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From: [REDACTED] on behalf of Cabinet Secretary for Finance, Economy and Fair Work
Sent: 01 August 2019 14:19
To: Cabinet Secretary for Finance, Economy and Fair Work; Wilcock C (Chris); [REDACTED]
Cc: Rennie M (Michelle); McCaig C (Callum); Maxwell S (Stewart) (Special Adviser); DG Economy; Chief Executive Transport Scotland; Rollison R (Richard); Rhatigan D (Dermot); [REDACTED] Chief Financial Officer; [REDACTED]
Subject: RE: Letters to Jim McColl and Inverclyde Council.

Chris

Response below from Jim McColl received just now. Grateful for advice and suggested response.

Thanks

[REDACTED]

Dear Derek

Thank you for your email which I received at 18.18h last night.

I was extremely disappointed to find out about the Scottish Governments position via the media yesterday and not from your office and to hear that you had advised the local council yesterday morning.

You state once again that you feel our proposal falls short of MEOP. In the spirit of openness and cooperation we have shared our detailed legal advice with you, and it does seem crystal clear that what we propose does not cause the issues that you seem to suggest.

I must ask once again that in the spirit of the Scottish Government being equally as open as we have been, that you share the details of your advice with us in order that our legal team can fully understand the issues that are causing your lawyers genuine concern. I have been given contact details of a Brussels QC who could be approached for a second opinion on your detailed concerns.

To address your comments about CBC providing additional funding, I am surprised that your legal team have not advised you that we are an FCA regulated investment manager and that we have a fiduciary duty to our investors to make investments that will give them a return, which further investment into FMEL will not. Our global investor base is made up of over 60 investors ranging from family offices to pension funds. Were we to breach this fiduciary duty and make a further investment into FMEL as you suggest, not only would this be unlawful but would result in members of our team potentially losing the right to work in the financial services industry going forward.

Given the shortcomings of the technical specification of the vessels utilised by CMAL for contract award, the inappropriate behaviour of CMAL, unbecoming of a company wholly owned by Scottish Ministers and the realities of building first in class prototype vessels, FMEL finds itself in a situation where it has to date funded a £45m growth in project costs. The total projected costs to construct both ferries for CMAL is currently over £195m versus an original contract value of £97m. Additional funding is required to meet the additional costs. We would be in breach of our fiduciary duties if we were to provide additional funds to subsidise the costs of the ferries to CMAL and the Scottish Government as there would be no return on this money for our investors.

We have both been involved in FMEL from the very start when Alex Salmond was the First Minister and you were the Transport Secretary. CBC was asked to come in and save the business. Like you I also have a strong commitment to completion of the vessels for CMAL, securing the jobs and ensuring that the future of full commercial shipbuilding is continued. Where we appear to disagree is that I feel we must have as many exchanges as is necessary to achieve that outcome and I am at a loss as to why you are so reluctant to be open with us as to the exact issues that your lawyers have with MEOP.

It would be an extremely regrettable outcome for me if we did not manage to resolve this in an open, professional, fair and amicable way.

I noticed in your briefings to the media yesterday the statement, in rejecting the legal advice we obtained, the Scottish Government claims it is required to keep public expenditure to the lowest level possible. No accountancy qualification or complicated economic analysis is needed here. Simple arithmetic will tell you that our proposal to take responsibility for half of the economic impact of the additional cost to construct these ferries for CMAL, is clearly the best way for the government to keep public expenditure to the lowest level possible. The alternative plan to nationalise FMEL will result in the Scottish Government bearing the full cost to construct the ferries which will result in the public purse bearing twice the cost it would expend under our proposal.

We remain fully committed to working with you to ensure the construction of the CMAL vessels, to ensure the ability of the business to continue with its diversification and growth strategy and to exploit its leading position in the development of hydrogen propulsion technology. This will lead to the creation of many more high-quality jobs, provide first class training for the next generation and make a significant contribution to the local economy in Inverclyde and the wider Scottish economy.

Kind regards

Jim McColl
Founder, Chairman & CEO

[Redacted]

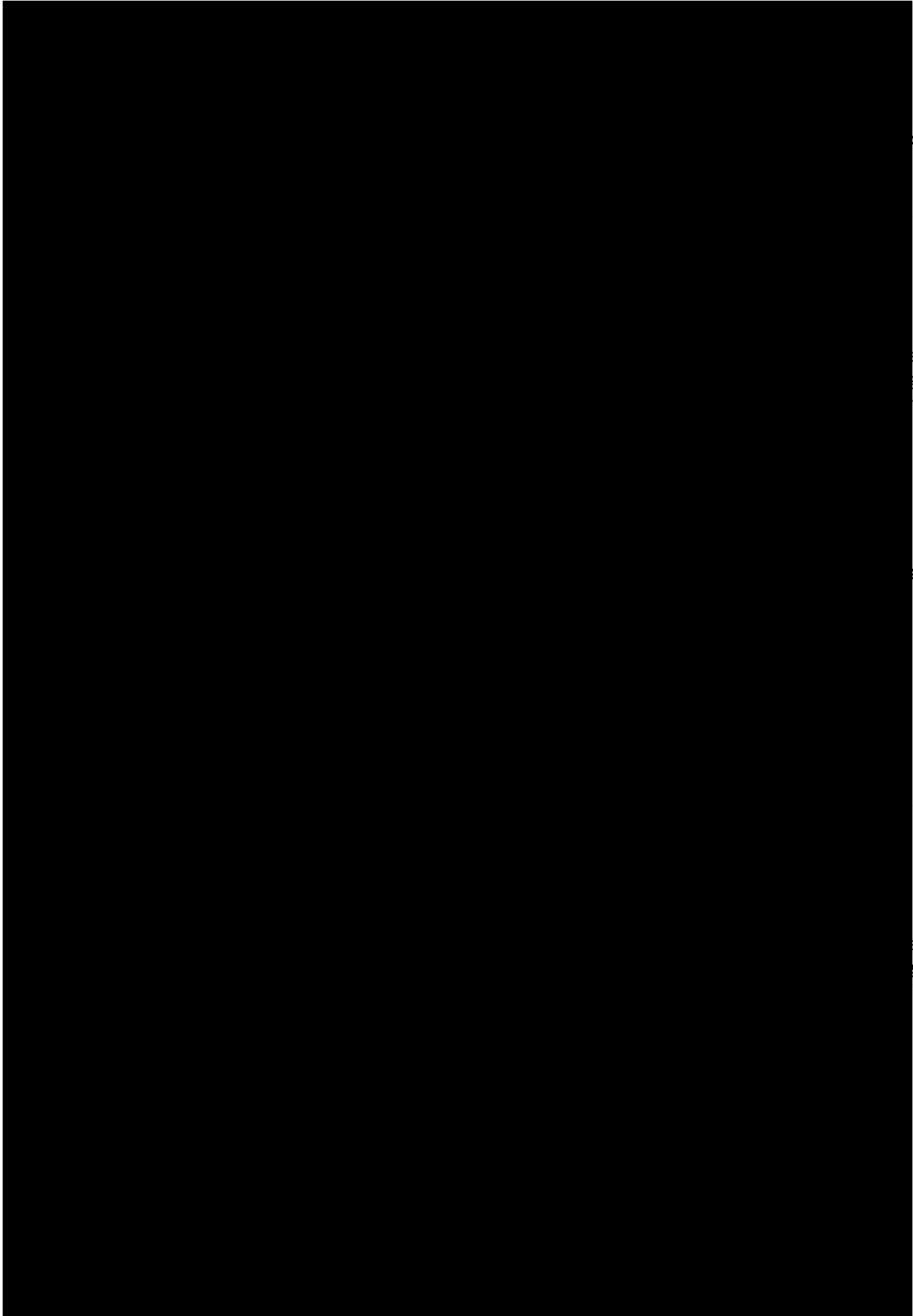
[Redacted]

**Private Secretary to Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work
The Scottish Government**

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