholder. As such the provisions of the Companies Act 2006 applies to its Directors of which the Chair is one. Section 175 (duty to avoid conflict of interests) provides the following:

   (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
   (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

3. This section goes on to add that this duty would not be infringed "if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest" or "if the matter has been authorised by the directors".

4. The role of Chair of the Scottish National Investment Bank is a public appointment and, although this appointment is being taken forward as an unregulated process, we are following The Ethical Standards Commissioner's Code of Practice for Ministerial Appointments to Public Bodies in Scotland which provides the following:

   "The appointing minister will take steps to confirm that the applicant is a fit and proper person for the position to which they are appointed. This will

require information that the applicant has no inappropriate or unmanageable conflicts of interest incompatible with their appointment."

The role of the Selection Panel in providing advice

5. In providing a recommendation to Ministers, the Selection Panel need to be content that in their opinion, any conflict of interest (real or perceived) that has been declared by the candidate or, come to light during the appointment process, can be managed appropriately and effectively if the individual was appointed to the Board. If they are satisfied that it can be managed then they can recommend the candidate as appointable to Ministers. They can also decide if they want to note in the submission to Ministers what the conflict was and if they had views on how it would be managed if appointed.

6. If, however, they are not satisfied that it can be managed appropriately and/or effectively then, they should not recommend the candidate to Ministers regardless of the quality of their application and how well they performed at interview.

[REDACTED]

Annex B

Skills criteria for Chair of the Board of the Scottish National Investment Bank

The agreed skills, knowledge and experience required for the Chair role are:

Values (essential)
Outstanding ability and commitment to instil a culture of transparency, equality, diversity and inclusion in the boardroom and beyond, and to create an ethical and trusted financial institution from inception. A commitment to deliver the Bank's objective of achieving growth which combines increased prosperity with greater equality.

Economic context (essential)
Understanding of the role of development banks and public investment in delivering economic growth and the ability to translate knowledge and understanding of the economy to the Scottish context.

Strategic leadership (essential)
Motivational leader capable of formulating and delivering strategic priorities. Experience of leading organisational start-ups or systematic change and of developing and embedding a positive culture and effective governance.

Board management (essential)
Comprehensive understanding of skills and knowledge required on the Board, including a commitment to build capacity and ensure Board skills are used, and an ability to create strong and positive relationship between Board and Executives.

Stakeholder engagement (essential)

Creativity and vision to articulate the Bank's role and build strong and trusting stakeholder relationships coupled with exceptional media handling skills. Capable of upholding and communicating the importance of the operational independence of the Bank and its Board.

Industry experience (desirable)

Understanding of the banking or financial services sector including a clear understanding of the governance and operational structures of financial institutions and the relationship between risk and reward across a portfolio of investments.

Document 8 Note of meeting between Mr Mackay and Willie Watt 30 October 2019

Purpose of the meeting
For Cab Sec to meet Willie Watt following the submission to him on the chair appointment process and the recommendation that Mr Watt was the preferred candidate.

Attendees
Cab Sec FEFW
Willie Watt
Liz Ditchburn

[REDACTED]

Document 9 Various emails between officials and Ministerial offices confirming choice of candidate

From: [REDACTED]@gov.scot> **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work
Sent: 06 November 2019 18:35
To: [REDACTED]@gov.scot>; Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: [REDACTED]@gov.scot>
Subject: RE: FM approval - SNIB Chair

[REDACTED]

Cab Sec cleared the note and it has been sent. Will let you know when we get a response.

Thanks

[REDACTED]Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government
St Andrew's House **|** Regent Road **|** Edinburgh **|** EH1 3DG | **T:** 0131 244 **[REDACTED] | M: [REDACTED]**

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [REDACTED]@gov.scot>
Sent: 04 November 2019 17:14
To: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: [REDACTED]@gov.scot>
Subject: FM approval - SNIB Chair

Hi **[REDACTED]**, please find attached a simple submission for FM from the Cab Sec, to get approval of his decision to appoint WW as the Chair of SNIB. This would be sent on the back of our submission of 22nd October.

Let me know if you need anything else. At present we are looking at announcing this Friday if we can get sign off.

Thanks, **[REDACTED]**
[REDACTED]
Team Leader, Governance and Public Appointments
Scottish National Investment Bank : **Scottish Government**
1st Floor North, Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG
Tel: 0131 244 **[REDACTED]** Mobile: **[REDACTED]**
Want to know more about the Bank? Read about it on our website

From: [REDACTED]@gov.scot> **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work
Sent: 08 November 2019 12:39
To: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>; First Minister <firstminister@gov.scot>
Cc: [REDACTED]@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>
Subject: RE: Note from Cabinet Secretary - SNIB Chair

Hello **[REDACTED]**

Just wondering when you expect to hear back from FM on this? Officials are hoping the announcement can take place on Wednesday so ideally we would need a response today or early Monday? Is this possible?

Thanks

[REDACTED]
[REDACTED]
Deputy Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 244 **[REDACTED]**

From: [REDACTED]On Behalf Of Cabinet Secretary for Finance, Economy and Fair Work
Sent: 06 November 2019 18:35
To: First Minister <firstminister@gov.scot>
Cc: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**@gov.scot>
Subject: Note from Cabinet Secretary - SNIB Chair

[REDACTED]
Please find below a note from the Cabinet Secretary. The Chair-designate will Chair the Selection Panel for the Chief Executive Officer recruitment at a meeting on 28 November so it would be helpful to have an early response on this.

SCOTTISH NATIONAL INVESTMENT BANK: APPOINTMENT OF CHAIR-DESIGNATE

Purpose
To seek your approval of the appointment of the Chair-designate of the Scottish National Investment Bank.

Recommendation

Further to the submission of 22 October from officials in the Scottish National Investment Bank programme team (copy attached), I met with the recommended candidate on 30 October 2019.

As a result of this meeting I have accepted the recommendation of the Selection Panel that **Willie Watt** be named as the first Chair of the Scottish National Investment Bank.

Conclusion

You are asked to approve my decision that **Willie Watt** be appointed as the Chair-designate of the Scottish National Investment Bank.

Arrangements will be made to seek a suitable event to publicise the appointment and provide feedback to other candidates once your final approval is given.

DM
6 November 2019

[REDACTED]
Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government
St Andrew's House **|** Regent Road **|** Edinburgh **|** EH1 3DG | **T:** 0131 244 **[REDACTED] | M: [REDACTED]**

From: [REDACTED]@gov.scot> **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work
Sent: 12 November 2019 19:30
To: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>; **[REDACTED]**@gov.scot>
Cc: [REDACTED]@gov.scot>; **[REDACTED]**@gov.scot>; **[REDACTED]**gov.scot>; **[REDACTED]**@gov.scot>
Subject: RE: FM approval - SNIB Chair

[REDACTED]

FM has cleared the appointment. What do you need me to do now?

Thanks

[REDACTED]
Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government
St Andrew's House **|** Regent Road **|** Edinburgh **|** EH1 3DG | **T:** 0131 244 **[REDACTED] | M: [REDACTED]**

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

From: [REDACTED]@gov.scot> **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work
Sent: 08 November 2019 12:45
To: [REDACTED]@gov.scot>; Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: [REDACTED]@gov.scot>; **[REDACTED]**@gov.scot>
Subject: RE: FM approval - SNIB Chair

No problem. I am not about on Monday (**[REDACTED]** from Mr McKee's office is covering) so can chase again on Monday if need be.

[REDACTED] – emails in the for decision folder just so they are all in the one place.

[REDACTED]

Deputy Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 244 **[REDACTED]**

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From: [REDACTED]@gov.scot>
Sent: 08 November 2019 12:41
To: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: [REDACTED]@gov.scot>
Subject: RE: FM approval - SNIB Chair

Great, thanks **[REDACTED]**
From: [REDACTED]@gov.scot> **On Behalf Of** Cabinet Secretary for Finance, Economy and Fair Work
Sent: 08 November 2019 12:40
To: [REDACTED]@gov.scot>; Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: [REDACTED]@gov.scot>
Subject: RE: FM approval - SNIB Chair

[REDACTED]

Will just use this copy list and will use the 22nd October copy list once I hear back from FM.

See attached email with **[REDACTED]** original email included.

Thanks

[REDACTED]

Deputy Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 244 **[REDACTED]**

From: [REDACTED]2@gov.scot>
Sent: 04 November 2019 17:13
To: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: [REDACTED]@gov.scot>
Subject: FM approval - SNIB Chair

[REDACTED], please find attached a simple submission for FM from the Cab Sec, to get approval of his decision to appoint WW as the Chair of SNIB. This would be sent on the back of our submission of 22nd October.

Let me know if you need anything else. At present we are looking at announcing this Friday if we can get sign off.

Thanks, **[REDACTED]**

Team Leader, Governance and Public Appointments
Scottish National Investment Bank : **Scottish Government**
1st Floor North, Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG
Tel: 0131 244 **[REDACTED]** Mobile: **[REDACTED]**
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Document 10 – Scottish Government News Release "Appointment of the Chair of the Scottish National Investment Bank"

News

Scottish Government
Riaghaltas na h-Alba
gov.scot

15 November 2019

Appointment of the Chair of the Scottish National Investment Bank
Cabinet Secretary for Finance, Economy and Fair Work, Derek Mackay MSP, today announced the appointment of Willie Watt as the first Chair of the Board of the Scottish National Investment Bank. The Cabinet Secretary said:

> "I'm delighted to appoint Willie Watt as the first Chair of the Board of the Scottish National Investment Bank.
>
> "The Bank has the opportunity to transform and grow Scotland's economy, and I know that Willie's background in investment and wealth of experience in building organisations with the right kind of culture and values will help to shape it as a trusted and credible financial institution now and for generations to come.
>
> "I look forward to working together as we build an ethical, sustainable and inclusive Bank to support economic growth across Scotland and help businesses and communities to flourish."

Willie Watt added:

> "I am proud to be appointed the first Chair of the Bank's Board.
>
> "This is an incredibly exciting opportunity and I look forward to building a highly skilled team to help shape the Scottish National Investment Bank and realise its full potential.
>
> "I believe the Bank has a unique opportunity to support ambitious companies and help to create a fairer and more inclusive economy, one that is fit for purpose in the 21st century. I very much look forward to playing my part in helping to achieve that."

Appointment
Willie Watt was CEO of Martin Currie, an international public equities investment firm based in Edinburgh, between 2001 and February 2019 and having organised succession is currently Chairman of the firm until December 2019. Martin Currie is a specialist Investor whose clients are leading global public and private asset owners. Previously Willie spent 16 years with the 3i Group, latterly as Managing Director of its Scottish business. He ran specialist venture, buy out and energy investment teams. Willie is a member of the advisory board of Scottish Equity Partners.

Length of Term, Remuneration and Time Commitment
The appointment is for 4 years. It commenced on 11 November 2019 and will end on 10 November 2023. The Chair of the Board receives up to £60,000 per annum for a time commitment of up to 48 days per year.

Other Ministerial Appointments
Willie Watt is also a Board member of the National Galleries of Scotland.

Political Activity
All appointments are made on merit and political activity plays no part in the selection process. However, in accordance with the original Nolan recommendations, there is a requirement for appointees' political activity within the last five years (if there is any to be declared) to be made public.

Willie Watt has had no political activity in the last five years.

The Scottish National Investment Bank
The Scottish National Investment Bank has the potential to transform Scotland's economy. It will be operational in 2020, investing in businesses and communities across Scotland. The Bank will take a mission based approach to investment, tackling key societal challenges. The Bank will work with stakeholders to develop its missions, the primary one of which will be supporting the transition to net zero. The Scottish Government has committed to investing £2 billion to capitalise the Bank over 10 years, enabling it to become a cornerstone institution in the Scottish economy.