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Rural Economy and Connectivity Committee
Scottish Parliament

Sent by email to: rec.committee@parliament.scot

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Dear Edward

INQUIRY INTO THE CONSTRUCTION AND PROCUREMENT OF FERRY VESSELS IN SCOTLAND

At the second panel session for the Committee's inquiry in to the construction and procurement of ferry vessels on 26th August I undertook to provide the Committee with additional information on the deployment of the Scottish Government's £30 million commercial loan to Ferguson Marine Engineering Limited (FMEL).

As I remarked to the Committee, there is an important distinction to be drawn between CMAL payments for vessel construction milestones achieved and equipment for those contracts, and the drawdown of borrowings designed to ensure the broader sustainability of the shipyard. For the former, Kevin Hobbs of CMAL explained at the Committee's session of 11 March the process by which ferry delivery milestones were certified and equipment vested and the relevant payments made. For the latter, I refer the Committee to the loan documentation and monitoring reports (both financial and operational) prepared by PWC and Commodore Luke van Beek which are available on the Scottish Government website¹.

The purpose of the loan facility made available to FMEL in June 2018² was to fund the business to "*assist with the long term viability and enhanced capabilities of the businesses carried on at the Property*" and for "*other general working capital purposes of FMEL, all as identified in the Business Plan and/or Financial Model*" (see Clause 2.2 of the published loan agreement). Use of the facility by the business for any purposes other than that specified in Clause 2.2 of the loan agreement, without the prior written consent of the Scottish Ministers, would be an event of default.

¹ <https://www.gov.scot/collections/ferguson-marine-documents/>

² <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2019/08/foi-18-01835-appeal/documents/foi-18-01835---1---loan-agreement/foi-18-01835---1---loan-agreement/govscot%3Adocument/FOI-18-01835%2B-%2B1%2B-%2BLoan%2BAgreement.pdf>

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In signing the loan agreement, the borrower (the Directors of FMEL) committed to certain undertakings including, for example, the provision of information throughout the loan period. The information required included regular financial reports (e.g. profit and loss, balance sheet and actual cash flow against budget); details of changes in key personnel or office bearers of FMEL; management accounts plus related commentary on the build out of vessels 801 and 802 plus details of cost estimations and other information relevant to the delivery of the CMAL vessels and to the running of the business.

The information provided to Government by FMEL under the loan agreement provided visibility on the progress of the CMAL vessel contracts and the business in general but loan utilisation (i.e. the conditions governing specific drawdown from the facility) was not tied to achievement of specific milestones in the CMAL contracts. To be precise, the “Conditions of Utilisation” of the £30 million facility included:

- i. no potential event of default or actual default unwaived;
- ii. satisfaction that the cash balance held by the Group was at least the amount set out in the Minimum Cash Balance Schedule – this was to ensure cash was not drawn into the business at a rate faster than planned; and
- iii. satisfactory assurance from the Scottish Ministers’ independent operational expert that progress of the build of the vessels known as 801 and 802 was proceeding in accordance with the overall resource program presented by FMEL on 28 and 29 May 2018 at Port Glasgow, taking account of factors that are outside FMEL’s control.

As highlighted above, the loan monitoring and assurance reports prepared by PWC and Cdre van Beek are available to the Committee from the Scottish Government website³.

*Kind regards
Fiona Hyslop*

FIONA HYSLOP

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