

[REDACTED]

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[REDACTED]

From: Kevin Hobbs [REDACTED]
Sent: 31 May 2019 17:21
To: Wilcock C (Chris) [REDACTED]
Cc: [REDACTED]

Subject: Letter to Mr. Wheelhouse - MV Glen Sannox NEWBUILDCON
Importance: High

Chris

I thought that it would be useful to make a number of points regarding your email below.

We will have a call on Tuesday (4th June 2019) and I have spoken with [REDACTED] who intends to be at St Andrews House.

[REDACTED] ay wish to add to this Email in advance of the meeting. Note I have copied in Erik Ostergaard.

In response to your first question

Contractual dates

- The delivery dates were and are Glen Sannox - May 2018; and H802 - July 2018
- At the date of writing the delivery of Glen Sannox is 12 months late and is nowhere near completed having been launched in November 2017 (19 months ago)
- A fully resourced and competent ship yard will take at least an additional 12 months to achieve sea trials
- At the date of writing the delivery of H802 is 10 months late and is only 50% completed on the slipway
- A fully resourced and competent ship yard will take at least and additional 12 months to achieve launch and an additional 12 months to achieve sea trials – so 24 months overall, from now, until completion of the second vessel
- FMEL have not proven to be either fully resourced or a competent ship yard.

Resources and Finance

- It is abundantly clear that FMEL are struggling financially
- The resources applied to Glen Sannox is circa 40 personnel and this is wholly inadequate. At this stage of a project we would anticipate that there should be a minimum of 250 and often more so resources are 16% of what we would expect
- The resources applied to H802 is circa 15 personnel and this is wholly inadequate. At this stage of a project we would anticipate that there should be a minimum of 150 and often more so resources are 10% of what we would expect.
- FMEL have stated that they are concentrating their resources on the 3 minor projects of H 803/804/805
- It is impossible to predict completion at this rate of progress but the delivery of each vessel is many years away and with no meaningful interim payments due any time soon
- Financially we are aware that SG has made Loans amounting to £45m – this is now been fully drawn down.
- It would seem that CBC are at best reluctant to invest further
- The level of resource on GS and H802 is negligible and progress is slow to non-existent.
- It is evident that there are insufficient funds to complete either of the vessels

Cardinal Dates Programmes

- FMEL last provided a Cardinal Dates Programme (a timeline and project plan, known as CDP) for each vessel in June 2018 – some 11 months ago
- The CDP informed that the delivery of Glen Sannox at 21st June 2019
- The CDP informed that the delivery of H802 at 10th March 2020.
- These dates will be missed by a significant margin – a minimum of 12 months per vessel over and above that already afforded (most likely double for H802) – that is assuming adequate resources and finances are in place.
- This would make the Glen Sannox over 24 months late and H802, at best, some 32 months late – these dates being on the basis of many caveats – previously provided.
- In fact, in the past 11 months thus far FMEL have fulfilled only one of the milestones due to have been performed according to their June 2018 expectations.

FMEL Claim

- On 20th December 2018 FMEL submitted a claim to CMAL for £66m
- The claim is based not on the contracts themselves but depends on an 'implied term'
- This was thoroughly analysed by CMAL from a technical perspective and our lawyers and Legal Counsel (QC) from a legal perspective
- A full rebuttal was issued to FMEL on 4th March 2019
- We have effectively invited FMEL to issue court proceedings but after 3 months there have been no proceedings issued, and no further correspondence from them.
- Our opinion is that the claim is baseless and suspect that FMEL are hearing the same advice from their own lawyers

Surety Bonds

- The Surety Bonds were both due to expire in December 2018.
- The surety bonds for each vessel are independent of one another; they are valued at £12.125m per vessel.
- Extensions of the validity of the Bonds were offered by FMEL regarding Glen Sannox which now expires at 31st July 2019 and H802 which now expires at 30th April 2020.
- In order to achieve the extensions CMAL agreed that we would not cancel either of the Contracts in advance of those CDP delivery dates as presented and forecast in June 2018.
- CMAL have since January 2019 repeatedly asked if FMEL are able to provide an updated CDP and new forecast delivery dates, without success
- CMAL have also asked formally whether FMEL are able or are intending to offer any further extensions to the validity of the Bonds to which we have not received a positive answer.

- On the basis that the Surety Bonds are not renewed, and given there is zero possibility that delivery dates will be met prior to their expiry, the Board of CMAL has resolved that there is now no option but to call on the Surety Bond for Glen Sannox in June 2019

Assessment

- It is clear that FMEL have not got the financial resources to complete either vessel
- The personnel that are applied to these 2 projects are completely inadequate – we now believe that a delivery date cannot reasonably be predicted by CMAL nor for that matter by FMEL
- The management - structure, skills and experience is severely lacking and our assessment is that FMEL cannot deliver the vessels.
- Many aspects must change – management, resource levels (significantly increased) and funding streams.
- No surety bond extension has been offered and it is unlikely that they could be renewed, as a result of both delays and the claim that has been rejected by CMAL, if the Bond provider considers that the risk is no longer insurable.

Notwithstanding any other matter the delivery of the vessels to the CHFS Network has been and continues to be a matter of urgency

This matter must therefore be brought to a conclusion – very quickly.

As mentioned above, our Board has resolved to cancel the Contract and trigger the Surety Bond for Glen Sannox, on the grounds of late delivery, in order to realise the value of the secured amount towards the eventual completion of that vessel. We believe that cancellation, and the likely enforcement by the Bond provider of their floating charge over the FMEL business and premises, will trigger a cancellation right also for H802 and so allow in total some £24.25m to become available.

In response to your second question

CMAL has for many months if not years expressed concerns about the performance of FMEL and the ability to deliver the vessels.

We have developed contingency plans as far as we are able to do so given that there are many moving parts.

It is further complicated by the SG Loans and the details of the Inter creditor agreements to which we have no visibility.

We have stated and indeed requested on many occasions that you share your thoughts with us but for reasons of confidentiality have not been able to do so. This is causing concern because our plans and SG involvement are inextricably linked. Unless we work closely together we cannot develop our plans any further!

Best Regards,
Leis gach deagh dhùrachd,

Kevin Hobbs
Chief Executive Officer
Árd-oifigear

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From: [Chris Wilcock](#) [redacted]

Sent: 30 May 2019 14:56

To: Kevin Hobbs [redacted]

Cc: [redacted]

Subject: Letter to Mr. Wheelhouse - MV Glen Sannox NEWBUILDCON

Good Afternoon Kevin,

Thank you for sight of the letter you sent to Ministers on 23 May and our follow up conversations confirming that this has not been shared with the yard and that no actions will be taken by CMAL until Scottish Ministers have confirmed their position on this matter.

In advance of Ministers considering their response, it would be helpful for us to have further discussion on the following –

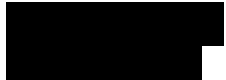
- Understanding of CMAL position and grounds for being able to cancel the contract and call the bonds. I note this has already been discussed in your meeting with PWC and exchanges with Gordon but it would be helpful to explore this further and there may be merit in MacRoberts and Addleshaw Goddard being involved in these discussions.
- What would be the next steps that CMAL would undertake following any move to cancel the contracts and the calling of the bonds. Again, we have discussed this previously but it would be helpful to set this out in more detail.

Could I ask you to liaise with [redacted] to set this up? Ideally early next week if possible to allow us to provide further advice to Ministers to inform their response.

Happy to discuss if that is easier?

Chris

Chris Wilcock
Director – Aviation, Maritime, Freight and Canals



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thead. Ma 's e is gun d'fhuair sibh seo gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigeil chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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