

**Rural Economy and Connectivity Committee**

**Inquiry into the Construction and Procurement of Ferry Vessels in Scotland**

**Written submission on behalf of Scottish Ministers**

12 August 2020

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## **1. Introduction**

1. The Rural Economy and Connectivity Committee (RECC) has called an inquiry into the construction and procurement of ferry vessels in Scotland. The remit of the inquiry is to identify and address current and future challenges and opportunities in the procurement of new vessels to support Scotland's ferry network.
2. The Cabinet Secretary for Economy, Fair Work and Culture and the Minister for Energy, Connectivity and Islands have been invited to give evidence to the inquiry on 26 August 2020, and welcome the opportunity to do so, recognising the significant public interest in MV Glen Sannox (vessel 801) and vessel 802 and in broader issues around the delivery of vessels to serve the Clyde and Hebrides and Northern Isles ferries networks.
3. This written submission has been prepared on behalf of the Scottish Ministers, to provide the RECC with a comprehensive statement on the issues which are understood to be of interest to the inquiry. It is hoped that this will assist the inquiry in its consideration of the evidence presented to it, given the time which has elapsed since the first evidence sessions. Scottish Ministers proactively published a suite of information of relevance to the matters being considered by the inquiry on its website on 19 December 2019. For ease of reference, links have been provided to relevant documents in support of the evidence provided in this statement. Scottish Ministers would be happy to supplement this submission with additional information, should that be considered of assistance.

## **2. Roles and Responsibilities**

4. There are a number of actors who are directly involved in the provision of lifeline ferry services on behalf of Scottish Ministers, and who have been directly involved in the delivery of vessels 801 and 802. These roles are clearly defined with appropriate governance relationships in place. However, Ministers are mindful of the suggestion before the inquiry that there is an absence of transparency and accountability around roles and decision making and offer the following summary of roles and responsibilities to provide context for subsequent chapters of this written statement.
5. Transport Scotland is the national transport agency for Scotland, working directly with Scottish Ministers on the transport vision for Scotland. With Ministers, Transport Scotland sets the policy context and strategic outcomes for ferry services in Scotland. Transport Scotland produces the Vessel Replacement and Deployment Plan (described below) in close collaboration with CalMac Ferries Limited (CFL) and Caledonian Maritime Assets Limited (CMAL). Transport Scotland provided a voted loan to CMAL for the delivery of vessels 801 and 802.
6. CMAL procures and owns the vessels deployed in the Clyde and Hebrides Ferry Services (CHFS) fleet, which are chartered to CFL as the current operator of the CHFS network. CMAL also owns around half of the port

infrastructure relied upon for delivery of the CHFS contract, with others owned by trust, council and private harbour authorities. CMAL is responsible for the procurement of vessels 801 and 802 and is the customer of Ferguson Marine now in public ownership, previously Ferguson Marine Engineering Limited (FMEL) under the contracts to deliver the vessels. CMAL will own vessels 801 and 802 upon their completion (with title to some of the materials already having vested to them) and will charter these vessels to CFL as the incumbent operator of the CHFS network.

7. The Scottish Ministers own the entire share capital of CMAL. Transport Scotland provides a sponsorship function in respect of Scottish Ministers' shareholding, which includes oversight of governance arrangements in relation to company accounts, corporate plans and the provision of administrative support in the Ministerial appointment of CMAL's Chair and non-executive directors. The relationship between Scottish Ministers and the CMAL Board is set out in the CMAL Management Statement and Financial Memorandum.
8. CFL is the operator of the CHFS contract 2016-2024 let by the Scottish Ministers, having secured the contract following a competitive tender process. CFL operates the CHFS contract under the Caledonian MacBrayne brand. CFL retains responsibility under the CHFS contract for deploying the fleet of vessels which it charters from CMAL as CFL considers appropriate to meet customer demand. CFL provided a Specification of Operational and Technical Requirements for vessels 801 and 802. David MacBrayne Limited (DML) owns the entire share capital of CFL.
9. The Scottish Ministers own the entire share capital of DML. Transport Scotland provides a sponsorship function in respect of Scottish Minister's shareholding in DML, which includes oversight of governance arrangements in relation to company accounts, corporate plans and the provision of administrative support in the Ministerial appointment of DML's Chair and non-executive directors. The relationship between Scottish Ministers and the DML Board is set out in the DML Framework Document.
10. Fergusons Marine Engineering Limited secured the contracts to deliver vessels 801 and 802 in 2015 following a competitive tender process run by CMAL. Separately, Scottish Ministers provided FMEL with commercial loans in 2017 and 2018 to assist with cash flow difficulties experienced during the construction of 801 and 802 and to support diversification of the business. To avoid any perception of a conflict of interest between Scottish Ministers' distinct roles as creditor under the FMEL loan agreements, as CMAL shareholder and as CMAL creditor under the voted loans for vessels 801 and 802, a clear separation of responsibilities and information flows was maintained between those Scottish Government officials leading on diligence around the FMEL loans, and Transport Scotland officials who engaged with CMAL.
11. Fergusons Marine Engineering Limited entered administration on 16 August 2019. Following a marketing exercise by the appointed Administrator, during

which time Scottish Government acted as managing agent for the business, the Administrator determined that the Scottish Government offer provided best value for FMEL creditors. On 2 December 2019 FMEL entered public ownership. A new group of companies, under the auspices of Ferguson Marine (Port Glasgow) Holdings Ltd (FMPG) was created and the contracts between CMAL and FMEL for vessels 801 and 802 assigned to Ferguson Marine (801 and 802) Ltd .

12. As a company wholly owned by Scottish Ministers, Ministers have the power to appoint and remove company Directors of Ferguson Marine (Port Glasgow) Holdings Ltd. As sole shareholders of the company, Scottish Ministers have powers under the Articles of Association of the business to, in exceptional circumstances, direct business decisions. This power is not intended to be used regularly.
13. The inquiry has heard these various relationships described as a “merry go round of blame”, and has received feedback from community representatives that the structures make it difficult for communities to provide feedback on essential services directly to the appropriate decision makers. Although the legal relationships between the various parties are well understood and enforced by the parties themselves, Scottish Ministers are aware of the perception which exists of a lack of accountability between parties and takes that perception seriously.
14. As outlined by Ministers, Transport Scotland will commission a study of the legal structures and governance arrangements which exist between the “tripartite group” of Transport Scotland, CMAL and CFL. Its purpose will be to ensure that the arrangements and roles which have been in place for some time, continue to reflect best practice in the circumstances which prevail at today’s date, and can best equip Scottish Ministers to deliver their ambitions for efficient ferry services across the CHFS and Northern Isles networks. Transport Scotland, CFL and CMAL have each committed to engaging constructively in that process and to reflect on any recommendations produced.

### **3. General approach to investment decisions**

15. In December 2012, Transport Scotland published “*Scottish Ferry Services: Ferries Plan (2013 – 2022)*”<sup>1</sup> which sets out the basis of all of Scotland’s ferry services until 2022. The Ferries Plan was the culmination of the Ferries Review, an extensive consultation undertaken over a three year period. Broadly speaking, the Ferries Plan defines the outcomes which Scottish Ministers seek to achieve for the island and remote communities served by the ferries network.
16. The Ferries Plan, in turn, informs the Vessel Replacement and Deployment Plan (VRDP)<sup>2</sup>. VRDP reports are produced by Transport Scotland in close

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<sup>1</sup> <https://www.transport.gov.scot/public-transport/ferries/scottish-ferries-plan/>

<sup>2</sup> <https://www.transport.gov.scot/publication/vessel-replacement-and-deployment-plan-2016/>.

collaboration with CFL and CMAL. VRDP identifies future network investment proposals in line with three evidence based criteria: existing vessel and harbour infrastructure life expiry; reliability and resilience of existing assets and services; and capacity, based upon current and forecast demand, that demand analysis being underpinned by detailed modelling reflecting local economic growth forecasts. The future network investment proposals within VRDP represent the means by which the outcomes identified in the Ferries Plan are to be delivered. VRDP identifies the specific solution (for example one or two vessels, major or non-major vessel) to meet demand across the network. VRDP does not of itself represent a financial commitment to proceed with any of the investment proposals identified. It is a long term framework within which individual investment decisions are prioritised and taken. VRDP was first published in 2015 and has been kept under review, including engagement with stakeholders, with updates published in 2016, 2018 and a further update in development.

17. The individual proposals identified within VRDP are revisited and examined in detail before an investment decision is taken to proceed. This takes account of any changes in circumstances since the date of publication of VRDP, and allows for consideration of the specific detailed business case in line with the requirements of the Scottish Public Finance Manual. Transport Scotland sets the policy context within which any new vessel must be designed. CFL sets out its operational requirements. CMAL procures and owns the vessels. New vessels are normally funded by way of voted loan from Transport Scotland (on behalf of Scottish Ministers) to CMAL and the final investment decision on the provision of a voted loan is taken by Scottish Ministers on advice from Transport Scotland. From 2019, any commitment of this scale is subject to approval by the Transport Scotland Investment Decision Making Board prior to a Ministerial decision.
18. The current Ferries Plan is due to be replaced by the end of 2022. This is likely to differ from its present form. It will be developed within the policy context provided by the recently published National Transport Strategy and National Islands Plan, which are themselves aligned to the Scottish Government's Purpose and National Outcomes. It will be closely linked to the emerging Strategic Transport Projects Review, in order to consider island connectivity more broadly having regard to aviation, ferries and fixed links, and to connecting and onward travel. It will reflect the Government's commitments to achieve net carbon neutrality by setting out pathways towards zero/low emission vessels and services. That policy development is underway. In the meantime, investment decisions continue to be taken within the context of VRDP, again with the engagement of stakeholders.

#### **4. General approach to vessel specification and design**

19. As with any manufacturing project, vessel design proceeds from a high level definition of basic requirements, outcomes or parameters and constraints through to the production of detailed design drawings reflecting the complexity of the vessel design and engineering.

20. Transport Scotland provides high level guidance on a specific vessel project through VRDP, as described above. CFL provides a statement of operator requirements (SOR) informed by that guidance. CMAL procure naval architects to convert the SOR into a high level design, including initial General Arrangement (GA) drawings. This is done through a project management process which ensures that Transport Scotland and CFL can verify that identified policy and operational requirements are met or, when opportunities for refinement are presented during the design development process, adaptations to Transport Scotland and CFL requirements are considered and approved. The output is referred to as the **tender design requirement**.

21. In the case of a design and build contract, this tender design requirement is presented to potential shipyards as part of the vessel procurement process. Bidders respond to the invitation to tender with their proposed **concept design**. The concept design demonstrates at a basic level that the tender design requirement is capable of delivery. Once the contract has been awarded, the contractor assumes responsibility for developing their conceptual design into the **basic design** and then the **detailed design**. Broadly speaking, the basic design relates to the hull form and mechanical components of the vessel (steelwork and engine). The basic design drawings are approved by the relevant certification authority (flag – in the case of 801 and 802 the Marine Coastguard Agency (MCA)) and classification society (class – in the case of 801 and 802 Lloyds Register) and shared with CMAL as customer for information and to allow observations to be made around compliance with the tender design requirement. This leads to the production of the final detailed design, which includes outfitting arrangement drawings. This is an iterative process which can typically take around a year following contract award. Under the standard shipbuilding BIMCO (the Baltic and International Maritime Council) contract, there is no prohibition on the contractor commencing construction work prior to approval of either the basic or detailed design by flag, class, or observation by customer. However, any decision to do so is taken at the contractor's own risk.

22. A number of factors will influence the specification of a vessel. The base criteria agreed among Transport Scotland, CFL and CMAL in the first and subsequent VRDP reports, extant at the time of specification of the requirements for 801 and 802, were that any new vessels should be:

- safe;
- reliable;
- have sufficient cargo and deadweight capacity;
- be suitable in relation to manoeuvring, berthing and station keeping;
- achieve reasonable sea keeping and the comfort of passengers and crew;
- have appropriate redundancy levels; and
- deliver fuel efficiency and emissions reduction.

These criteria are kept under review and are expected to be updated in the next iteration of VRDP to give increased weight in decision making to emissions reduction and accessibility.

23. **Safety.** The safety record of both the CHFS and NIFS operations are strong. Safety is deeply embedded in maritime law, regulation and design requirements and in operational practices. Transport Scotland, CMAL and the ferry operators are strongly committed to maintaining these standards and addressing risks and issues.
24. **Reliability.** The provision of reliable services for the island and remote communities served is at the heart of Scottish Ministers' commitment to the lifeline ferry network. The whole major fleet has been deployed in response to demand growth. This has reduced the resilience of the fleet overall, with little or no spare capacity readily available. The delivery of new tonnage provides the opportunity to assess the value for money and affordability of retaining a major vessel as to offer resilience within the fleet.
25. **Cargo deadweight capacity.** In the case of ro-pax vessels (roll on, roll off vessels which carry both vehicular and pedestrian passengers), the determinative characteristic of capacity will typically be the cargo arrangement, with the space allocated to pedestrian passengers being a secondary, consequential feature of the space required to deliver car and other vehicular capacity. Capacity is determined by the size of the vehicle deck, including mezzanine decks, and by deadweight. This is particularly significant on routes with a high freight demand where on occasions a ship has to sail with available deck space because the maximum weight capacity has been reached (the Islay services using the MV Hebridean Isles is an example of when this can occur).
26. **Manoeuvring, berthing and station keeping.** These are design aspects which impact on service reliability. Many of the harbours on the CHFS network are in historic locations and often offer limited manoeuvring space. Well-known examples include Mallaig, Ardrossan and Lochboisdale. Berthing in strong wind, swell and tide conditions is a highly skilled activity which Masters and crew manage on a day to day basis, using a combination of forward power and thrusters. Berthing needs to avoid heavy impacts between ship and pier which risk damage to both as well as potential harm to passengers from a "hard landing". The specification for 801 and 802 includes significant manoeuvrability and station keeping which should allow for strong performance in poor weather and sea conditions, which are known to impact upon reliability on their intended routes and are forecast to increase as a result of climate change.
27. **Crew accommodation.** The inquiry has heard evidence on the requirement for crew to reside upon the vessels serving the network. It has been suggested that the maritime tradition of crews living aboard vessels is an antiquated one being perpetuated unnecessarily. That claim incorrectly suggests a passive continuation of working practices without reflection on whether that remains the correct working model. It is correct that staff are accommodated on some, but not all, vessels across the ferry network. The factors which influence a decision on whether on board accommodation is required include:

- The availability of local crew: wherever possible CFL looks to recruit locally to the home base of the vessel as it is recognised to improve overall crew wellbeing. However, CFL reports that it regularly experiences issues in recruiting the numbers of crew required locally in remote islands with the requisite qualifications, experience and skills.
- Where insufficient suitably qualified crew are available locally, the absence of on-board crew accommodation would require local accommodation. Notwithstanding the significant additional operational cost, sourcing accommodation locally can be very challenging, especially in summer months where availability is already limited for visitors to the islands. When CFL has deployed additional crew as short-term relief, there have been instances of crew being housed some 20 miles from the home port, which also impacts on hours of rest and reduces the available operating hours for the service / requires more crew to meet timetable requirements.
- Service resilience. As crew on the major vessels are currently accommodated on-board, the vessels can be deployed to anywhere within the network (within the constraints of certain vessels and harbours). Were crew to be based on-shore, when sailing the Master would need to be confident that he or she would be able to return to the home port to enable crew to rest. If there is a risk that the vessel will not be able to return to her home port at the end of the operating day, the Master may take the decision to cancel services earlier than what would normally be expected resulting in an increase in cancellations. In some cases, the need to return to the same port every night would require changes to current service patterns and timetables which could increase the operating day (and the crew requirement), or reduce the frequency of service, or restrict last and first sailings to certain locations.

28. **Redundancy.** Mechanical parts can and do fail. Building some redundancy in to the vessel specification enables a vessel to continue to operate in those circumstances. For example, on the MV Loch Seaforth, the most recent major vessel addition to the CalMac fleet, the combination of diesel electrical and diesel mechanical propulsion give a high level of redundancy. The two main engines can use IFO (intermediate Fuel Oil) and MDO (Marine Diesel Oil) fuels. Backup diesel generators would allow her to operate to timetable even with one main engine out of service. This does not represent an over engineered solution, but rather a balanced approach to safeguarding operational resilience.

29. **Fuel efficiency and emissions reduction.** Shipping faces significant challenges in moving to zero or low carbon. Having introduced three diesel-electric hybrids to the fleet since 2011, Transport Scotland are keen to explore the options of “second generation” hybrids as well as all-electric ferries or other alternative fuels. For the major vessel fleet, the current size, weight and power of batteries represent a barrier to deployment in the short-term. Transport Scotland are considering hydrogen technology as a potential long-term solution for major CHFS and NIFS vessels, but the technology is not yet available for deployment. Until those technologies are established for use in

larger vessels, LNG is the preferred alternative fuel type to MGO. LNG is an established technology. Although a transition fuel, LNG is a significantly cleaner fuel than traditional marine diesel with lower sulphur emissions. Ministers are planning an expansion of shoreside power supply for overnight vessels, having supported its implementation at Stromness for the MV Hamnavoe, and are supporting this overnight shoreside electric power supply capability at Tarbert and Lochmaddy for vessel 802 as well as at Ardrossan for 801.

30. **One major vessel or two smaller vessels.** This is relevant to the question of balancing seasonal peaks in demand. Peak demand is modelled through VRDP based upon a nine week seasonal peak period identified on a route specific basis. However, that seasonal peak does not reflect periods of (sometimes significantly) reduced demand throughout the year. Capacity to meet the seasonal variation and ensure a proportionate resource allocation can be met in one of two ways; either through the provision of two vessels to deliver increased frequency of crossings; or through the provision of a larger vessel, in some cases operating an increased number of sailings in the peak. The former approach has been taken on routes to Cumbrae, Arran, and Mull. For example, in the case of the main Oban-Craignure service to/from Mull, the service is provided year round by the MV Isle of Mull, supplemented in the Summer season by the MV Coruisk. This provides sufficient capacity during the winter months using a single vessel and additional capacity in summer to meet increased demand to travel, particularly for tourism. Alternatively, the single large vessel approach creates opportunities for economies of scale in terms of crew and fuel. For example, a ship the size and capacity of the MV Loch Seaforth has a comparable core crewing requirement to significantly smaller vessels such as the MV Hebridean Isles. The decision balances resilience, operating cost and interoperability.
31. **Standardisation.** The inquiry has heard evidence from witnesses on the standardisation of vessels and the benefits to increased resilience of interoperability and increased efficiency in production that accrue from a standardised approach. Ministers are generally supportive of the concept of standardisation, to the extent that this is physically practicable. Where vessels can be built using standard components, Ministers acknowledge that this should allow for design and construction time periods to be reduced and for potential cost efficiencies to be identified. Standardisation of bridge, engine and safety equipment will enable operator crew to move more easily between vessels and for a smaller range of spares to be stocked.
32. However, although the principles around standardisation are sound, they do not reflect the diverse maritime conditions across the 26 routes on the CHFS network. Nor do the general principles reflect the demand variations across routes or demand variations across seasons which are characteristics of the Scottish ferry network. The introduction of a highly standardised fleet would also require further standardisation of harbour infrastructure, with, in some cases, very substantial investment required. Not all harbour infrastructure is within the direct control of Scottish Ministers. These complexities distinguish Scotland's ferry network from that seen in other countries such as Norway

and make the introduction of a standard fleet more complex than might otherwise have been suggested to the inquiry.

33. Vessels on the CHFS network are categorised as either major vessels (designed to operate principally to or from a linkspan and with a Euro Class B certification required for the classification of sea in which they operate), or as non-major vessels (all other vessels in the fleet, usually operating short routes from slipways or, in some cases, linkspans, in more sheltered waters). There is already a high level of interoperability of vessels within the major and non-major vessel fleets. The small vessel fleet is almost entirely interoperable. The major vessel fleet is too, though with some key exceptions:

- The MV Loch Seaforth and MV Isle of Lewis, due to their length and draft, can only operate to and from a small number of ports at present;
- The Islay ports (Kennacraig, Port Ellen and Port Askaig) can only be served by 4 of the 10 major vessels;
- The only major vessel that can currently serve Mallaig is the MV Lord of the Isles. Mallaig has only recently been brought back into use as a major vessel port in order to provide a direct service to Lochboisdale.

34. Scottish Ministers' aspiration would be to remove these exceptions over time but in some cases the investment required would be very considerable and would need to be assessed for affordability, value for money and alongside other priorities. Ministers have previously responded to a RECC recommendation that the Scottish Government should work with all harbour owners to encourage a standardisation of ferry berthing points to allow greater flexibility in the network and allow a wider number of vessels to access ports. That work is underway.

35. The inquiry has heard anecdotal evidence that two vessels could be introduced to serve every route across the whole of Scotland's network for £25 million per vessel<sup>3</sup>. Scottish Ministers do not recognise that cost as being one which could reasonably meet basic operating requirements, given the constraints highlighted in this submission. Nor does it take any account of the potential additional ongoing costs of operating two vessels rather than one.

36. A balanced consideration of all of these factors is required when setting the specification for a new vessel. The consideration is made more complex by ensuring that the vessel must meet the requirements of the initial or primary route identified through VRDP, while retaining sufficient flexibility to provide resilience across the entire network, over the 30 year life of the vessel. A balance must always be achieved, to ensure that investment decisions can be taken in accordance with the principles of propriety, affordability and value for money which underpin the Scottish Public Finance Manual.

## **5. The specification and design of vessels 801 and 802**

### Transport Scotland policy requirements

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<sup>3</sup> – <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12493&mode=pdf#page=13>

37. The first VRDP report published in 2015 forecast peak nine week vehicle deck capacity utilisation rates on the Ardrrossan Brodick route of 70% in 2017 and 73% in 2018. It also forecast peak nine week capacity utilisation rates on the Uig - Tarbet/Lochmaddy route of 74% in 2016 and 76% in 2017. Utilisation rates in excess of 70% are generally understood to be indicative of the point at which customers begin to experience unmet demand on a service. These routes were accordingly identified as priority routes for investment.
38. Those forecast demands were in fact exceeded, with actual recorded peak vehicle deck utilisation rates on Ardrrossan Brodick route of 80% in 2017 and 83% in 2018. Peak vehicle deck demand on the Ardrrossan Brodick route is now forecast to be around 95% in 2021, reducing to 68% in 2022 following the impact of the introduction of MV Glen Sannox (801). The actual recorded nine week vehicle deck capacity utilisation rates on the Uig - Tarbert/Lochmaddy routes (combined) were 76% in 2016 and 76% in 2017. Forecast peak vehicle deck demand on the Uig Tarbert route is now around 102% in 2022, reducing to 85% in 2023 following the introduction of vessel 802 into service. Forecast peak vehicle deck demand on the Uig Lochmaddy route is now around 84% for 2022, reducing to 69% in 2023 following the introduction of vessel 802 into service. The decision to identify these routes as investment priorities has been proven to have been correct in the period since the original decision was taken.
39. The impact that the Covid 19 pandemic will have on forecasts is currently unknown. There are suggestions that people may need to travel less due to increased homeworking and more remote meetings and may wish to travel less due to health concerns or reduced disposable income. Equally there may be an increase in staycations for people in the UK not wishing to travel abroad, with islands seen as particularly attractive destinations due to low infection rates and the opportunity to avoid crowded towns and cities. Patronage will continue to be closely monitored as lockdown easing progresses.
40. In the case of the Ardrrossan-Brodick service, the Ferries Plan identified the need for a second vessel for the majority of the summer season. The vessel specification therefore aimed to meet forecast needs on the understanding that the new vessel would be operating, during summer, alongside another vessel. The Ferries Plan also noted that the introduction of new tonnage to the fleet as a whole would provide the opportunity for the provision of additional sailings on the route during the rest of the year.
41. In the case of Uig-Tarbert/Lochmaddy, the Ferries Plan concluded that both services met their model service profiles. Additional sailings have been introduced both before and after the publication of the Ferries Plan, to increase capacity and connectivity. A further detailed analysis of carryings and forecasts was undertaken for the Outer Hebrides STAG appraisal in 2019, which concluded that vessel 802 could provide an adequate service in terms of capacity for some years to come; however this will need to be kept under review once she has entered service and, as set out previously in the

VRDP, considered alongside other options including additional vessel deployment. The Outer Hebrides STAG outcomes will feed into Transport Scotland's future planning work through the development of the successor to the Ferries Plan.

CalMac Ferries Limited's Specification of Operational and Technical Requirements (SOTR)

42. In 2014, CFL procured naval architects to develop a detailed SOTR. CFL identified key operational requirements in terms of fuel (LNG/MGO dual fuel), vessel dimensions, passenger carrying capacity, vehicle carrying capacity, deadweight, propulsion, manoeuvrability, passenger facilities and services, redundancy and crew accommodation. The SOTR was shared with Transport Scotland and CMAL. This provided an opportunity for discussion, for assumptions to be tested and for high-level design options to be examined.
43. Although intended to operate initially on the Ardrossan- Brodick and Uig – Tarbert/ Lochmaddy routes, the specification of vessels 801 and 802 was developed to be suited to operating on multiple major CHFS routes, with particular emphasis on efficient operation on medium distance routes (transit duration from thirty minutes to five hours), including multi-port routes serving: Uig, Tarbert, Lochmaddy, Oban, Coll, Tiree, Castlebay, Lochboisdale, Craignure, Colonsay, Ardrossan, Brodick, Gourrock (refuge), Ullapool (relief) and Stornoway (relief). That was to provide inter-operability across multiple routes and provide greater flexibility to improve network resilience over the long term.
44. The requirement for passenger accommodation suitable for 1000 passengers was included in CFL's SOTR. This reflected the passenger capacity of the existing vessels serving Arran and Mull, the MV Caledonian Isles and the MV Isle of Mull respectively. As 801 and 802 were intended to be the first of a standardised series of vessels, and were not intended to remain deployed on their initial routes for their whole working life (and that will remain under review), CFL was keen to ensure that the vessels could be deployed in future on a wide range of major vessel routes, including those with a higher passenger demand than on Uig-Tarbert/Lochmaddy. Since the determinative characteristic of capacity will typically be the cargo arrangement, with the space allocated to pedestrian passengers being a secondary, consequential feature of the space required to deliver car and other vehicular capacity, the ability to accommodate 1000 passengers was considered to reflect a reasonable balance between known planned and potential future deployment of the vessel, to provide flexibility and resilience across the network.
45. The crew accommodation on both vessels reflects CFL's requirements of up to 32 crew and 2 cadets. Crew numbers required for Passenger Certification (PC) compliance are the minimum required to evacuate the maximum number of passengers covered by the PC – note this does not have to equate to the maximum number of passengers that can be physically accommodated. This does not include hours of rest and crewing needed to meet timetable requirements and retail offering. CFL is a major employer of cadets and

therefore supports UK shipping more widely and the promotion of seafaring as a career. The accommodation levels were considered to be proportionate and reasonable.

46. The vessels were designed as dual-fuel, enabling them to operate on either LNG or marine diesel. LNG is an established technology. Although a transition fuel, LNG is a significantly cleaner fuel than traditional marine diesel with lower sulphur emissions. Dual fuel provides operational resilience.

#### CMAL's tender design requirement

47. CMAL commissioned Wärtsilä, who partnered with Houlder, to produce tender design requirements to capture Transport Scotland's policy and CFL's operational requirements. These were issued with the invitation to tender.
48. CMAL appointed CFL representatives as panel members for the evaluation of the tender submissions received, to ensure that the concept designs submitted by bidders aligned with CFL's SOTR, as reflected in the tender design requirement. CFL was not a decision maker in the procurement process, its input being restricted to advice on the narrow question of adequacy of concept design.

#### Harbour upgrades

49. The SOTR put forward by CFL set out the dimensions of the vessel and included a requirement that it would be able to berth in a number of CHFS harbours (see above). It has been incorrectly suggested to inquiry that vessel 801 will not fit in to Ardrossan Harbour. CFL and CMAL have both confirmed to Scottish Ministers that both 801 and 802 will fit into Ardrossan Harbour without the requirement for modification of harbour infrastructure.
50. As noted in the submission from Transport Scotland officials to the then Cabinet Secretary for Infrastructure Investment and Cities of 20 August 2015, the risk of major infrastructure upgrades being required to accommodate the vessels was considered to be low at the date of the approval of the voted loan in CMAL favour<sup>4</sup>.
51. It was however known at the time of deciding to proceed with vessels 801 and 802 that ongoing investment would be required to the network of ports and harbours, independently of vessel deployment plans. Of the principal ports to be initially served by 801 and 802: Brodick and Uig were approaching life expiry; Tarbert had been identified in the Ferries Plan as requiring major investment during the period of the Plan; Ardrossan was known to have some aging assets and a difficult approach; and Lochmaddy was in relatively good

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<sup>4</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2015/documents/ferguson-marine-submission-to-ministers-recommending-contract-award-20-august-2015/ferguson-marine-submission-to-ministers-recommending-contract-award-20-august-2015/govscot%3Adocument/Ferguson%2BMarine-%2Bsubmission%2Bto%2Bministers%2Brecommending%2Bcontract%2Baward%2B-%2B20%2BAugust%2B2015.pdf>

condition but would need work within a 10-15 year period<sup>5</sup>. Engagement with the various harbour authorities led to the production of masterplans which addressed existing needs, and then to detailed designs for port redevelopments in close consultation between CMAL and CFL, which included consequential improvements including improved operational resilience at Ardrossan in certain weather conditions.

## **6. Procurement of 801 and 802**

52. CMAL issued invitations to tender to six pre-qualified shipyards on 10 December 2014. In keeping with the requirements of the OJEU process, information was made available on both a ceiling and floor price. This was a condition of the procurement process, does not prevent a bidder from departing above or below those prices and not, as has been suggested to the inquiry, an error or calculated move designed to alert bidders to the acceptable budget or price. Seven tender submissions were submitted to CMAL by the six shipyards by the deadline of 31 March 2015.
53. Although Scottish Ministers were not involved in the evaluation of bids submitted to CMAL, the number of valid bids received suggested to Scottish Ministers in their role as creditor to CMAL under the voted loan arrangement, that there was nothing inherent in the tender design requirement which should lead CMAL to question whether or not the tender design requirement was reasonably capable of delivery at the contracted price by a competent contractor. That view has been reinforced by evidence provided by the Ferguson Marine Turnaround Director Mr Tim Hair, who advised the inquiry that he sees no reason why the vessels should not have been capable of delivery by FMEL<sup>6</sup>.
54. There has been some discussion before the inquiry about the terms of the letter written by Addleshaw Goddard to RECC on behalf of CMAL dated 3 March 2020<sup>7</sup>, with the suggestion made that only three of the tender returns complied with the tender design requirement. The letter in fact confirms that only one of the tender returns (Shipyard C) did not meet the baseline requirements. It was confirmed in oral evidence by CMAL on 11 March 2020 that six of the seven returns met the tender requirement.
55. CMAL assessed the tenders returned. This included considering evidence of experience, expertise, financial and physical capacity to deliver at the time of contract award. The bids were assessed by CMAL on both quality and price (50:50) and FMEL was identified by CMAL as the preferred bidder. Scottish Ministers did not direct the outcome of the procurement process, nor did they seek to exert any political influence over it.
56. The inquiry has heard inaccurate claims that the contract price was announced by the First Minister before the contract price had been agreed. A contract price of £48.5 million for each vessel was agreed between CMAL and

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<sup>5</sup> <https://www.transport.gov.scot/publication/vessel-replacement-and-deployment-plan-2016/>

<sup>6</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12478&mode=pdf#page=6>

<sup>7</sup> [https://www.parliament.scot/S5\\_Rural/20200303\\_RECC\\_Letter\\_from\\_CMAL\\_FI.pdf](https://www.parliament.scot/S5_Rural/20200303_RECC_Letter_from_CMAL_FI.pdf)

FMEL. This was set out in a letter from CMAL to FMEL dated 28 August 2015 in which CMAL confirmed FMEL as the preferred bidder. The inquiry has also received evidence of correspondence between the contracting parties' legal representatives which confirms that the schedule of payment milestones and contract price had been agreed on this date<sup>8</sup>. The First Minister announced on 31 August 2015 that FMEL had been identified as preferred bidder. That announcement was made at the FMEL yard, alongside and with the agreement of Mr McColl, in FMEL's knowledge of the contract price that had been accepted by CMAL. Scottish Ministers had no role in determining the contract value, nor did they seek to exert any political influence over it.

57. As is common practice, a number of drafts of the contracts were exchanged between CMAL and FMEL during the period from announcement of preferred bidder on 31 August 2015 and contract completions on 14 October 2015. Throughout that period, Scottish Ministers were aware of discussion between parties in relation to the provision of performance bonds<sup>9</sup>, but were not aware of any negotiation on contract price. The contracts entered into were internationally recognised and industry standard BIMCO design and build contracts.<sup>10</sup>

58. The inquiry has expressed an interest in paragraph 17 of the submission from the Ferries Unit of Transport Scotland to the then Cabinet Secretary for Infrastructure Investment and Cities dated 20 August 2015<sup>11</sup>, which states:

*“As with any procurement, a legal challenge from one of the unsuccessful shipyards cannot be discounted. CMAL have not identified any particular risks in this regard and, in any case, are confident that any challenge can be defended. That said, the relationship between Scottish Ministers and Ferguson's owner is well known.”*

59. It is standard practice for Transport Scotland to advise Ministers of the level and nature of any risk associated with a high value procurement, in

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<sup>8</sup>[https://www.parliament.scot/S5\\_Social\\_Security/General%20Documents/20200224\\_RECC\\_Letter\\_from\\_CMAL\\_to\\_RECC\\_Clerk.pdf](https://www.parliament.scot/S5_Social_Security/General%20Documents/20200224_RECC_Letter_from_CMAL_to_RECC_Clerk.pdf)

<sup>9</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2015/documents/ferguson-marine-submission-to-ministers-requesting-approval-of-cmal-contract-award---7-october-2015/ferguson-marine-submission-to-ministers-requesting-approval-of-cmal-contract-award---7-october-2015/govscot%3Adocument/Ferguson%2BMarine%2B---%2Bsubmission%2Bto%2Bministers%2Brequesting%2Bapproval%2Bof%2BCMAL%2Bcontract%2Baward%2B-%2B7%2BOctober%2B2015.pdf>

<sup>10</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2015/documents/ferguson-marine-contract-documents-signed-by-cmal-and-fmel---16-october-2015/ferguson-marine-contract-documents-signed-by-cmal-and-fmel---16-october-2015/govscot%3Adocument/Ferguson%2BMarine-%2Bcontract%2Bdocuments%2Bsigned%2Bby%2BCMAL%2Band%2BFMEL%2B%25E2%2580%2593%2B16%2BOctober%2B2015.pdf>

<sup>11</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2015/documents/ferguson-marine-submission-to-ministers-recommending-contract-award-20-august-2015/ferguson-marine-submission-to-ministers-recommending-contract-award-20-august-2015/govscot%3Adocument/Ferguson%2BMarine-%2Bsubmission%2Bto%2Bministers%2Brecommending%2Bcontract%2Baward%2B-%2B20%2BAugust%2B2015.pdf>

circumstances where Ministers would be authorising the award of a voted loan from Transport Scotland to CMAL to fund the contract price from CMAL to the preferred bidder. That includes risk of challenge of the outcome by an unsuccessful bidder. Nothing more should be inferred from the inclusion of that text in this context. The language in the final sentence simply seeks to highlight the potential perception of a conflict which could exist given the well-known role of Mr McColl on the Scottish Ministers' Council of Economic Advisers, his high profile political activity and his role in acquiring the shipyard when it went into administration in 2014, an event with which Scottish Ministers were actively engaged. Despite that potential perception, Transport Scotland officials described the prospects of a successful procurement challenge as being low.

### Production Programme Review

60. Following a meeting between the then Minister for Transport and the Islands, Mr Humza Yousaf, Transport Scotland officials, CMAL and FMEL representatives on 3 Nov 2017, Mr Yousaf wrote to Mr McColl on 9 November 2017 reflecting parties' agreement to a third party peer review of the production programme for 801 and 802<sup>12</sup>. In taking this request forward, Transport Scotland officials sought input from the Scottish Government Portfolio, Programme and Project Assurance team, who helped to identify Commodore Luke van Beek as an appropriately qualified and available individual to assist in the completion to the peer review of FMEL's production programme. In describing the request for input, Transport Scotland incorrectly referred to the task as a "bespoke Gateway Review".
61. That inaccurate language has been referred to in subsequent correspondence, including in evidence to inquiry by Commodore van Beek on 5 February 2020. However, there was no intention to undertake a gateway review of the project. That error in language had no material bearing on the identification of the appropriate candidate to undertake a peer review of FMEL's programme, nor on progress of that review, which is addressed in greater detail in subsequent sections of this submission.
62. By the time the process of interviewing and identifying Commodore van Beek as the suitable reviewer for Transport Scotland was complete, circumstances had moved on considerably. There was by then a greater focus around FMEL's cash flow and loan requirements at which point it was determined that Commodore van Beek would assume an alternative role for the Scottish Government's Economic Development Directorate as part of the certification for loan drawdown as set out in later paragraphs.

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<sup>12</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/november-2017/ferguson-marine-letter-from-humza-yousaf-to-clyde-blowers-capital-re-third-party-peer-review---9-november-2017/ferguson-marine-letter-from-humza-yousaf-to-clyde-blowers-capital-re-third-party-peer-review---9-november-2017/govscot%3Adocument/Ferguson%2BMarine-%2Bletter%2Bfrom%2BHumza%2BYousaf%2Bto%2BClyde%2BBlowers%2BCapital%2Bre%2Bthird%2Bparty%2Bpeer%2Breview%2B%25E2%2580%2593%2B9%2BNovember%2B2017.pdf>

63. The Scottish Government's Procurement Directorate did undertake a focussed review for Scottish Ministers of CMAL's procurement process for vessels 801 and 802 in May 2018<sup>13</sup>. The review concluded that:

*"We found no evidence to indicate that there were any problems or areas of concern arising from the procurement process,"* and

*"We found no evidence to indicate that at the point of contracts being signed there was a lack of shared understanding between both parties as to what was required under the contract (to the contrary, we found evidence that both parties understood what was required)."*

64. The Scottish Ministers refute any allegation of incompetence, vested interest or corruption in the procurement process. The explicit allegations made by Mr Pederson to the inquiry to that effect<sup>14</sup> are grave in nature, and made by Mr Pederson without the benefit of any knowledge of or insight into the procurement process applied. The Scottish Ministers also refute the inference made to the inquiry that there had been political interference in the procurement process.

65. The Scottish Ministers have confidence in CMAL's competence as a procurement authority and are satisfied that the processes adopted in the procurement of vessels 801 and 802 was robust.

## **7. Contract Monitoring and Management**

66. Neither Scottish Ministers nor Transport Scotland is a party to the contracts for construction of vessels 801 and 802. CMAL was the client under the contracts. FMEL was the contractor. It is a condition of the voted loan from Transport Scotland to CMAL to fund vessels 801 and 802 that CMAL keeps Scottish Ministers updated on progress of the vessels.

67. CMAL keeps Scottish Ministers informed of progress on the two vessels by way of regular engagement with Transport Scotland officials and by regular written updates. The updates address progress of construction of the vessels and expenditure against profiled plans.

68. Transport Scotland also receives regular updates on all ferry and port/harbour projects through the Network Strategy Group (NSG). The NSG is chaired by Transport Scotland officials and includes senior representation from CMAL and CFL. The NSG meets several times a year. The remit of the NSG is to collectively implement the long term strategy for the replacement and improvement in the ferry fleet and ferry related infrastructure. Vessels 801 and

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<sup>13</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2018/documents/may-2018/ferguson-marine-sg-procurement-review-report---7-may-2018/ferguson-marine-sg-procurement-review-report---7-may-2018/govscot%3Adocument/Ferguson%2BMarine%2B-%2BSG%2Bprocurement%2Breview%2Breport%2B-%2B7%2BMay%2B2018.pdf>

<sup>14</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12493&mode=pdf#page=16>

802 have been a regular and significant feature of NSG reports and discussions in recent years.

69. CMAL highlighted concerns about vessel delivery in its quarterly report February – April 2016<sup>15</sup>. The report describes a seven week delay to the fabrication schedule, partly attributable to delays in the issue of hull structure drawings by FMEL. CMAL reported assurances from FMEL that the programme would be back on track by milestone 8 (50% fabrication), scheduled for attainment by 14 October 2016. At this stage, the risk of late delivery of the vessels was assessed by CMAL as medium, with mitigation comprising on site CMAL supervision and regular progress meetings between CMAL and FMEL put in place.
70. CMAL reported to the NSG in November 2016 that fabrication was behind schedule, with delays anticipated to contracted launch dates. CMAL also questioned whether the vessels could be delivered nine weeks apart as planned. CMAL reported that, in what it perceived to be an effort to meet milestones for tonnage, FMEL had been fabricating units without always having the final approved drawings, and that consequently modifications were required to some structural members on the already fabricated units. CMAL also highlighted its view that few parts of the units fabricated had been offered to the Classification Society for survey. During this period, CMAL continued with onsite supervision and regular progress meetings between FMEL and CMAL. A revised new build strategy and a revised cardinal date programme were to be proposed by FMEL<sup>16</sup>.
71. In December 2016<sup>17</sup>, CMAL reported to Ministers that key performance milestones had been missed, with foreseeable delays to delivery of both vessels. The December 2016 report outlined modifications proposed by FMEL to bring the propulsion power predictions back in line with contract requirements. The revised programme provided to CMAL by FMEL showed hull inspection and launch in line with the original programme. However, CMAL reported that while the 801 programme launch date of 24 August 2017 was likely to be met, that drawings, outfitting and installation may be behind

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<sup>15</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2016/documents/ferguson-marine-cmal-quarterly-progress-report-february-to-april-2016---1-april-2016/ferguson-marine-cmal-quarterly-progress-report-february-to-april-2016---1-april-2016/govscot%3Adocument/Ferguson%2BMarine%2B-%2BCMAL%2Bquarterly%2Bprogress%2Breport%2BFebruary%2Bto%2BApril%2B2016%2B-%2B1%2BApril%2B2016.pdf>

<sup>16</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2016/documents/ferguson-marine---cmal-update-to-network-strategy-meeting---14-november-2016/ferguson-marine---cmal-update-to-network-strategy-meeting---14-november-2016/govscot%3Adocument/Ferguson%2BMarine%2B-%2BCMAL%2Bupdate%2Bto%2Bnetwork%2Bstrategy%2Bmeeting%2B%25E2%2580%2593%2B14%2BNovember%2B2016.pdf>

<sup>17</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2016/documents/ferguson-marine-cmal-update-to-network-strategy-meeting---10-december-2016/ferguson-marine-cmal-update-to-network-strategy-meeting---10-december-2016/govscot%3Adocument/Ferguson%2BMarine-%2BCMAL%2Bupdate%2Bto%2Bnetwork%2Bstrategy%2Bmeeting%2B%25E2%2580%2593%2B10%2BDecember%2B2016.pdf>

schedule. During this period, CMAL continued with onsite supervision and regular progress meetings between FMEL and CMAL, including an escalation meeting between CMAL CEO Mr Kevin Hobbs, CMAL Director of Vessels Mr Jim Anderson, the then FMEL Chairman Mr Keith Mitchell and FMEL Managing Director Liam Mr Campbell to discuss the projects. An additional progress report was provided to NSG on 17 January 2017<sup>18</sup>. During this period, Transport Scotland officials were satisfied that CMAL was taking a responsible and diligent approach to managing the contracts and that all reasonable steps were being taken by CMAL to manage contractor performance.

72. By February 2017, some fifteen months into the contracts, FMEL had yet to issue a detailed plan for fabrication, equipment installation, outfitting and commissioning<sup>19</sup>. CMAL wrote to Transport Scotland officials on 8 February 2017<sup>20</sup> to express its concern that delays to delivery of vessels 801 and 802 were likely to exceed those permissible under the contracts with a best case for delivery of 801 of August 2018 and for 802 of October 2018, possibly February 2019. Transport Scotland officials highlighted CMAL's concerns to Scottish Ministers.

73. On 2 March 2017, the then Minister for Transport and the Islands met with Mr Jim McColl, Chairman and CEO of Clyde Blowers Capital (CBC) (FMEL's parent company) and then Chairman of FMEL. At that meeting, the Minister expressed concern at delays, and discussed the cash flow challenges of the business<sup>21</sup>. Following that meeting, FMEL set up a 'War Room' and CMAL noted in its updates that there was a 'significant change in strategy' and 'energy and commitment around this project – previously it was drifting.'

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<sup>18</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/january-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---17-january-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---17-january-2017/govscot%3Adocument/Ferguson%2BMarine-%2BCMAL%2Bupdate%2Bto%2Bnetwork%2Bstrategy%2Bmeeting%2B%25E2%2580%2593%2B17%2BJanuary%2B2017.pdf>

<sup>19</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/february-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---16-february-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---16-february-2017/govscot%3Adocument/Ferguson%2BMarine-%2BCMAL%2Bupdate%2Bto%2Bnetwork%2Bstrategy%2Bmeeting%2B%25E2%2580%2593%2B16%2BFebruary%2B2017.pdf>

<sup>20</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/february-2017/ferguson-marine-email-from-cmal-to-ts-re-progress-with-dual-fuel-ferries---8-february-2017/ferguson-marine-email-from-cmal-to-ts-re-progress-with-dual-fuel-ferries---8-february-2017/govscot%3Adocument/Ferguson%2BMarine-%2Bemail%2Bfrom%2BCMAL%2Bto%2BTS%2Bre%2Bprogress%2Bwith%2Bdual%2Bfuel%2Bferries%2B%2B-%2B8%2BFebruary%2B2017.pdf>

<sup>21</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/march/ferguson-marine-meeting-between-humza-yousaf-and-cbc-including-cash-funding-situation-report-from-fmel---2-march-2017/ferguson-marine-meeting-between-humza-yousaf-and-cbc-including-cash-funding-situation-report-from-fmel---2-march-2017/govscot%3Adocument/Ferguson%2BMarine-%2Bmeeting%2Bbetween%2BHumza%2BYousaf%2Band%2BCBC%2Bincluding%2Bcash%2Bfunding%2Bsituation%2Breport%2Bfrom%2BFMEL%2B-%2B2%2BMarch%2B2017.pdf>

CMAL and FMEL agreed formal meetings fortnightly to constantly monitor progress. CMAL committed to continue to assist FMEL with their knowledge and expertise. This was reflected in the April 2017 monthly progress update from CMAL to Transport Scotland<sup>22</sup>.

74. It was clear by May 2017 that FMEL was experiencing cash flow difficulties. Delays by FMEL in making supplier payments were impeding progress on the vessels. The absence of a solution to FMEL's financial position was considered likely to result in failure of the project to deliver 801 and 802 under FMEL's stewardship. Transport Scotland worked with CMAL to identify legitimate contractual measures to address the cash flow issues facing FMEL. Ministers agreed to authorise an acceleration of payments under the voted loan to CMAL, to facilitate payment by CMAL to FMEL under the contracts for vessels 801 and 802. The final delivery payment was reduced from 25% (£24.25 million) to 10% (£9.70 million), allowing payments of up to £14.55 million to be brought forward and linked to additional production milestones<sup>23</sup>. CMAL agreed a robust process with FMEL regarding the spending of the £14.55 million. Invoices from suppliers were reviewed and CMAL ensured that these were fully paid directly to the supplier. Some invoices presented were rejected on the basis they related to other projects and not hulls 801 and 802.

75. CMAL could not accede to all requests made by FMEL to support its performance. In particular, a balanced view was taken that it was not possible to revisit refund guarantee provisions, in line with a suggestion by FMEL that the refund guarantee in place should be replaced by a guarantee by Scottish Ministers. Nonetheless, Scottish Ministers are satisfied that CMAL exercised all reasonable steps permissible under the contracts for 801 and 802 to incentivise and facilitate FMEL performance, providing flexibility to support FMEL cash flow position. Scottish Ministers gave separate consideration to direct financial support available to FMEL, but this was done out with the context of the contracts for 801 and 802, as discussed at section 8 below.

76. In June 2017<sup>24</sup>, CMAL reported improvements in FMEL's project management. CMAL reported that in the four month period since the 'War

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<sup>22</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/april-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---20-april-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---20-april-2017/govscot%3Adocument/Ferguson%2BMarine%2B-%2BCMAL%2Bupdate%2Bto%2Bnetwork%2Bstrategy%2Bmeeting%2B%25E2%2580%2593%2B20%2BApril%2B2017.pdf>

<sup>23</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/may-2017/ferguson-marine-submission-to-ministers-from-ts-re-funding-options-for-fmel---11-may-2017/ferguson-marine-submission-to-ministers-from-ts-re-funding-options-for-fmel---11-may-2017/govscot%3Adocument/Ferguson%2BMarine-%2Bsubmission%2Bto%2Bministers%2Bfrom%2BTS%2Bre%2Bfunding%2Boptions%2Bfor%2BFMEL%2B%25E2%2580%2593%2B11%2BMay%2B2017.pdf>

<sup>24</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2019/12/ferguson-marine-key-documents-2017/documents/june-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---22-june-2017/ferguson-marine-cmal-update-to-network-strategy-meeting---22-june-2017/govscot%3Adocument/Ferguson%2BMarine->

Room' had been established, that FMEL had produced detailed plans, which were being reviewed and updated in line with the usual iterative design spiral process. Reports in July and August 2017 continued to report some progress, but noting that updated cardinal dates for 802 were still awaited from FMEL.

## **8. Commercial Loans**

77. FMEL is a Scottish Enterprise account managed business. Scottish Enterprise engaged with FMEL on the funding needs of the business from spring 2016 and, despite steps taken by CMAL to support the cash flow of FMEL, it was evident by May 2017 that FMEL had a significant and urgent funding requirement. Scottish Enterprise conducted a high-level review of FMEL's financial position in July 2017 which considered the trading performance of the business for the four months to 30 April 2017. The review found FMEL's financial position to be weak: the business had a funding requirement in 2017 and 2018, which peaked at circa £14 million in October 2017 and £27 million in May 2018. The review reflected on the financial outlook presented by the business but did not provide a full independent analysis of the circumstances.
78. In August 2017, the Scottish Government asked PricewaterhouseCoopers LLP (PWC) to provide additional analysis of FMEL's short-to-medium term cash flow projections and review the options available for the Scottish Government to assist the company with its funding requirements. Thereafter, PWC were retained as the Scottish Government's external commercial advisers for what became known as 'Project Poseidon'. This work was commissioned independently of Transport Scotland, to avoid any actual or perceived conflict of interest between Ministers' shareholding and sponsorship function of CMAL, and the respective commercial interests of CMAL and FMEL under the vessel contracts.
79. FMEL's costs on the CMAL contracts were running at circa £74 million by August 2017 with costs to complete forecast by FMEL at circa £37 million – some £14 million over budget. Management estimates based on a number of assumptions including build progress showed FMEL had an immediate cash requirement of £8 million in September with the peak funding requirement of the business at close to £29 million by May 2018. PWC highlighted a range of options to address FMEL's funding requirement including a commercial loan (ie debt provided on market terms) from the Scottish Government. PWC advised that if no action was taken by the Scottish Government this risked FMEL entering insolvency with the consequent risk of additional costs and delayed delivery of the ferries to CMAL and, in turn, to the communities on the CHFS network.
80. Following due diligence undertaken by expert external commercial and legal advisers, the Scottish Ministers made two commercial loans to FMEL for an aggregate amount of £45 million. The first was an unsecured loan of £15

million to FMEL in September 2017, to aid cash flow for the vessels under construction and to assist with business stability. Clyde Blowers Capital (CBC) also committed at the time to providing further private funding to FMEL under certain conditions although this investment did not materialise. On 20 December 2017, FMEL received the final £2 million instalment of the £15 million loan facility and absent further funding the business expected at that time to exhaust its cash reserves by mid-to-late February 2018 – again risking insolvency.

81. Once the £15 million loan was fully drawn, CBC asked Scottish Ministers to enter into an intercreditor agreement with HCCI, the provider of surety bonds to FMEL for hulls 801 and 802, in order to release £10.7 million of FMEL's own resources and support positive cash flow in the period to April/May 2018. CBC negotiated with HCCI to accelerate the release of an additional £5.5 million (minus a fee) from the escrow account that provided cash collateral for the surety bonds. HCCI had been due to release £5.2 million of cash collateral to FMEL following the launch of the Glen Sannox in November 2017 but CBC agreed to postpone that payment while the potential larger collateral release was negotiated. The intercreditor agreement confirmed the priority of HCCI's debt relative to Scottish Government debt and blocked any repayment to the Scottish Government until HCCI's claims were discharged in full.
82. The release of the additional £5.2 million of cash collateral to FMEL via the intercreditor deed in early February 2018 was quickly absorbed by the business catching-up on delayed payments to suppliers and by late March/early April 2018 the business was again running low on funds. In May 2018 the directors of FMEL presented a cash flow forecast to Scottish Ministers that showed the business had all but exhausted its cash reserves and had no viable route to access external funding including via CBC. Against this background, and in the absence of viable options to resolve the contractual dispute between FMEL and CMAL (which FMEL suggested would have proven that sums were payable by CMAL to FMEL), a second loan from Scottish Ministers of £30 million on a 10 year repayment term was agreed in June 2018. The purpose of the second loan was to support cash flow and assist diversification of the business. This second loan agreement: (i) secured all funds owed to Scottish Ministers, (ii) created the potential for the loans to be converted to equity in FMEL – potentially, up to full ownership in the event the business faced insolvency, and (iii) committed CBC to inject new funding into the business alongside the Government loan on equivalent terms (captured in the Subscription and Shareholders Agreement). CBC agreed to inject £8.5 million of new funding into FMEL structured in two tranches.
83. The Subscription Shareholders Agreement committed CBC to subscribe for, and pay for in full in cash, shares in the issued share capital of FME (Holdings) Limited equal to 10 per cent of the loan drawdown from the Scottish Government under the June 2018 loan agreement. As at 28 September 2018, the principal amount of the loan was £17 million (excluding all accrued interest thereon), CBC was therefore obliged to subscribe for shares on 28 September 2018, in accordance with the terms of the warrant

instrument and loan agreement. On 1 October 2018 Scottish Ministers were notified by legal representatives of CBC that the company's Investment Committee would not invest the required sum into the business unless the terms of the June 2018 agreement were amended. The failure of CBC to fulfil its obligation to invest resulted in a breach of the terms of the loan agreement and the Scottish Government notified FMEL and CBC that it was reserving all rights and remedies available under the terms of the June 2018 agreement and suspending further drawdowns against the £30 million facility. In December 2018 Scottish Ministers signalled to CBC that they would be prepared to consider amending the terms of the loan agreed in June 2018 to facilitate the injection of CBC's committed investment, subject to agreement of acceptable commercial terms. The amended legal documentation was concluded on 1 February 2019.

84. The second loan was not contractually tied-in with the CMAL ferries contracts but given Ministers' clear priorities the loan agreement allowed work on the ferries to continue, alongside diversification of the business. Loan monitoring was conducted by PWC (financial monitoring) and by an operational expert (Commodore Luke van Beek) who was responsible for monitoring FMEL's performance against its high-level vessel delivery programme milestones and resourcing plan. All loan reporting was commissioned by the Scottish Government's Economic Development Directorate.

85. The operational expert was not asked to investigate any contract issues arising from the CMAL ferry procurement or to mediate in the dispute. He did not report against the detail of the CMAL contract, either conformity to specification or on the quality of FMEL's workmanship, and he had no access to the CMAL-FMEL contracts. He was asked only to be cognisant of the contractual relationship and dispute between FMEL and CMAL. Cdre van Beek was briefed on the contractual background by Scottish Government and Transport Scotland officials, and had the opportunity to liaise with senior representatives of CMAL on two occasions to gather some high-level information on the vessels plan and progress. The operational expert produced a total of eight written reports relating to the FMEL assignment: one initial construction review, five loan drawdown reports and two quarterly reviews. He also provided oral updates to the Director-General Economy (Scottish Government) and Chief Executive of Transport Scotland in December 2018 and to the Cabinet Secretary for Finance, Economy and Fair Work in April 2019. Key points observed by Cdre van Beek in his reports include:

- the viability issues of FMEL as a commercial shipyard throughout the period covered;
- initial confidence in the programme resulting from an investment in infrastructure, recruiting of new senior management and a new approach to planning;
- a well-executed plan to increase manpower to the necessary resource level which had been delivered by the end of September;
- difficulties resulting from the drawing approvals process, described as emerging specification change;

- failure of the design process to keep pace with the build programme;
- challenges associated with sub-contractor engagement including liquidity and cash flow and deliberate decisions to delay engagement of suppliers;
- a deteriorating relationship between FMEL and CMAL; and
- worsening FMEL cash flow.

## 9. Relationship Management and Dispute Resolution

86. The discussions between Transport Scotland/ CMAL on contract performance the Scottish Government/ FMEL on cash flow issues experienced by the business were run in parallel. Ministers were keen, both in the context of their interest as CMAL shareholder and in their wider interest in the importance of FMEL to the local economy, to ensure that CMAL was acting as a responsible client and not managing the contracts in a manner which might exacerbate the contractor's cash flow problems. Ministers had an equal interest, in the context of their creditor interests under the voted loan to CMAL, to ensure that the delivery of vessels 801 and 802 was not prejudiced by a client/ contractor dispute. This was done in the context of a deteriorating client/ contractor relationship between CMAL and FMEL, with Ministers unable to ascertain, on the basis of information available at the time, a clear and consistent reason for delays and price increases. Around 2017, FMEL indicated that it was preparing a formal contract price increase (CPI) claim against CMAL. The quantum of the claim was understood at that time to be around £17 million. Ministers' role was not to provide an extra-judicial dispute resolution function, but rather to seek to broker a process between the contracting parties that would allow work to progress on vessels 801 and 802.
87. FMEL made reference to multiple contract variations. The BIMCO contracts contain provisions in relation to modification and change to the contract specification. These allow the client and contractor to discuss any changes proposed by either party to the specification as set out in the contracts, and for appropriate adjustments to be made to the contracted price and timetable for delivery. CMAL provided evidence of provision having been made for 81 changes to the contracted specification, 46 of which were initiated by FMEL and 35 of which were initiated by CMAL. Appropriate price adjustment were made, with an aggregate value of around £1.5 million, which sums were paid by CMAL to FMEL. Scottish Ministers were provided with no evidence of changes having been proposed by CMAL and rejected by FMEL on the basis that appropriate price or programme adjustments could not be agreed. Nonetheless, FMEL was persistent in its representations that multiple changes had been requested by CMAL.
88. Changes to the contracted specification which are governed by the modification and change provisions in the BIMCO contracts should be distinguished from iterative design changes arising from the standard design process of developing the basic and detailed designs, which is described at section 4: General approach to vessel specification and design. The process for agreeing these changes and for dealing with delays to client approval are set out in the contracts, but no reliance was placed upon the contract terms by FMEL. Ministers encouraged CMAL to act flexibly to ensure that feedback on

drawings was not being unnecessarily delayed, and that where work had been completed by FMEL at risk and in advance of necessary approvals, that certain concessions were being made to ensure that, where appropriate, abortive work could be avoided.

89. FMEL and CMAL separately sought independent advice from experts but were unable to agree on the output from those reports. To seek to progress matters, Ministers encouraged parties to engage in a formal dispute resolution process per the terms of the contracts.
90. The contracts provide for expert determination of disputes. FMEL was keen to pursue the option of expert determination in relation to its proposed CPI claim and outlined specific conditions under which this could be undertaken. However, CMAL's view based upon its own independent legal advice was that the quantum of the dispute rendered expert determination an inappropriate dispute resolution mechanism.
91. The contracts also provide for mediation. No agreement was reached on the terms of the mediation. The preferred mediator was not available within the required timescale.
92. The contracts make no provision for arbitration as an agreed dispute mechanism process. The contracting parties did not reach agreement on reference to arbitration.
93. Mr McColl has provided oral evidence to the inquiry that the CMAL Board threatened to resign over Ministers' intervention in the dispute resolution process<sup>25</sup>. Ministers have no record of the letter described by Mr McColl in his evidence. The CMAL Board were aware throughout the process of the need to act independently and to be mindful of their own fiduciary duties at all times.
94. In the absence of agreement over the alternative dispute resolution processes specified under the contracts, and in the absence of a formal CPI claim from FMEL, Ministers encouraged parties to focus on what could be done going forward to incentivise delivery. Cdre van Beek had been engaged by Ministers to monitor FMEL's performance against its high-level vessel delivery programme milestones and resourcing plan as part of his loan monitoring role. Drawing upon his insight in that role, Cdre van Beek was asked to propose measures which could be taken by contracting parties to provide greater certainty around cost and programme for completion of the vessels for consideration by the contracting parties. Some suggestions including the creation of a shared cardinal date programme and risk register were agreed in principle but not taken forward by FMEL. Other suggestions which required material modification to the contracted specification could not be taken forward within the context of the publicly procured contracts. Cdre van Beek's independent assessment was helpful in assuring Ministers that all practicable

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<sup>25</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12514&mode=pdf#page=33>

measures to incentivise and facilitate contract performance had been explored.

95. In December 2018, FMEL provided CMAL with the detail that would form the basis of its CPI claim, the quantum of which had by then increased to around £66 million. FMEL did not however take the claim forward through the courts, despite being encouraged by Scottish Ministers to consider this course of action throughout the dispute period. Following detailed consideration of the FMEL claim, CMAL responded in writing in March 2019 refuting all aspects.
96. In April 2019, FMEL wrote to Scottish Government indicating that it was in a position where it would have to make significant redundancies in order to protect the financial position of the company and its creditors. In the absence of a CPI claim having been lodged by FMEL, Scottish Ministers undertook to obtain an independent view on the claim in order to move matters forward. Both contracting parties were informed of this intention and FMEL indicated that that removed the need for it to take decisions on redundancies at that time.
97. Under the terms of the Ministerial Code, the output of the independent view cannot be published. However, it can be noted that this did not provide any basis upon which Ministers could direct CMAL to make additional payment to FMEL under the contracts.

## 10. Acquisition of Ferguson Marine Engineering Limited

98. Given the ongoing dispute and the anticipation of cash flow problems once the loans had been fully drawn down, and in the absence of other solutions or progress on the contractual claim, it was prudent that Scottish Ministers considered all of the possible options and scenarios to move the situation forward.
99. PricewaterhouseCoopers UK were appointed by Scottish Ministers in January 2019 to undertake this work. They were instructed to consider all possible options against criteria of **delivery of the vessels, safeguarding the workforce, and supporting a future for the site** against the background of the Scottish Ministers acting on a commercial basis in relation to the loans provided to the business. An initial long list of 29 scenarios were then tested against a range of procurement and state aid considerations.
100. The decision of Scottish Ministers to continue with the construction of both vessels has been described to the inquiry as a decision “just to get on with it”. This is an inaccurate characterisation of the decision making process, which has been lengthy, considered and based upon independent professional advice.
101. This analysis identified a short list of three broad options, which were to retender the work (with the potential for FMEL to secure this), administration (work with an administrator to complete the vessels) or nationalisation. Retendering the work was assessed as a higher cost option than proceeding

with the build out of the vessels, which would further protract the timeframe for the entry into service of the required vessels. Retendering would also inject further uncertainty, with the prospect that FMEL might not be the successful bidder, and the increased risk that the jobs and skills at the yard be lost.

102. In July 2019, two feasible options were therefore identified as being available to Ministers with the potential to deliver the identified objectives of delivery of the vessels, securing the jobs at the yard, and securing a future for the yard and commercial shipbuilding on the lower Clyde. These were either building out through administration without ownership or under public ownership.
103. The first option (build out of the vessels with the business in administration) was excluded as this created significant risks. With the yard in administration, Scottish Government would be required to negotiate with the administrator to access the yard, creating significant additional cost pressures and uncertainty for the workforce while access was negotiated. This option thereby failed to align with Scottish Government's objectives. Public ownership remained the only viable option to deliver the vessels, and secure the jobs and the yard.
104. The value for money and strategic arguments for intervention in this way were and remain strong. It represents the only option to secure the delivery of vessels 801 and 802 within the shortest timescales. It addresses the risks associated with an uncontrolled insolvency, it secures the existing jobs, and it allows time to develop options for the future of the business. It also lessens the risk of deterioration of the vessels under construction (and the effects on service life) that might arise under a lengthy uncontrolled administration and/or retendering process.
105. The normal process in an insolvency is for the immediate redundancy of non-key personnel. Building out the vessels with the business in administration would also have been likely to require a tendering exercise which would have added considerable time and uncertainty. A decision on the future of the business would then have been in the hands of the administrator.

#### Alternative CBC Proposals

106. After receiving the output of the independent view described at paragraphs 96-97, CBC proposed an alternative way forward that involved restructuring the business under CBC control with significant investment required by Scottish Ministers to complete the vessels. CBC's proposal offered no further investment in the business from them as owners and it confirmed that CBC would not be providing FMEL with the remaining substantial investment to which it had previously committed.
107. Scottish Ministers gave due consideration to this proposal over a number of weeks. However, after consideration it was confirmed to CBC that

this option was not viable given it raised significant risks in relation to procurement rules and State Aid.

108. For these reasons, pursuing the option of public ownership was, and is, considered in the best interests of the workforce and the customer of the vessels. The Scottish Government engaged with CBC around exercising Ministers' options to purchase the business in these circumstances, as set out at the point the loans were agreed.

#### HCCI Discussions and Administration

109. While discussions with CBC were continuing, in August 2019, the directors of FMEL set out notice of their intention to put the business into administration.
110. However, HCCI, in its position as first ranking creditor, appointed administrators to the business on 16 August 2019 given the circumstances of the business at that time.
111. Scottish Ministers had already been in discussions with HCCI to understand its intentions and consider what implications this would have for us, both in our role as second ranking creditor, and for our wider interests.
112. An agreement was reached between HCCI and CMAL that would see HCCI pay a negotiated amount, release its securities and CMAL agree not to call the bonds. This allowed for the option of Scottish Ministers' control of the business in the administration period. The Administrators of the business, Deloitte, commercially marketed the business and sought and received bids from prospective purchasers. At the conclusion of this process, the Scottish Ministers' bid was identified as representing the best return for creditors, and thereby the successful bidder. Had an amicable commercial solution not been available this could potentially have seen a significant period of disruption and inactivity at the site – and potential substantial costs during that period.

#### Case for intervention

113. The case for intervention was heavily influenced by the fact that the Scottish public sector is the major customer of the business with specific and important contracts in place for vessels 801/2. Other factors which impacted on the decision to intervene included the impact on the affected island communities and the consequences for employment in the Inverclyde area, which is above the Scottish average on unemployment and has lower rates of economic activity and employment than Scotland as a whole.
114. Under public ownership, Ministers have full control of the activity of the yard, employment and investment in facilities. This approach will provide much greater visibility and control over the delivery of vessels 801/2, in particular providing much needed certainty on the costs to completion.

## 11. The Programme Review Board

115. Ministers asked the new management team at Ferguson Marine to prepare a report outlining the anticipated time and costs to complete vessels 801 and 802. A Programme Review Board was put in place to support that process. Its principal function was to provide Ministers with assurance that the report was being prepared in an appropriate manner, for example that the correct questions were being addressed, a sensible approach being adopted, and that the underlying assumptions were clearly identified.
116. Members were selected on the basis of their particular industry or sector knowledge and expertise. This includes a range of expertise from the maritime sector including naval architecture, ferry procurement and operations. It also includes experience from procurement and project management of large scale public sector contracts generally and representation from the workforce at Ferguson Marine.
117. In August 2019, the estimated cost to complete the vessels was £81m. The report from the Programme Review Board on the revised schedule and costs for the delivery of vessels 801 and 802 was presented to Parliament on 18<sup>th</sup> Dec 2019. This provided information which allowed for a revised value for money assessment of the plan to complete the vessels to be made. The report identifies the estimated cost to complete the vessels as £110.3m. The increase in the costs to complete the vessels reflects the immature design, out of sequence working, and the number of defects identified by the customer.
118. This £110.3m figure includes a requirement for remedial work (£12.8m) which reflects the fact that the care and protection of the vessels has been at best inadequate over the last 2 years. It also includes £8.8m of contingency and a requirement to invest in further equipment for the yard (£1.6m) to enable the completion of the vessels. The performance penalty provision (£800k) is also a contingency against the failure of the vessels to meet the performance requirements of the contracts.
119. The assessment of value for money should consider risk separately, which implies a cost to complete of £100.7m and a contingency for risk of £9.6m. Uprating the original tender cost using the GDP deflator suggested a range of possible retender build costs of £101.8m to £106.6m, were this to be retendered in 2019/20. The value for money calculation had clearly narrowed significantly since the decision to nationalise the yard in August. The costs of the 2 options were within an assumed 10% margin for error of each other and there was no obvious value for money choice. However, neither was there a case to step away from the original decision.
120. In response to the Covid-19 pandemic, Ferguson Marine implemented robust measures to protect public health and delivered a managed shutdown of the yard by 27<sup>th</sup> March 2020. The managed shutdown put the yard in the best possible state of readiness to reopen when appropriate. The yard reopened for outdoor work only on 8<sup>th</sup> June, in line with Scotland's route map

through and out of the Covid pandemic. Design work was able to continue remotely and is progressing well. The MV Glen Sannox (vessel 801) will go to dry dock in August in line with the schedule presented to Parliament in December 2019.

121. An updated report to reflect the impact COVID-19 has had on the programme for the vessels will be presented to Parliament in due course. Development of this report is underway, with the management team at the yard leading a rigorous assessment of: the impact of the closure; the progress that has been possible during the closure; the phased return to work in line with Scotland's route map through and out of the Covid pandemic; and changes to working practices to allow for safe working.

## **12. Assurance on delivery of vessels going forward**

122. Relationships between CMAL and FMPG, at all levels of the organisations, are strong and productive. The respective Project Directors are in regular contact: the collaboration and constructive engagement, of which this is an example, is supporting progress towards delivery of the vessels.

123. A schedule of programme review meetings is in place. CMAL and FMPG have agreed that a monthly update will be provided to Scottish Ministers which will address progress in delivery of the vessels.

124. The monthly progress update will be submitted to Scottish Government, presenting the agreed view of CMAL and FMPG on the progress towards the delivery of the vessels where possible, and any differences of opinion if these exist. A monthly report on costs will be produced by FMPG and submitted to Scottish Government for consideration.

125. The inquiry has heard some speculation on the quality of 801 and 802, in particular it has heard evidence that, if there is rust and water ingress at this stage, that the vessels will never be right. Rework on the vessels was identified as part of the initial assessment and planning process and reference is made in the report on the revised schedule and costs for delivery of the vessels, as presented to Parliament on 18<sup>th</sup> Dec 2019. All rework is being carried out to the appropriate standards and, where appropriate, will be inspected and approved by Lloyds Register and MCA. There is no question of the vessels "never being right."

126. Ministers have been consistently clear that they wish to be transparent and will provide updates on the progress towards delivery of the vessels. The nature and timing of those updates will be appropriate to the stage in the process going forward.

## **13. Future of Ferguson Marine**

127. The Ferguson Marine business is now wholly owned by Scottish Ministers. Ministers are mindful of the need to separate the functions of client

and contractor under the contracts for vessels 801 and 802 and have implemented structures which allow for these clear distinctions to be made. As a public body, the business in public ownership is supported by a sponsorship team. This role is delivered by Ferguson Marine Response Division, a team within Scottish Government and separate from Transport Scotland.

128. Ministers have committed to exploring options for a sustainable future for the yard. Consideration of a possible pipeline of future work is a key element of this. As part of this work, officials are considering whether a legally compliant route exists to allow for contracts for the delivery of vessels required by Scottish Government to be directly awarded to Ferguson Marine. This work is at an early stage and is complex. Officials plan to engage closely with relevant experts, including the Competition and Markets Authority, to fully inform this work.

#### **14. Impact of delay on island communities**

129. Scottish Ministers recognise that the Clyde and Hebrides routes operate with an ageing vessel fleet and that resilience impacts directly upon the communities served. Those impacts should not be dismissed as a mere inconvenience. Ferries provide a lifeline service which are key to accessing work, school, healthcare and other essential services, delivery of essential supplies and export of island products, supporting island and remote economies and sustaining communities. Ministers recognise the description provided to the inquiry by Mr Angus Campbell, Chair of the CalMac Community Board, that a lack of confidence in ferry services can impact upon people's decision on whether to live and work on the islands, and impacts upon the sustainability of the island communities themselves.

130. These human impacts are at the heart of Scottish Ministers' commitment to supporting lifeline services through continued investment in ferry services across Scotland. Scottish Ministers will continue to invest in ferry services in Scotland as reflected in the Islands Plan. Although lessons should and will be learned from the costly experience of vessels 801 and 802, that experience will not deter future investment.

#### **15. Reflections**

##### **Community Engagement.**

131. The inquiry has heard evidence of consultation fatigue among communities, and the seemingly conflicting view that Transport Scotland should attend island communities more often to understand the issues affecting them. Transport Scotland is already in the process of developing a revised communication and stakeholder strategy. Transport Scotland engages regularly with all stakeholders and values the input from these discussions, but also understands the importance of communicating what actions or decisions are being taken on the back of feedback received. That includes providing a clear explanation of which organisation takes

responsibility for a particular decision, and reasons for decisions taken. A lot of information has been provided by island communities through recent consultation exercises, for example those undertaken to inform the National Transport Strategy and the National Islands Plan, and the Committee's own call for evidence. Ministers are grateful to communities for their contribution in the discussion around ferry services, and rely upon their input in policy development.

132. We will publish a ferries stakeholder engagement strategy, setting out the membership and purpose of each group and the specific policies or projects to which that consultation will contribute.

133. We will also continue to articulate where feedback received through consultation exercises has informed individual decisions.

### **Standardisation of Vessels.**

134. As described in this submission, Ministers are already committed to the principle of improved standardisation, but will take forward a specific piece of work to identify the infrastructure upgrades and vessel replacements that would be needed to achieve that outcome. That programme will not provide a funding commitment for the individual projects, but will provide greater transparency around the benefits and costs to fully deliver that outcome over the longer term and the challenges to implementation. That is a substantial piece of work, which will take time to deliver. This work has been put on hold due to the need to focus efforts on the operational response to Covid-19 but Ministers will provide the Committee with an indicative project plan once developed, so that stages in the process and associated timescales are well understood.

### **Reflections on the tripartite arrangements.**

135. The relationships between the various government departments and Government owned entities involved in the provision of ferry services in Scotland are well defined and enforced. However, Scottish Ministers are aware of the perception which exists of a lack of accountability between parties and takes that perception seriously.

136. Transport Scotland will commission a review of the legal structures and governance arrangements which exist between the "tripartite group" of Transport Scotland, CMAL and CFL. Its purpose will be to ensure that the arrangements and roles which have been in place for some time, continue to reflect best practice in the circumstances which prevail at today's date, and can best equip Scottish Ministers to deliver their ambitions for efficient ferry services across the CHFS and Northern Isles networks. Transport Scotland, CFL and CMAL have each committed to engaging constructively in that process and to reflect on any recommendations produced.