

FERGUSON MARINE PORT GLASGOW – IN YEAR FUNDING
OFFICIAL SENSITIVE - COMMERCIAL

From: Kate Hall
Deputy Director
Strategic Commercial Assets Division
12 July 2023

First Minister
Deputy First Minister and Cabinet Secretary for Finance
Cabinet Secretary for Wellbeing Economy, Fair Work and Energy

FERGUSON MARINE PORT GLASGOW – RESPONSE TO LETTER FROM FMPG AND LETTER OF COMFORT

Priority and Purpose

1. **Urgent.** On 22 June the CEO and Board of FMPG wrote to DG Economy requesting a Letter of Comfort be provided to satisfy the requirements of S714(3) of the Companies Act 2006 and enable closing of accounts to March 2023. This relates to assurances needed by the CEO as FMPG Accountable Officer and to FMPG Directors in relation to FMPG’s status with respect to their obligations to provide a statement of “going concern” to Companies House. This submission sets out the proposed response with a draft copy of the Letter of Comfort to be sent from the Director General Economy as the Portfolio Accountable Officer at ANNEX A.

Recommendation

2. We recommend that the letter of comfort at Annex A is sent to FMPG by DG Economy following a request from the CEO and seek the Cabinet Secretary’s agreement to this.

Background - FMPG Going Concern

3. Ferguson Marine Port Glasgow Limited accounts are due to be submitted, along with the three subsidiary companies, Ferguson Marine (801 – 802) Ltd, Ferguson Marine (803 – 805) Ltd and Ferguson Marine (Port Glasgow) Holdings Ltd, to Companies House.
4. When filing annual accounts the Companies Act 2006 requires the directors to make a statement that the company trades as a “going concern”. By making this statement they confirm that on the date of approval of accounts as accurate, they have made a full inquiry into the affairs and prospects of the company, there will be no grounds on which the company could then be found unable to pay its debts, and will be able to continue to carry on business as a going concern (i.e. it is able to pay its debts as they fall due) throughout the following 12 months, (the Support Period).
5. The CEO and Board of FMPG are seeking a Letter of Comfort to support them in the preparation of their 2022/23 annual accounts and to make the relevant statement that the company will be able to continue to carry on business as a “going concern”.

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6. Whilst FMPG have budget cover based on the CEO's cost to complete both vessels as at Sept 2022 the current budget allocated in year (23-24) of £57,6m will be insufficient to complete vessel 802 and will require funds beyond the 23-24 financial year. Budgets for 24-25 will not be set with Parliament until later this current year. As a consequence, the Directors cannot be fully assured of the next 12 months funding (to July 24 and beyond) until that Budget process is complete. Whilst the letter of comfort provides no future guarantee of funding, it states the policy intent to support the yard with the noted objectives, and therefore acts as one of several assurances which Directors will seek to make the required statement.
7. The issuing of a letter of comfort to a public body to support its annual accounts is not an uncommon practice, however we are satisfied that it is necessary and appropriate in this instance.
8. The terms of the letter of comfort is not intended to be legally binding. The letter only confirms the Scottish Ministers present policy, (subject to the Public Finance and Accountability Scotland Act 2000, Scottish Public Finance Manual, Scottish Parliament, applicable laws and within agreed budgets) within the Support Period to support FMPG to:
 - complete and deliver vessels 801 and 802;
 - secure a sustainable future for the yard, and
 - ensure that FMPG as a group is managed (in as far as it is within the gift of the Scottish Ministers) so that it maintains adequate financial resources, and is in a position to meet its obligations.
9. A similar request by the CEO of FMPG last year, the previous Deputy First Minister approved a Letter of Comfort (attached at ANNEX B).

Legal Advice

10. The draft letter at ANNEX A has been approved by SGLD.
11. The Ministers may wish to note that:
 - a going concern is an accounting requirement imposed by the Companies Act 2006 and used in preparing financial statements. The going concern statement assumes that a company will continue in operation and that it is not intended or required to liquidate the company or cease trading during the following 12 months. This means the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year. If that is not the case, it will not be a going concern; and
 - a comfort letter is a written assurance often issued by a party that is typically the principal's parent company but can also, in exceptional circumstances, be a bank or a shareholder as is the case in this instance. A comfort letter is intended to offer "comfort" to another party as to the principal's ability or willingness to perform its obligations in relation to the ability of the comfort provider to procure that the principal will perform its obligations. Comfort letters may be, but are not usually intended to, give rise to legally binding obligations

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which is also the reason for its content to be wide in scope and non-committal in nature or limited to predetermined conditions only.

Financial considerations

12. There are no new financial considerations arising directly from this letter, as it states only the current policy position and gives no legal guarantee in terms of direct or indirect financial support.

Sensitivities

13. FMPG continues to attract significant media and political interest. This approach is consistent with the evidence given by the Cabinet Secretary to the Public Audit Committee on 22 June 2023 confirming that he remained committed to supporting a sustainable future for Ferguson Marine, confirmed the Scottish Government's intention to deliver vessel 802 at the yard and provide a platform on which future success can be built.
14. The issuing of the letter of comfort is one of the components which the Directors will use to satisfy themselves of the going concern position, and given the current sensitivity around the future of the yard, will be seen as a reinforcing the SG's commitment to seeking to secure a sustainable future.

Quality Assurance

15. This submission has been agreed with the DG Economy.

Conclusion and next steps

16. The Cabinet Secretary is asked to confirm if he is content with the draft Letter of Comfort at Annex A and we would also welcome any comments from the FM and DFM.

Kate Hall
Deputy Director
Strategic Commercial Assets Division

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Draft Letter of Comfort DGE to FMPG

ANNEX A

Director-General Economy

Gregor Irwin

T: 07[REDACTED]

E: DGEconomy@gov.scot

The Board of Directors

Ferguson Marine Port Glasgow (Holdings) Limited

Ferguson Marine Newark Works Castle Road Port Glasgow Scotland

PA14 5NG

xx August 2023

Dear Sirs

Ferguson Marine Port Glasgow (Holdings) Limited ('FMPG (Holdings) Limited') and its subsidiaries (collectively, "the Group")

Confirmation of Scottish Government financial support – SPFM

The Scottish Government is required to act in accordance with the Public Finance and Accountability (Scotland) Act 2000 ('PFA Act') and in line with the Scottish Public Finance Manual ('SPFM'), to ensure at all times that actions proposed or taken satisfy the Accountable Officer requirements of regularity, propriety and value for money. All financial support provided by the Scottish Government is subject to proportionate due diligence to ensure that any support complies with the requirements of the PFA Act, the SPFM, as well as any other applicable law, such as on subsidy control. The confirmations provided below are given only to the extent we are satisfied (or, as regards future decisions, may be satisfied) that these requirements are or can be met.

Confirmation of continuing support to the Group

It is our present policy, subject to the approval of the Scottish Parliament and in so far as permitted by applicable laws and within agreed budgets for at least a period of 12 months from the date of approval of the 2022/23 annual report and accounts (Support Period), to support the Group to complete and deliver vessels 801 and 802 and securing a sustainable future for the yard, whilst ensuring that Ferguson Marine Port Glasgow (Holdings) Limited and its group of companies are managed (in as far as it is within the gift of the Scottish Ministers) so that it maintains adequate financial resources, and is in a position to meet its obligations.

The Scottish Government is encouraged by the commitment of the group's board in developing its five year business plan. The support by the Scottish Government in respect of the business plan has been and will remain subject to due diligence to ensure this satisfies the requirements of the SPFM and complies with applicable law.

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This letter is intended to confirm only the Scottish Government's policy as regards the Support Period. It is not to be construed as constituting a promise or warranty as to future conduct in that period or otherwise, or as imposing on Scottish Ministers any obligation beyond the Framework Agreement, or in conflict with, the requirements of the SPFM or any applicable law.

We undertake to inform you immediately in the event that circumstances change. Yours sincerely,

Director General Economy Scottish Government

Cc : Colin Cook
Director Economic Development

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Letter of Comfort (Director to Auditors) Dec 2022

ANNEX B

The Board of Directors
Ferguson Marine Port Glasgow (Holdings) Limited
Ferguson Marine
Newark Works
Castle Road
Port Glasgow
Scotland
PA14 5NG

15 December 2022

Dear Sirs

Ferguson Marine Port Glasgow (Holdings) Limited ('FMPG (Holdings) Limited')

Scottish Government financial support – SPFM

The Scottish Government is required to act in accordance with the Public Finance and Accountability (Scotland) Act 2000 ('PFA Act') and in line with the Scottish Public Finance Manual ('SPFM'), to ensure at all times that actions proposed or taken satisfy the Accountable Officer requirements of regularity, propriety and value for money. All financial support provided by the Scottish Government is subject to proportionate due diligence to ensure that any support complies with the requirements of the PFA Act, the SPFM, as well as any other applicable law, such as on subsidy control. The confirmations provided below are given only to the extent we are satisfied (or, as regards future decisions, may be satisfied) that these requirements are or can be met.

Confirmation of continuing support

We confirm that we intend, subject to parliamentary approval, to support FMPG (Holdings) Limited financially for at least a period of 12 months from the date of signing the 2021/22 annual report and accounts. As a minimum this would be to January 2024 (Support Period). Financial support is intended to be given to FMPG (Holdings) Limited to meet its liabilities as they fall due within the Support Period. This includes all costs in the Support Period incurred by FMPG (Holdings) Limited under the terms of the contracts for the completion and delivery of vessels 801 and 802 between FMPG (Holdings) Limited and Scottish Ministers.

In providing this letter of continuing support we confirm:

- The policy of the Scottish Government as at the date of this letter remains to complete and deliver vessels 801 and 802 and support the yard in securing a sustainable future. The additional funding request in relation to 801 and 802 is subject to due diligence and all decisions taken by the Scottish Government in that respect will require to be compliant with the requirements of the SPFM as set-out at the beginning of this letter.

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- The ongoing review commissioned by Scottish Government, into certain FMPG (Holdings) Limited future options, does not impact upon the Scottish Government's intention to support FMPG (Holdings) Limited in meeting its liabilities as they fall due within the Support Period, including those in relation to the contracts for delivery of 801 and 802.

The Scottish Government will work with FMPG (Holdings) Limited's Board as it develops its business plan. Any financial support from the Scottish Government in respect of the business plan will be subject to due diligence to ensure this satisfies the requirements of the SPFM and complies with applicable law. Any proposed business plan must be agreed between Scottish Ministers and the Board of FMPG (Holdings) Limited as provided for by the Framework Agreement.

This letter is intended to confirm the Scottish Government's policy as regards the Support Period. It is not to be construed as constituting a promise or warranty as to future conduct in that period or otherwise, or as imposing on Scottish Ministers any obligation beyond the Framework Agreement, or in conflict with, the requirements of the SPFM or any applicable law.

Without prejudice to that generality, this letter does not promise or guarantee anything that would not, in the assessment of the Scottish Government's Principal Accountable Officer, be consistent with the requirements of the SPFM, including the need to achieve regularity, propriety and value for money as regards Scottish Government finances.

We undertake to inform you immediately in the event that circumstances change.

Yours faithfully

Director of Economic Development
Scottish Government

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