



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 30 June 2022

Session 6



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PUBLIC AUDIT COMMITTEE
20th Meeting 2022, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Craig Hoy (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Helen Carter (Scottish Government)

Kevin Hobbs (Caledonian Maritime Assets Ltd)

Morag McNeill (Caledonian Maritime Assets Ltd)

Erik Østergaard (Caledonian Maritime Assets Ltd)

Bill Reeve (Transport Scotland)

Lawrence Shackman (Transport Scotland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Public Audit Committee

Thursday 30 June 2022

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning and welcome to the 20th meeting in 2022 of the Public Audit Committee. The first item on our agenda is a decision on taking business in private. Do members agree to take agenda items 4 and 5 in private?

Members *indicated agreement.*

Section 23 Report: “New vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802”

09:00

The Convener: We have two evidence sessions this morning and the first is a continuation of our inquiries into the Audit Scotland report “New vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802”. Joining us this morning—in the room rather than remotely, I am pleased to say—we have Kevin Hobbs, the chief executive officer of Caledonian Maritime Assets Ltd, and Morag McNeill, the interim chair of the board; we also have Erik Østergaard, who was formerly the chair of CMAL and is now the chair of David MacBrayne Ltd.

I will invite Morag to give us a short opening statement. Thank you for providing us with a written submission, which we found very helpful. It has been published on our website. We got some further material yesterday; we have to make sure that it is cleansed, data-wise and so on, so we have not been able to publish that yet and we cannot refer to that material this morning. We hope to be able to publish it over the next few days. That may well mean that we will return to you to seek further particulars and search a bit more into what you have provided us with—we may even invite you back to give us more oral evidence—but we will see how things go this morning.

Morag McNeill (Caledonian Maritime Assets Ltd): Thank you for inviting us to share evidence with the committee today and to answer the committee’s questions. We will endeavour to answer all the questions today if we can. If we are unable to do so, we will respond in writing to the committee, as is normal practice.

As the convener mentioned, I am currently the interim chair of the CMAL board. I have been a non-executive director on the board since 2014. Erik Østergaard was my predecessor as chair of the board. Both Erik Østergaard and I were in post when the dual-fuel ferries contracts were awarded. Kevin Hobbs, CMAL’s chief executive officer, joined CMAL in April 2016, several months after the contracts were awarded, but he has a solid understanding of the issues that emerged in the early stages of the construction of the vessels and thereafter. We have been involved previously in the Rural Economy and Connectivity Committee’s hearings. We were also extensively questioned by and asked to provide evidence to Audit Scotland;

we welcome its report, which we consider fair and balanced.

We are acutely aware that the delay in completion of these vessels is having a significant impact on island communities, who are, quite rightly, frustrated and worried. However, the problems that arose around the MV Glen Sannox and hull 802 are not representative of our past and current vessels and harbours projects and the quality of our work to support Scotland's ferry infrastructure.

We have submitted lengthy written evidence to the committee, as we are concerned about the accuracy of some of the information shared in previous sessions. That is perhaps understandable, as many of those who have appeared before the committee were not in post at the time when the contracts were awarded. A number of these matters are addressed in our written submission, but I would highlight the announcement of Ferguson Marine Engineering Ltd as the preferred bidder and the subsequent award of the contracts, the issues around the refund guarantee, the acceleration of milestone payments, the dispute resolution process and the fact that the payment of instalments of the £30 million Scottish Government loan was personally sanctioned by the expert appointed by the director general economy against designated progress events that had, in reality, not been achieved by Fergusons.

We are also happy to address the more technical aspects of the choice of liquefied natural gas fuel, which was a requirement of CalMac's vessel specification, and the sequencing of the construction of the vessels. If it will assist the committee, I am more than happy for committee members to direct questions to me and I will bring in colleagues as required. The committee is of course free to direct questions to my colleagues. Thank you.

The Convener: Thank you very much indeed. You set out quite a lot of the ground that we want to cover this morning. To pick up on one point that you made, do you accept the recommendations of the Audit Scotland report?

Morag McNeill: We do.

The Convener: Thank you. The deputy convener, Sharon Dowe, has a series of questions.

Sharon Dowe (South Scotland) (Con): Good morning. On procurement, which you mentioned in your opening statement, one of the stated aims on your website is to be cost effective. To what extent do you consider the procurement of vessels 801 and 802 to be cost effective?

Morag McNeill: We believe that the procurement process provided for value for money—that was part of the procurement evaluation. We have made some improvements in our procurement process but we believe that the procurement was thorough and robust. I will ask Kevin Hobbs to say something more about the procurement.

Kevin Hobbs (Caledonian Maritime Assets Ltd): The procurement itself was anonymised. Obviously, it is a fixed-price contract, a design and build contract, or international standard Baltic and International Maritime Council contract. I was not in post at the time, but that is the process that we always go through. At the time, the £97 million—I know that you will ask later on why it is no longer £97 million—was deemed to be the best value for money.

Sharon Dowe: Section 3 of your submission is on "Provision of Refund Guarantees". In section 3.6, you state that

"CMAL had no awareness of, or involvement in, these exchanges."

That was in reference to exchanges between MSPs and so on about the non-provision of the refund guarantee from Ferguson Marine Engineering Ltd. When did you find out that FMEL was not giving the builders refund guarantee and why did you not go back to the tendering process at that point?

Morag McNeill: We became aware that FMEL could not provide a Clyde Blowers Capital guarantee on 21 August 2015. We were not aware until about 25 September that it was also having problems in producing a guarantee from a bank or an insurance company, and it gave its final position in relation to that on 7 October, by which time it was already the preferred bidder and we had stood down the other bidders.

Sharon Dowe: When you found out that it was not going to give you the builders refund guarantee, which was part of the tendering process, why did you not cancel the contract at that point and go back to the tendering process? In the communication that you have sent through, that seemed to be your preferred choice.

Morag McNeill: That was indeed the preferred option.

Sharon Dowe: Why did it not happen?

Morag McNeill: Because the minister authorised us to proceed.

Sharon Dowe: What minister was it?

Morag McNeill: My understanding is that it was a transport minister but we are not sighted on the conversations that Transport Scotland had with the minister. What we have is a letter authorising

us to proceed towards the contract, by the Scottish ministers, as sole shareholder of CMAL. That is contained in a letter that John Nicholls wrote at the time that the contract was awarded.

Sharon Dowey: Why did you not get a copy of that? It says in the paperwork somewhere that you asked for a letter of comfort. You state:

“The chair requested that Transport Scotland provide CMAL with a letter of comfort if required. John Nicholls agreed that a letter of comfort would be provided to CMAL.”

However, there does not seem to be a lot of communication or evidence to show that the letter of comfort was put in.

Morag McNeill: The letter of comfort is the letter that John Nicholls wrote at the time of the award of the contract.

Sharon Dowey: Were you happy to accept that at the time?

Morag McNeill: The letter from John Nicholls said that ministers had read and approved the contents of that letter, and we relied on that. That letter did two things. It gave a shareholder authorisation under the articles of association of CMAL, which was an instruction to proceed by the minister. It also gave CMAL an unconditional financial undertaking, unlimited in time and amount, to protect the solvency of CMAL if there was a problem with the contract. I was heavily involved in the drafting of that letter. I am a lawyer by training. That letter was agreed. Some of it was drafted by me and it was also reviewed by the Scottish Government legal department and approved by it.

Sharon Dowey: At the time, were you happy to go forward with the contract, or did you feel that you were being forced into it?

Morag McNeill: Our preference was to retender. We were authorised by our shareholder to proceed. That was an instruction to proceed.

Sharon Dowey: Section 6.9 of your submission states:

“CMAL were told that they should not seek a Ministerial direction by the Ministers in relation to contract award of the Vessels to FMEL. However, the Board were sufficiently concerned about the Contracts in all the circumstances instead to seek a letter from the Ministers holding CMAL harmless in the event that the Contracts encountered the financial and technical issues identified in the risks paper.”

At that point, you seemed very, very concerned. I still do not understand why CMAL did not just go in and cancel the contract.

Morag McNeill: Because we were authorised to proceed by the minister. We were given a direct instruction in the letter from John Nicholls as our shareholder. If your shareholder instructs you to do something—

Sharon Dowey: That is what you do.

Morag McNeill: You do.

Sharon Dowey: Therefore, you were told to go in—

Morag McNeill: We were authorised to enter into the contract, yes.

Sharon Dowey: In some of the further evidence that we got, we spoke to Roy Brannen. He said:

“Transport Scotland did not have a role in the contract—it was between CMAL as the buyer and FMEL as the builder. CMAL had to satisfy itself that it was able to enter into that contract and resolve whatever issues were apparent.”—[*Official Report, Public Audit Committee, 26 May 2022; c 12.*]

Roy Brannen is saying that the decision was not to do with ministers and it was not to do with Transport Scotland; the decision was for CMAL.

Morag McNeill: I would disagree with that.

Sharon Dowey: You disagree with that.

Morag McNeill: If I may comment on the ministerial direction point, it is true that we were told not to ask for a ministerial direction, but I was not entirely sure in any event that a ministerial direction was competent in relation to the board of a non-departmental public body. David Middleton perhaps alluded to that in his written evidence to the committee.

What clearly was competent was a shareholder authorisation in relation to the shareholder's reserved powers under the articles of association. That protects the directors in terms of their fiduciary duties, so that was what we sought. It was a shareholder authorisation by the Scottish ministers, and that is contained in the letter from John Nicholls.

Sharon Dowey: I might come back to more questions on that later on.

How fit for purpose is the current ferry procurement process in Scotland, and how does it compare with processes in other countries? That question is based on previous evidence that we have had. We are now procuring ferries from Turkey, but the ferries that we have procured are double the price that Norway is paying.

Morag McNeill: I will ask Kevin Hobbs to answer that question.

Kevin Hobbs: That is simply not true. The ferries that we have ordered are very, very specific. We went through a robust procurement process. The price of the ferries that we have ordered is £45.5 million. The ferries that are being built for the Norwegian waters have a completely different specification. They cost £33 million, but the technical specification for waters in Scotland—across the Minch, for example—is completely

different from the specification for vessels that are being built for fjords. It is comparing apples and pears; it is not a good comparison—and £33.5 million is not half of £44.5 million.

Sharon Dowey: That is fair. That is me for now but I might come back in later, convenor.

The Convener: Can I follow up some of those lines of questioning from Sharon Dowey? I go back to the point about written authority or not written authority, and the difference between instruction from your sole shareholder and written authority. To all intents and purposes, it was equivalent, was it not, because your advice was being overridden?

Morag McNeill: Our advice was that the preferred option was to retender, as Erik Østergaard said in his email. Some evidence has been given that that was two weeks before we got to a final position with CBC and FMEL, and therefore the matters had resolved themselves to our satisfaction. That is not the case. That was why the risk letter went along with the submission from Transport Scotland. That letter referred to Erik Østergaard's email of September, because we were still very far away from the market-standard builders refund guarantee. There was no recommendation contained in those papers from CMAL.

09:15

The Convener: Mr Østergaard, do you want to come in at this point?

Erik Østergaard (Caledonian Maritime Assets Ltd): Yes. To supplement what Morag McNeill says, section 6.17 says:

"As explained in the risk paper, CMAL were not content with the final draft contracts. In these circumstances the Ministerial approval process was not normal. CMAL made no recommendation to Transport Scotland or to the Minister."

I heard Roy Brannen's evidence, and he stated, as far as I recall, that "CMAL was content" with the contract, and we were not. However, the combination of the undertakings that were given to us as a company by ministers with the end contents of the contract made it up. Basically, seen from our perspective, it was back to back in terms of guarantees. It is not correct to state that we were content with the contract. We were not, and that was clearly expressed also in the email that was submitted to board members and Transport Scotland at the time.

Morag McNeill: We would not have proceeded had we not had the undertakings contained in that letter.

The Convener: Again, just for the record, you mentioned evidence that we have received that

suggested that, Mr Østergaard, your letter was dated two weeks—or 12 days, I think—before the decision was taken by ministers. The submission says:

"While it may have expressed his frustration"—
your frustration, Mr Østergaard—

"the email makes clear that it dated from two weeks earlier"—

it was 12 days—

"and before the latest round of negotiations. (The Auditor General's report does not make that fact clear, and it could be taken to read as a final position.)"

However, you are telling us this morning that that was the final position of the board.

Morag McNeill: Yes, because the mitigation did not address the key concern in Erik Østergaard's email, which was that we did not have a 100 per cent builders refund guarantee. That was why that letter was referred to again in the submission that we made.

The Convener: Mr Østergaard, in one biography that I have read about you, when you were appointed to the board of the Isle of Man Steam Packet Company, you were described as possessing

"extensive experience with a number of European shipping concerns in a career that has spanned over 30 years in shipping."

Have you ever known a ship to be built without a builder's refund guarantee?

Erik Østergaard: Not that I recollect.

The Convener: In the context of what we have heard this morning and what we have seen in the written submission, did you at any point consider resigning as chair of CMAL?

Erik Østergaard: No, I did not. I have heard statements that the board was threatening to resign. I do not know who dreamed that up, but that has not been the case.

Morag McNeill: There was reference in relation to mediation, which we may come on to at some point in these discussions, that a letter had been sent by lawyers saying that the board had threatened to resign en masse. That is absolutely not true.

The Convener: That was evidence that we heard from Jim McColl, who said that he had been in a private meeting with Derek Mackay, which the civil servants had been asked to leave, when he was told that there was what he described as a legal letter from the board of CMAL threatening resignation en masse.

Erik Østergaard: We do not know of the existence of any such letter.

Morag McNeill: We did not send any such letter; we did not instruct any such letter to be sent. The board did not threaten to resign en masse.

The Convener: Again, just for the record, Mr Østergaard, neither did you, as chair of the board, notwithstanding the very strong terms of the email that you sent on 26 September, in the afternoon, saying, quite starkly:

“In my opinion the best option would be to bin the present result and start from scratch on the basis of our initial requirements”.

Those are quite strong terms, are they not?

Erik Østergaard: They are.

The Convener: But when that advice was overridden, you did not consider your position at that point.

Erik Østergaard: As I said, we got what we needed. It was obvious that there was an interest from the Scottish Government to see that that contract was awarded to FMEL—I presume in consideration of economic development, job creation with the yard and in the area of the yard, and the subcontractors that would be involved in the contract. From a Government perspective, that has probably been its interest. When we were looking at it as directors of the company, we had to safeguard that we were acting within the Companies Act and taking care of the company’s interest. The contract in isolation did not satisfy our test to do that, but, in combination with the undertakings from the Scottish Government and the guarantees provided by FMEL, we were of the opinion that we would not put the company at risk and thereby we were prepared to enter into the contract. However, we have also expressly said that the guarantee that was provided was not up to market standards.

The Convener: We have an attachment in an email that was sent to ministers, which is a note from CMAL at the time, back in October 2015, which says:

“Without guarantees for all payments made, there is a substantial risk. Under normal circumstances it is probably unlikely that a company of the size of CMAL would take on this risk.”

It says, “Under normal circumstances”. What were the abnormal circumstances that you were operating under?

Morag McNeill: The circumstance was that we got an unconditional financial guarantee from the Scottish Government to put us in funds—that if there was a problem CMAL would not be insolvent.

The Convener: We may return to some of these themes.

Craig Hoy (South Scotland) (Con): Mr Østergaard, you have a reputation as being quite a tough cookie in this industry—somebody who understands the industry and somebody who would fight his corner. When he came before us, I asked Roy Brannen from Transport Scotland about the correspondence that he had had. I asked him:

“If I advise you not to do something in pretty strong terms and you then proceed to do it, I am either being ignored or overruled, am I not?”

The response that we had from Mr Brannen was:

“Are you referring to the letter from the chair at the end of September and to the subsequent exchanges that went to the minister? As I understand it, from the moment that the chair expressed concern to the point at which the advice went up to the minister, quite a bit of negotiation had taken place between CMAL and FMEL on getting the contract to a place where both parties were content. At that point, CMAL was content to award the contract and was seeking approval from the minister to do so. That approval was sought and given, CMAL was responded to, and the board accepted that and then signed the contract on 19 October”. —[*Official Report, Public Audit Committee, 26 May 2022; c 13-14.*]

Was Mr Brannen giving a misleading account there? You were saying that you—

Erik Østergaard: That is what I just referred to. As I recall the statement from Roy Brannen—I do not have it in writing but as far as I understand it—he said that the board was content with the contract, and we were not. If we had not been given the undertakings from the Scottish Government, we would not have placed that order.

Craig Hoy: Specifically, he is saying that you sought the authorisation to proceed from ministers.

Erik Østergaard: Which we got.

Craig Hoy: Morag McNeill said that ministers told you that the deal was authorised and that you should proceed. Therefore, you were effectively overruled, were you not?

Morag McNeill: We did not take a decision not to award the contract. That sounds like a double negative—I am sorry. But—

Craig Hoy: I know that you are lawyer but we are getting into lawyerspeak here.

Morag McNeill: We got to a point where we had got to the position of negotiation with FMEL. It was going no further. At that point, I think that it is fair to say that Transport Scotland was keen to get something to the minister. We agreed that we would write the risk paper, which referred to Erik Østergaard’s email, and agree the terms of the letter of comfort—all the board members of CMAL were absolutely unanimous that we would not proceed without that letter—and that that would

go, via Transport Scotland, to the minister. However, there is no recommendation to award the contract.

The normal approval process is that we get the contract to the point where we are happy with it, we then recommend to Transport Scotland that the minister approves the award and we enter into the voted loan agreement. That is not what happened here. To that extent, it was not the normal process. The normal process is not to get a letter in the form that we got it, with a shareholder authorisation and a financial undertaking in it, or indeed to have to change the voted loan agreement at the last minute to provide that the loan would not be repayable until the vessels were in service. That is not a normal process.

Kevin Hobbs would like to come in.

Kevin Hobbs: I was not involved at the time but I have done a lot of research on this, as you can probably imagine. Between the preferred bidder decision and the contract, which took the best part of two months, the executive team, with the board, negotiated with FMEL, FMEL Holdings and Clyde Blowers Capital to make that contract as good as it could be. The initial position was “There is no refund guarantee”; where we ended up was with a 25 per cent refund guarantee. The initial position was that, for the final payment, which ordinarily is 20 per cent, they were offering 0.5 per cent; that improved to 25 per cent. We also agreed with them that as any material, equipment or machinery came across the yard’s doorstep, effectively we vested it. Vesting means that it is then legally in our ownership. Therefore, we moved from a position of being extremely uncomfortable to being more comfortable. Were we completely comfortable? Absolutely not.

As I said, I was not there at the time, but it is very, very clear that the normal process is that we go through an assessment, we make a recommendation and we get a voted loan letter. This was a process of doing an assessment, being unhappy and not recommending it. We then went into a process of negotiation and we came out the other end being happier than we were when we started off. Were we 100 per cent happy? Absolutely not.

Morag McNeill: To follow up on what Kevin Hobbs has said, Roy Brannen said, “And the minister approved it.” An approval would not have been enough for us. Had the minister simply come back and said, “Approved”, we would not have proceeded on that basis. We wanted a letter that had an authorisation and a financial undertaking in it.

Craig Hoy: Mr Brannen’s account says that you went to the minister and sought his approval and

that you were recommending to proceed with the vessels. That is what you would read into Mr Brannen’s statement, would you not?

Morag McNeill: That is not correct.

Craig Hoy: Did you ask to see ministers in the closing phases of the negotiation? Did you ask to sit down with ministers and express your concerns to them face to face?

Morag McNeill: Erik Østergaard’s email said that he would be more than happy to sit down and speak to ministers, and that offer was not taken up.

Craig Hoy: Were you given any reason as to why that was not taken up?

Erik Østergaard: No.

Kevin Hobbs: If I may come in, the normal process is that we have a sponsor, which is Transport Scotland and which attends our board meeting. Our correspondence generally is between CMAL and the sponsor team. The sponsor team makes recommendations to the minister. We are not involved in that. We would very rarely see anything that goes between Transport Scotland and ministers. Our direct line of communication under normal circumstances—indeed, under all circumstances—is with our sponsor team.

Once a year, under normal circumstances—not in a pandemic—the minister attends a board meeting for a period of time. Therefore, our direct communication in these respects is not directly with the minister; it is with our sponsor.

Craig Hoy: It does slightly beggar belief that, when you got to such an intense period of negotiations where there were clearly issues, you would not just connect the two main parties.

Did anybody from CMAL attend the ceremony to mark the preferred bidder status being awarded?

Morag McNeill: None of the non-executives did.

Craig Hoy: Why was that?

Morag McNeill: Because we were concerned that it would appear to be a fait accompli at that point. You will see from our submission that our preference was for that to be done on a confidential basis and for there not to be a public announcement. We thought that there was risk to the procurement process, because we had not yet issued the Alcatel standstill letters. Inevitably, if a negotiation is undertaken in a very public domain, that makes it quite difficult.

09:30

Craig Hoy: Did you feel that, by announcing that with such fanfare, the ministers were in effect forcing your hand?

Morag McNeill: It made negotiations more difficult—that was our reason. That was particularly because, by then, we knew that we were in discussions on a refund guarantee. At that point, prior to 31 August, all that we were hearing from CBC and FMEL was that CBC could not grant a guarantee. We were not hearing at that stage that there was no guarantee on offer. However, you will see from the minutes of the 25 August CMAL board meeting, which took place at Victoria Quay, that we were very concerned about it. The refund guarantee was discussed, but Transport Scotland was clear that the announcement was going ahead.

Craig Hoy: In relation to the issue of the contract, if you did not ask to speak to a minister and you did not have further negotiations with Transport Scotland, what were those last 24 hours like? Talk me through them. What was the dynamic internally in the organisation?

Morag McNeill: Sorry, but which point are you referring to?

Craig Hoy: It is the 24 hours where it appears that you changed your mind. From memory, it was 8 to 9 October. What discussions were you having within the organisation?

Morag McNeill: We had exchanges of emails. From memory, Erik Østergaard sent one saying that the minister clearly wanted to do this, and the board members said that, if we were going to do it, we needed an authorisation letter and a letter of comfort and, until we got those, we were not proceeding. A variety of emails went back and forth over a period of 24 hours.

Craig Hoy: There seems to be some dispute about the builders refund guarantee. In an email to Stuart McMillan, Derek Mackay suggested that you had waived the requirement in the past for a builders refund guarantee and that that was not pertinent or relevant to the discussions. Is that something that you are aware of?

Morag McNeill: We were completely unaware of that until it came out in evidence.

Craig Hoy: Why would Derek Mackay have that impression and communicate that to Stuart McMillan?

Morag McNeill: I cannot comment on Derek Mackay's thinking or why he said that. We have no knowledge of it at all.

Craig Hoy: FMEL told us that it told relevant parties that it could not provide a builders refund guarantee.

Morag McNeill: It had not told us until the point at which it said that it had a problem with the CBC guarantee. I will let Kevin Hobbs come in.

Kevin Hobbs: The standard BIMCO newbuildcon basically is the contract, although it is logically amended in some circumstances. The process at the invitation to tender clearly asks all the tenderers whether there are any problems with what is proposed. At that stage, FMEL made no comment that it would struggle with a builders refund guarantee. It stayed silent on that. Normal practice in shipbuilding and other contracts—we also do civil engineering contracts—is that, if somebody stays silent, it is tacit acceptance of what is written. Therefore, we had no clue. To be perfectly frank, if any of the bidders had said that they could not provide a refund guarantee, they would have been redlined and struck out.

What we saw when we did the assessment was that all the bidders could provide refund guarantees. It was only after the preferred bidder status was given that, all of a sudden, the rules were changing in front of our eyes. I was not there, but I can see exactly what had happened. That is not a good starting place, as you can probably imagine, for a contract that says, "Yes, we promise to do things." FMEL knowingly and willingly entered into that contract. All sorts of things have been said after the contract, but the reality is that the bid was very clear that FMEL could provide what was needed—it made no comment about the fact that it could not.

Craig Hoy: There is something a bit fishy about this, is there not? In effect, you have the minister and, in effect, the person who won the contract having one account of this fundamental issue of the builders refund guarantee, and you as the agency responsible were blissfully unaware of that. There is something fishy in this, is there not?

Morag McNeill: I cannot comment on whether it is fishy or not. It is just the position.

Craig Hoy: It is unconventional.

Kevin Hobbs: It is not normal practice.

Morag McNeill: It is not normal practice, but we were not involved. Until we heard the evidence, that was the first time that we had any inkling that there had been any discussion. We were certainly not made aware of the issue. Transport Scotland did not make us aware of it. I cannot comment on whether Transport Scotland knew.

Craig Hoy: I have one final question. There are lots of contradictory accounts of what went wrong and why it went wrong, but Jim McColl says that one of the fundamental issues as to why the two vessels have gone so far over budget and so far off track in terms of schedule is your alleged

meddling in the construction process. Did you tell FMEL in what order to build things?

Morag McNeill: I will leave that one to Kevin Hobbs.

Kevin Hobbs: No, not at all. It is a very standard international contract. It is a design and build contract, and it does what is written on the tin. In effect, it is up to the builder to decide how it wants to build the vessel. What we have seen in the narrative, recently and in the past, is that there were significant changes in views of how the vessel was going to be constructed. I think that there has been the rewriting of history in relation to our involvement. We do not meddle—we cannot meddle—but, when something goes catastrophically wrong, it is easy to slope your shoulders and basically blame somebody else.

As we say in our written evidence, ordinarily in a contract, we would accept that there will be some changes from time to time. That is about 3 per cent of the contract, which in this instance was £2.9 million. The changes that we agreed amounted to £1.55 million. I will not get too technical, because that would take too much time, but we had 111 changes that were discussed between us. Thirty of them we both agreed would not go forward. Forty-five of the changes were as a result of things that CBC and FMEL wanted to change. That left the balance for us, which was 36.

That is a completely normal process. With other contracts and in international shipbuilding, we would expect 3 per cent-worth of changes, which would have been £2.9 million. The actual figure of £1.55 million is far below what you would ordinarily expect with a contract. Therefore, we do not accept any comment about us meddling or interfering. There was complete confusion by the shipyard and, let us be honest, Mr McColl has no shipbuilding pedigree whatsoever.

The Convener: We are going to pursue those issues in a moment, but I want to take you back to the 31 August announcement. We now know from internal emails that were released in 2019 that there was an email to Keith Brown on 20 August 2015, copying in Alexander Anderson, the senior special adviser to the First Minister. Under the heading “Presentational issues”, paragraph 16 says:

“It would be appropriate for Mr Mackay as Minister for Transport and Islands to lead on this announcement”.

However, we know that, 11 days later, the First Minister was accompanying Mr Mackay and presumably leading on the announcement. What did you know about what was going on behind the scenes at the Scottish Government at that point?

Morag McNeill: Not terribly much. We received an email on 21 August from our then chief executive, Tom Docherty, to say that Richard Hadfield at Transport Scotland had gone to Keith Brown to seek approval. We were not aware of that until we were told that ex post facto. At that point the email said that the public relations machine was getting into gear, that the public announcement was going to be on 31 August and that the First Minister would be doing that. From memory, we knew on 21 August that the First Minister would be making that announcement.

Again, Tom Docherty explained the risks to Richard Hadfield and Transport Scotland about doing that so publicly when we were still in negotiations with our preferred bidder on a number of technical aspects as well as a number of issues on the contract, but we were told that it was going ahead.

The Convener: There was an internal email, issued on 20 August, that recommended that Mr Mackay lead on the announcement, but you are saying that, by the next day, there had been an intervention that meant that the First Minister was leading on the announcement.

Morag McNeill: The email from Tom Docherty said that our PR consultants had been contacted by the First Minister’s press officer. I took that to mean that it was going to be the First Minister making the announcement. I do not think that that email expressly said that she was, but certainly the press officer had been in contact with our PR agents.

The Convener: So that was the clear inference. Were you invited to that event, as non-executive members of the board?

Erik Østergaard: Formally, I do not think so.

Morag McNeill: I do not think that we were. I think that there were limited spaces, and I do not think that we were the most important people to be on the platform.

Erik Østergaard: Maybe it was implied that we should show up, but I do not know.

The Convener: I am trying to establish whether there was a boycott.

Erik Østergaard: No.

Morag McNeill: There were issues around the number of places available. We were concerned that it would be seen as a fait accompli with the public, when we still had significant miles to go on the contract.

Erik Østergaard: As Kevin Hobbs said, there were nearly two months of negotiations ahead of us, so we did not consider at that stage the contract negotiations to be completed at all.

The Convener: Was your non-attendance because of a lack of spaces, or was it because you had misgivings about the announcement or you felt that it would compromise the negotiations that you were involved in?

Morag McNeill: I cannot speak for the other directors, but I was uncomfortable.

Erik Østergaard: To be honest, I actually do not know whether I was out travelling or why I could not attend, but I could not. However, I shared Morag McNeill's concerns that it could be interpreted in the wrong way.

The Convener: Had you been available to attend, would you have attended?

Erik Østergaard: I do not know. I do not think so. I think that we discussed it at a certain stage.

Morag McNeill: Yes, there was an email exchange where we decided that we would not attend, but I do not think that we were invited and declined. I think that Tom Docherty asked whether we wanted to come, in which case he would have to find us space on the platform, and I think that we said no.

The Convener: So it was a case of, "When is an invitation not an invitation?"

Colin Beattie (Midlothian North and Musselburgh) (SNP): Before I get into the main line of my questioning, I would like clarification on one or two points that we have already been talking about.

The first is about decision making on the contract. Audit Scotland has had access to the same exchanges, documentation and so on as everybody else. On 21 April, Audit Scotland said that it was

"clear in our judgment that there was no formal written authority."—[*Official Report, Public Audit Committee*, 21 April 2022; c 36.]

Its contention relates mainly to that approval.

The CMAL paper said:

"CMAL was effectively instructed to proceed with the purchase from FMEL despite the concerns raised ... As explained in the risk paper, CMAL were not content with the final draft contracts. In these circumstances, the Ministerial approval process was not normal. CMAL made no recommendation to Transport Scotland or to the Minister."

There is a clear trail of key decisions and the basis on which they were taken.

We have seen all the documents that have been published. I mention in particular the email from Transport Scotland dated 9 April 2015. It says:

"The Scottish Ministers have also seen and understood that [the Director of Vessels'] paper and have noted and accepted the various technical and commercial risks identified and assessed by CMAL and have indicated that

they are content for CMAL to proceed with the award of the Contracts."

It is clear from the published documents that ministers were advised of the risks that had been identified by CMAL and of the mitigations that were put in place, and came to a decision on that basis. Is that a fair assessment?

09:45

Morag McNeill: Yes.

Erik Østergaard: Yes.

Colin Beattie: Good, thank you. That was an easy one.

Morag McNeill: I hope that they are all that easy.

Colin Beattie: Here is another easy one for you. Coming back to the BRG, which is a great bone of contention in this, when and how did CMAL first become aware that FMEL was unable to provide a full BRG?

Morag McNeill: There were stages in that. On 21 August—which was, ironically, the day on which we were told that the First Minister was going to attend the event on the night of 31 August—the email from Tom Docherty advising us of that came in at 5.05. The email from CBC's lawyers came to our vessels director, Andrew Duncan, at 5.38, about half an hour later. That was the first we knew that CBC would not grant a parent company guarantee. What we did not know until much later—post Erik Østergaard's email of September—was that it could not provide any form of builders refund guarantee from a bank or from anyone else, and that what we were going to get was a surety bond from Investec for 25 per cent of the price. That was after, as Kevin Hobbs said, a huge amount of negotiation, with our lawyers pushing them to get the refund guarantee and to mitigate some of the effects of not having a full refund guarantee.

On about 6 or 7 October, we hit the buffers: there was no further movement. CBC and FMEL were saying "This is it—there's nothing more."

Colin Beattie: For clarification, which year was that?

Morag McNeill: That was in 2015.

Colin Beattie: Were you aware that in March 2015 Scottish ministers advised FMEL that a full BRG was not required?

Morag McNeill: No.

Erik Østergaard: When was that?

Colin Beattie: That was in March 2015. This relates to assertions that were made by Mr McColl.

Morag McNeill: We were completely unaware of that.

Colin Beattie: Therefore, you were not aware from the outset that FMEL could not provide a full BRG.

Erik Østergaard: Could I just check my papers, for my clarification?

If you are saying that that was in March 2015, that was even before the preferred bidder had been selected.

Colin Beattie: Yes—March 2015.

Morag McNeill: That was during the ITT.

Erik Østergaard: Yes. Okay. No—we were not aware.

Kevin Hobbs: That is about the reported letter and/or discussion between Derek Mackay and Stuart McMillan, of which we had absolutely no awareness until this inquiry, six years later.

Colin Beattie: In Mr McColl's evidence on 16 June, he said that you were aware from the outset that FMEL could not provide a BRG. Is that correct?

Morag McNeill: That is not correct.

Colin Beattie: It is not correct.

At the pre-qualification questionnaire stage, did FMEL explicitly state that it could not provide the full BRG, which was a requisite for shortlisting to the ITT stage?

Morag McNeill: At that point it made no comment. Was that at the pre-QQ stage? I think it said that it noted the requirement for a guarantee.

Colin Beattie: Did FMEL not raise that; did it not question that—

Morag McNeill: At that point FMEL did not say that it could not give us a guarantee.

Colin Beattie: Was it reasonable for you to assume at that point that it was not a matter of contention?

Morag McNeill: Yes, indeed.

Kevin Hobbs: In normal contractual negotiations, unless there is a comment to the contrary you accept that the framework that you are putting forward within the four corners of the contract is accepted. That is the case unless somebody says that something will not be accepted.

Colin Beattie: Is that normal?

Kevin Hobbs: That is normal practice in contractual law, full stop. That is not just for shipbuilding contracts, but for any form of contract.

Colin Beattie: At the ITT stage, FMEL had not stated, one way or the other, whether a BRG was available, therefore the assumption was that there was.

Morag McNeill: Indeed.

Kevin Hobbs: That was in line with what would happen with any bidder.

Colin Beattie: Okay, that is fair enough.

I will turn to the money, which is always far more interesting. There were comments in the report of 9 December 2020 by the Rural Economy and Connectivity Committee that highlighted the fact that some milestone payments or stage payments were somehow out of order. The clear finding was that they were being constructed in such a way that qualification for payments was not necessarily in the order that it should have been, and so on. We have also heard that that is normal for the industry. Is it normal for the industry?

Morag McNeill: I ask Kevin Hobbs to answer that one.

Kevin Hobbs: Yes. It is very, very normal to enter into negotiations over milestone payments. At the end of the day, the buyer will pay only what is required, which in this instance was £97 million, but it is often the case that there is a negotiation between the buyer and the shipbuilder about the stages at which money is to be paid. What happened was not out of order, at all.

Shipbuilding contracts historically—I genuinely mean “historically”—involved five payments of 20 per cent. I have been involved in many shipbuilding contracts in which there were 10, 12, 15 or 20 payments because, at the end of the day, people want the contract to succeed. As long as you are not overpaying, there is nothing wrong with negotiating different milestone payments. The payments were absolutely in sequence. If you look at the milestone payments you will see payments for 25 per cent of the steel, 50 per cent of the steel, 75 per cent then 100 per cent. That is not abnormal.

Colin Beattie: I am a layman. I have no idea how to build a ship, but in any contract, milestones exist to say that a certain sequence of events has taken place leading to a critical point at which payment is triggered. The Rural Economy and Connectivity Committee found that that was not the case and heard evidence that that was not the case. Why is that practice okay in the industry? I am trying to understand that. To have one isolated event that will result in a payment then another isolated event that will result in a payment, although the bits in between have not been done, seems odd to me. I do not understand.

Kevin Hobbs: Those things were done. There has been a misinterpretation by the REC Committee. They were done.

We receive certificates at points in time in this contract—or any other contract that we have in shipbuilding or civil engineering—to say that a payment is due. We cannot interrupt that process. That is contract law. If something has happened—if a milestone has been reached—we have to pay that money.

Colin Beattie: You took legal advice on that, I believe.

Kevin Hobbs: Of course.

Colin Beattie: Your taking legal advice implies that you had some doubts about it.

Kevin Hobbs: No. We take legal advice every day of the week.

Colin Beattie: Was there nothing specifically unusual in taking legal advice as to whether you were obliged to pay the milestone payments?

Kevin Hobbs: No.

Colin Beattie: Okay. You paid FMEL £83.25 million. That is about 85 per cent of the contract value.

Kevin Hobbs: We paid £82.5 million plus £750,000 for the variations to contract.

Colin Beattie: That is explained in the other papers. Why, then, were the ships not 85 per cent built?

Kevin Hobbs: There are a number of moving parts. You will recall that I said earlier that the final payment was due to be 25 per cent of the contract value. That was negotiated. You will also see in our written submission that at one point we accelerated some payments to FMEL, which changed the contract. The final payment went from 25 per cent to only 10 per cent, which represents a £14.55 million difference.

Colin Beattie: Can I check that that was CMAL's decision?

Morag McNeill: Can I come in here?

Kevin Hobbs: By all means.

Morag McNeill: CMAL eventually agreed to that. It is in the Audit Scotland report that the acceleration was requested by FMEL—by Jim McColl, as I understand it—and that Derek Mackay agreed to that before it had been approved by the CMAL board. The CMAL board subsequently rejected the proposal twice. What we eventually agreed to was accelerated payments against specific invoices for specific equipment, because we were concerned, at that stage, that FMEL was clearly not paying its

suppliers; there was a backlog with suppliers and it could not get equipment on order. There was concern that FMEL might have a liquidator or an administrator appointed to it. The last thing that we wanted was £14 million of public money sitting in FMEL's bank account.

What we agreed to do—Kevin Hobbs can talk about the very laborious process that we went through to ensure it—when we sat down next to FMEL was to transfer into its bank account money that was then immediately transferred out to pay suppliers. That was done instantaneously. We also refused to pay any of FMEL's direct costs. All the money that was accelerated was used to buy equipment that we vested ownership in and is now being installed, or has been installed, on the vessels.

Colin Beattie: Do we have evidence of Derek Mackay's approval? I presume that he must have signed off on something to authorise the change in the terms.

Morag McNeill: We were not sighted on anything.

Colin Beattie: Did anything come from Transport Scotland?

Morag McNeill: Transport Scotland requested a change to accelerate the payments, which—as I said—we refused to do twice.

Kevin Hobbs: We did receive a letter of comfort.

Morag McNeill: Another letter of comfort.

Kevin Hobbs: Another letter of comfort. The original one was about the contract signing, the other one was about the change from the final delivery payment of 25 per cent to 10 per cent. We received a letter of comfort—which I think is in the pack, in the appendices—that narrates that that was acceptable. At the end of the day, we receive voted loans from the Government, so we are effectively using public money. We must have a trail that says, when there is a substantive change—£14.55 million is a substantive change—that we have approval for that change, because we do not have that kind of money. We draw money from the Government via the voted loans system.

Colin Beattie: What checks did CMAL make prior to making the milestone payments? Were the payments simply made against invoices?

Kevin Hobbs: Are you talking about the £14.55 million or are you talking about any milestone payment?

Colin Beattie: I am talking about any milestone payment.

Kevin Hobbs: We have a site team and a project director through whom it is agreed whether a milestone has been reached. We receive a request and a certificate from the yard and we have to sign that off as the milestone having been met.

Colin Beattie: To do that, do you visit the works?

Kevin Hobbs: We have between three and six people on site permanently. That is normal shipbuilding practice. Effectively, they are checking the quality of the build against the specification and so on. We have people on site not 24/7, but for 12 hours a day, every single day, seven days a week.

Colin Beattie: Therefore, you were satisfied that the milestones had been achieved and that the payments were justified, up to 85 per cent of the value of the vessel.

Kevin Hobbs: Yes.

Colin Beattie: Did you ever challenge FMEL on how the money was being spent, given what was uncovered about it not paying its suppliers and so on? Was it £9 million or something?

10:00

Kevin Hobbs: If we are talking about the £14.55 million, we—myself and Jim Anderson, who is the director of vessels—received four arch-lever folders. We spent literally 18 hours a day for two days going through each invoice, sifting out those we recognised as being part of our new-build contract from those that we did not. As an example of that, within the package, there were some invoices that related to the redevelopment of the yard and the head office and stuff like that. We went through a sifting process of reading every invoice and verifying whether it was to do with our vessel, because at the time there were other vessels being built. Basically, we ended up with two large piles, which were, effectively, payable and not payable. When we ended up with the payable amounts, we found that, of the £14.55 million, about £9.5 million was a backlog of invoices. We knew that that was happening because we had been contacted over several months by international and local suppliers to say that they were not being paid. We knew that there were some problems.

Colin Beattie: At the time of nationalisation, there was every indication that the vessels were far from ready to be launched. Did you have any questions about the amount of public funds that had been paid in, the lack of progress on these vessels and the fact that they were far behind where they should have been? Surely the milestones and the robust checks that took place

should have thrown up quite clearly that some of these works were not happening.

Kevin Hobbs: Yes, of course we had concerns. We had concerns throughout the contract. You will see in our written evidence that we were first flagging concerns back in December 2015 that what we would consider normal shipbuilding practice was not being followed. Yes, we were concerned. Part of the story that gets us to £82.5 million includes the accelerated £14.55 million, so if the figure of 25 per cent for the final payment had remained in place, the sum would not have risen to £82.55 million; it would effectively have been £68 million at that stage.

Colin Beattie: At this point, we are not touching the loans that came from the Scottish Government. My understanding is that you were not part of that particular discussion.

Kevin Hobbs: We did not know about it.

Morag McNeill: We were completely unsuspected.

Colin Beattie: Surely there must be some linkage between these significant milestones that trigger the payments and the quality of what has been done. It cannot just be to do with checking the invoices and so forth. Was there quality control in there? If there was, why was that not evident at the point of nationalisation?

Kevin Hobbs: The quality of the build is not in question. You heard evidence previously that the guys on the ground that do the welding and steel cutting and so on were going about their daily business. This is a catastrophic failure of management; it is not a catastrophic failure of the workforce.

Colin Beattie: At what point did you identify that catastrophic failure of management?

Kevin Hobbs: I arrived in March 2016. I have said already that we were flagging up problems in December 2015, so at that point I was reading emails and receiving the handover from the previous chief executive, but the way that the shipyard was going about the build, at risk, was not normal shipbuilding practice as we had seen it previously. Between us—that is, Erik Østergaard, myself and our vessels team—we have literally hundreds of years' worth of experience.

Colin Beattie: Can you give an example—

The Convener: I am anxious to bring Willie Coffey in. There are only 60 minutes in this hour, so I am afraid that I will have to cut you off at that point, Colin. If we have time, I will you bring back in, but I want to bring in Willie Coffey, who has a series of questions to ask.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Morag McNeill, I hope to get into this issue

about quality and the statement in CMAL's submission that says quite clearly:

"CMAL consider that the primary cause of the Vessels' delay and associated cost overrun is a catastrophic contractor failure between October 2015 and August 2019."

We were beginning to get into that territory during Colin Beattie's questioning. Could you explain to the committee why you are using such strong words, and could you offer the committee a few examples to justify those comments?

Morag McNeill: Kevin Hobbs, over to you.

Kevin Hobbs: I will go back to Mr Beattie here. We have heard, "Where has the money gone?" quite a lot. I think that the best way that I can explain it is to say that we believe that the money has been spent within the business, for sure. "Catastrophic failure" are strong words, but what we saw was units being built in the shed that were basically built at risk. We had not commented on the drawings that we were presented with and neither had the class society, which is Lloyds.

If you build something undercover, it might cost one unit of price; when you do that in the open air to join the vessel up, it costs two units of price; and when you do that when the vessel is afloat, it will cost four units of price. Basically, we saw units being built at risk, not signed off by us and not signed off by Lloyds. What that meant is that, when they were inspected, there were many, many mistakes.

Mr McColl says that we interfered. This is not interference. This is pointing out that this is a unit that has been built incorrectly. If it takes one unit of cost to do something, it then takes another unit of cost to undo it, and it then takes another unit of cost to do it properly, you can easily see that what should be one unit of cost becomes three units of cost. That is the simplest way that I can explain what was going on. There were mistakes made at the outset by the builder because it did not have approved drawings and, when the units were inspected, they were riddled with errors that had to be undone and then the job had to be done again. Effectively, some of that was happening in the sheds, but if it is happening out on the berth, which is the new-build berth and the launch berth, that will cost twice as much and, if it is happening when the vessel is afloat, it costs four times as much. If you want to follow the money and see where the money has gone, I can tell you that, effectively, the money was wasted. That is what happened. Does that explain adequately?

Willie Coffey: It is getting there.

Kevin Hobbs: Well, ask some more.

Willie Coffey: It is difficult for us. In your response to Colin Beattie, you said that these were management failures, not workforce failures,

but, with regard to the specification for the ship and the construction, surely the specifications were followed by the workforce. Where is that failure? Is it the management's failure to give the workforce correct specifications?

Kevin Hobbs: The management team, the planning team and the technical team deliver packages of work to the workforce to construct the vessel. The workforce follows what it has been told to do and, if that is wrong, it is not the workforce's fault; it is because the planning and/or the technical detail has been sent down to the shop floor incorrectly. That was where the problem lay, which is why we say that it is a management failure and not a workforce failure.

Willie Coffey: You are saying that there were errors in the design and specification for these vessels and the workforce simply carried out the work as specified?

Kevin Hobbs: Yes. This gets slightly technical. Remember that, all the way through this, this is a design and build contract. We do something called a concept design, which, at the end of the day, specifies very clearly that what we are being asked to be built can physically be built. It is physics. We cannot ask somebody to build something that cannot be built. This might be a silly example but we cannot ask someone to build a 100m-long ship that has a beam of 80m and can carry 1 million passengers. It will not happen. You cannot say, "We want this thing to be built and it has to take 5,000 cars." That will not happen either. The concept design is us proving to ourselves that what we are asking any shipyard to bid for is fair and reasonable and can physically be delivered.

Willie Coffey: I will turn to the thorny issue of the cables, which has come up several times in the committee. Paragraph 138 of the Auditor General's report highlights:

"This process identified that some of the 1,400 cables that FMEL had installed at the end of 2018 were too short to reach required equipment."

I put that point to Mr McColl last week, I think, and his response was that the specification changed constantly and equipment was moved around, making the cables shorter as a result. Could I ask for your view on that comment so that we can get that on the record?

Kevin Hobbs: There are an awful lot of cables on a ship, and the cables that were installed at that point made up about 30km of 250km of cables. The numbers are enormous, as you can imagine. Very simply, two things happened. Some of the cables that were installed were simply too short to reach the equipment that they were supposed to be connected to. That is part 1 of the story. Part 2 of the story is that the original installer

did not come back to site after administration, so there was a change from a company called Kongsberg to one called Wärtsilä. The systems and control panels that Wärtsilä has in some instances—only a few—had to be in different compartments, because they were configured differently. There were short cables—full-stop—and there was some moving of equipment.

Mr McColl says that we moved the equipment. No, we did not. It was a design and build contract. It was up to the shipyard to decide how that was going to be built. Again, this is not interference from us; this is a shipyard working with its contractor, specifying in which compartment a control panel is going. In a few instances, the control panel ended up in a different compartment and, naturally, the cables were too short. Bearing in mind that only 30km of cable is installed out of 250km, it is only 12.5 per cent—thank goodness. *[Interruption.]*

Willie Coffey: Can we just wait a minute until the helicopter passes over? *[Interruption.]*

Kevin Hobbs: Does that answer the question?

Willie Coffey: Thanks very much. It sounds as though it is a little bit of both. My interpretation is that cables were short but equipment was in different places as well. Is that fair?

Kevin Hobbs: Yes, that is true.

Morag McNeill: We did not move the equipment or ask for the equipment to be moved.

Kevin Hobbs: That is the responsibility of the shipyard.

Willie Coffey: On the broader issue of quality and quality standards, there is also commentary in the Auditor General's report about there being little or no linkage to quality standards and no linkage between milestone events and quality checks. There is a comment that the quality was initially good but that, from October 2017-ish, he was beginning to highlight many quality issues, and those led to the owner observation reports, which were many and numerous. Can you say something about the application of quality standards and whether you considered it was correct, appropriate, fit for purpose and so on, or whether it was not?

Kevin Hobbs: Generally, yes, it was fine. When the yard got into difficulties, it started to cut some corners. That is when we started saying, "Hold on a minute. We have owner observation reports. This is not normal shipbuilding practice—it is not normal standards." It is a two-part story. When everything was fine and the shipyard was operating as it should do, there were no issues. Issues started to arise when it evidently started to get into financial difficulty. That manifested itself first in corners being cut, but then the production

of the ships slowed down substantially because—fairly obviously—if you cannot pay your subcontractors, they are not on site, building the ship.

10:15

Willie Coffey: In any process of constructing anything, you are bound to get comments and requests for change—specification changes, perhaps—as you go along. Is that natural in the process?

Kevin Hobbs: That is the variation to contract piece. There seems to be complete confusion in the mind of the previous owner as to what a comment is. There are formal variations to contract, which I have explained. There were 111 discussions and 81 actuals, 46 of which were proposed by the yard and 35 of which were proposed by us, resulting in the £1.55 million. Owner observation reports are us attempting—as we attempted an awful lot—to help the yard to say, "Look, this is not normal shipbuilding practice. Can you please rectify the problem that has manifested itself?" That is not a change; that is us simply saying, "You are not a building a ship to normal shipbuilding standards." That is not a change; that is asking for what we are paying for.

Willie Coffey: The documentation that we have says that there were 346 observation reports.

Kevin Hobbs: They are on-going every day, so it is a moving feast.

Willie Coffey: Are all of those commentary about the failure to apply standards?

Kevin Hobbs: Yes. Again, there are two elements. The first is whether the standards have been applied and normal shipbuilding practice is being followed. There is also the problem that you have with any shipyard, that it is building the ship and warranting it for a year although you expect to operate it for 30 years. So, some of the comments are about the ability to maintain a ship. Imagine how you would want the pipes, for example. You would want the pipes side by side, so that you could access them. You would not want them on top of one another, so that, if the bottom one went wrong, you would have to dismantle many pipes to access the problem area. It is quite complicated.

Willie Coffey: To be totally clear, none of the observation reports is connected to specification changes—design changes or spec changes.

Kevin Hobbs: No, none whatsoever.

Willie Coffey: They are a commentary about the construction that is going on during the process.

Kevin Hobbs: As I say, the variations to contract—VTCs—are about actual changes that are being actively discussed and that have to be paid for. Some of the changes that were asked for by FMEL even resulted in our getting a credit. So, within the £1.55 million are some credits, when the VTC says, “Do you really want this? We would like to do it in a different way,” and we agree with that. Other ones are us saying, “Can we change something?” One of the specific changes that was asked for involved building a couple of extra crew cabins for cadets, so that Caledonian MacBrayne could train more cadets.

Willie Coffey: I have one last comment on this area. The information that we have is that, in April this year, there were still about 211 observation reports outstanding. Is that normal practice, or does that tell us that there is a bigger issue?

Kevin Hobbs: No, it is normal. Basically, what happens is that it ebbs and flows. As you are building out a ship, some of the observation reports are dealt with and they fall away while others are raised. It is a dynamic process within a shipyard every single day of the week. When people say that there are a certain number of ORRs, that is the number at a particular point in time; it is not a definite number that is there forever.

The new chief executive officer, David Tydeman, wrote to the Net Zero, Energy and Transport Committee back in March, and I presume that another letter will go to the NZET Committee before the end of this month, or very early next month. That will call out the number of ORRs and you will see that those are dramatically reducing. However, as the vessel is built out, some additional ones will come in and will have to be resolved. It is about being agile.

Willie Coffey: Overall, they do not give you cause for concern about further delay or further cost—they are a normal part of the construction process.

Kevin Hobbs: Whether or not we were building at Ferguson’s—we have built previously in Poland, at Remontowa, and at Flensburg, in Germany—that is normal and par for the course in every shipbuilding contract in every yard throughout the world.

Willie Coffey: Thank you very much for your answers.

The Convener: We are coming towards the end of our session, but Craig Hoy and Sharon Dowe have indicated that they want to come back in with a very short question each. I will come to Craig Hoy first.

Craig Hoy: I might have picked up what he said incorrectly, but I have a technical question for

Kevin Hobbs. You said that you attribute a lot of the cost overruns to the fact that vessel 801 was put into the water, which meant that costs were more expensive. Are you implying that the vessel was launched too early?

Kevin Hobbs: Absolutely. There has been discussion about that. Our opinion, in line with normal shipbuilding practice, is that you should do as much as you can under cover in the first instance, you should join things up outside and you should do as much as you possibly can when the ship is dry—it is only then that you should launch the ship. I will put it very simply: we could not dictate to the yard what it should do, but, on 21 November, when vessel 801 was launched, we had very active discussions with Jim McColl’s team in which we said that the launch would be too premature.

Craig Hoy: Mr McColl said:

“Had we not launched 801, it would have impaired the work on 802, so it was the proper logistical thing to do.”—*[Official Report, Public Audit Committee, 16 June 2022; c 28.]*

Could it be that another photo shoot with the First Minister, to great fanfare, might have ended up costing the taxpayer millions of pounds?

Morag McNeill: Can I come in? As far as we are concerned, the launch was driven by FMEL. There is a note from Andrew Duncan, our director of vessels, saying:

“FMEL’s main priority is putting the ship in the water on 21st November 2017, regardless of the problems that will be encountered later.”

Kevin Hobbs: That was Jim Anderson; you said Andrew Duncan.

Morag McNeill: Sorry—Jim Anderson.

At that point, FMEL had that view for, I think, two reasons. First, it released money from the Investec bond—I think that the sum was about £5 million—as well as a milestone payment, but, at that point, there were two versions of the truth about whether the vessels were delayed. We were saying that there were real issues and that we did not believe that the deadline dates and delivery dates would be met. FMEL was saying that that was nonsense, that CMAL was not telling the truth and that there was no problem. Therefore, there was a drive to launch to show that there was no problem and that FMEL was right and we were wrong.

Craig Hoy: Could there have been a political imperative in that? That was the second time the First Minister turned up when you seemed uneasy about the process.

Morag McNeill: I cannot comment on that.

Craig Hoy: Okay.

Sharon Dowey: I have a question about the ports. The two ferries that are coming into service run on diesel and liquefied natural gas. Has work started on the bunkering facilities to store that? It has also been commented on that the vessels are larger than the ones that are currently in operation, so the ports are too short to take them. Again, has work started in that regard?

Kevin Hobbs: Yes. As it stands, one of the vessels is designated for the Arran route between Ardrossan and Brodick. Again, there is a bit of an urban myth. We have been accused by some people of spending money unnecessarily, but Brodick was our oldest port—it was more than 50 years old—and it needed to be replaced, naturally. Structures do not last for ever.

As far as LNG is concerned, there is an intermediate tank. Tankers can deliver directly to the ship, but that is quite tricky because all operations have to stop, and we do not want that to happen. There is an intermediate 200m³ tank, so the road tanker can deliver to the intermediate tank and the vessel can then connect to the tank at the port and take the fuel on board.

Yes, the tanks are being built as we speak. In the Highland Council area, there will be one at Uig port, which is being redeveloped to take it. As it stands, the other one will be at Ardrossan, and that port will be redeveloped by its private operator. We will provide the intermediate tank, its bund and all the rest of it. We are talking about cryogenic material—it is stored at 200 degrees below zero—so it is quite specialist kit, but, yes, the tanks are on order.

Sharon Dowey: Are they expected to be completed by the time the vessels come into operation?

Kevin Hobbs: Yes.

Sharon Dowey: Okay.

The Convener: I have a final question for Mr Østergaard. In your opinion, given your experience, do you think that the ferries will be fit for purpose?

Erik Østergaard: They are coming in late, but they are highly needed in the network. It is quite obvious that, at the moment, the average age of vessels in the CalMac fleet is 24 years, so the ferries will not solve the entire problem by bringing down the average age of vessels in the fleet. The original specification was defined by CalMac, and the latest report that I have seen says that both vessels will go into service during the course of next year—801 in the spring and 802 at the end of the year, in October.

The Convener: Interestingly, since January, you have been the chair of David MacBrayne Ltd, so you have gone from being part of the client

body to being the chair of the body that will receive and operate the ferries.

Erik Østergaard: That is correct.

The Convener: That is why I am interested in your opinion on whether the ferries will be fit for purpose.

Erik Østergaard: I am quite sure that they will be able to carry passengers, cars and trucks, as was intended in the contract, and that they will be operating on the routes.

The Convener: I go back to what was said at the beginning of the evidence session. You were the chair of the board that signed off on the contracts—whether by instruction or otherwise—and you are now the chair of the board that will, I hope, be in receipt of the ferries.

Erik Østergaard: I think that you need to distinguish between—

The Convener: Is there a conflict of interest, Mr Østergaard?

Erik Østergaard: No, I do not see that there is a conflict of interest. The dispute about signing or not signing the contract was hooked up on one particular issue relating to refund guarantees; that had nothing to do with the ferries as such. Once they are delivered, they will enter the CalMac fleet in entirely the same way as was the case with MV Loch Seaforth, which was built in Flensburg, with MV Finlaggan and with the three hybrids. The ferries will go into service in a completely normal way following dialogue between the two bodies that, together, are responsible for delivering on the contracts, with the ferries operating to the islands.

The Convener: For us, this is not just about the contractual relationship and the business refund guarantee arrangements; it is about the fact that the ferries are five years late and counting and are two and a half times over budget and counting.

Erik Østergaard: They are. That is a fact.

The Convener: You share—

Erik Østergaard: Where do you see the conflict of interest?

The Convener: My understanding is that CalMac cannot refuse the ferries, for example; it will be required to operate them. We have received evidence from people that suggests that there will be problems because of the length of time that it has taken to build the vessels. You do not see that.

Kevin Hobbs: No. I will come in here. This is a highly regulated business. Ultimately, any vessel that carries passengers—or any vessel of substance, full stop—operates only if it receives a passenger certificate. Whether a vessel receives a

passenger certificate is not up to CMAL, the builder or CalMac; it is a matter of flag state. In the UK, flag state is controlled by the Maritime and Coastguard Agency so, ultimately, it is the MCA that gives a passenger certificate. Such a certificate says that a vessel is good and safe to operate, and it can be taken away at any point, full stop.

To anybody suggesting that, somehow, corners will be cut, I point out that we—CMAL—are the owners, the classification society does, in effect, the equivalent of a car MOT and, ultimately, the MCA, as the flag state representative, gives a vessel a certificate. If a vessel does not get a certificate, it will not operate. That is nothing to do with CMAL, CalMac or any of us sitting here today.

Erik Østergaard: The ferries will have to pass.

Kevin Hobbs: Yes. We will come back and talk to you at length about that if you want us to.

Erik Østergaard: CalMac is planning for the two ships to enter into service next year. That is in the planning.

The Convener: That would be in 2023.

Erik Østergaard: Yes.

The Convener: We have run out of time. As you say, Mr Hobbs, we might want to explore further issues with you, but I thank all three witnesses for the time that they have given us this morning and for their openness. That has been appreciated.

As I mentioned at the start of the meeting, we have been able to publish some written evidence. We are keen to publish subsequent evidence, but we have to go through a certain due process in order to put that into the public domain. We will do that and give the matter further consideration. We might come back to the witnesses with questions that arise from that process. As a committee, we will also need to consider whether there would be value in having a further evidence session, because we have covered some areas in some detail, but we probably have not had the time to scrutinise other areas as much as we would have liked—it might not feel like that to the witnesses, from their end, but that is our take. I thank them once again.

I will suspend the meeting to allow for a changeover of witnesses.

Morag McNeill: Thank you for inviting us.

10:31

Meeting suspended.

10:34

On resuming—

Major Capital Projects

The Convener: The next item on our agenda is consideration of evidence and witness information on major capital projects in Scotland, which the committee has taken a long-standing interest in. I am delighted to welcome Helen Carter, deputy director, infrastructure and investment, Scottish Government; Lawrence Shackman, director of major projects, Scottish Government; and Bill Reeve, director of rail, Transport Scotland. We have a fairly limited amount of time this morning but we will try to maximise the best use of it.

I have a couple of opening issues that I want to explore. My first question is partly for my benefit. We have received a briefing that suggests that, as far as the capital budget allocations that you have are concerned, there has been a higher than expected financial transactions budget allocation but a lower than expected capital budgets allocation over the next few years. What do the financial transactions budget allocations derive from and where do the capital budget allocations come from? Helen Carter, could you answer that?

Helen Carter (Scottish Government): Yes, I am happy to do that. The capital budget allocation comprises capital grant funding from HM Treasury and also the utilisation of our capital borrowing powers. Financial transactions funding also comes from the Treasury, but it is a specific type of funding that can be used only to make loans or equity investments, so it cannot be used to build things in the traditional sense; it has to be repaid, so it has much more limited use. Where we have deployed that is, for example, in the Scottish National Investment Bank, which can use financial transactions funding to make loans and invest in businesses and investment propositions. We have also deployed it primarily within housing, in relation to some of the shared equity schemes and so on. It is just a different type of capital funding, but it is all part of the overall capital package of investment.

The Convener: This morning we are primarily concentrating on transport projects, especially road and rail. Again for my information, could you explain a bit more about the targeted review of the capital spending review, which sounds to me like a review of a review? What is that comprised of? How are priorities set and allocations awarded at the end of that?

Helen Carter: In 2021, we published the CSR, which was a multiyear plan for capital investment up to 2025-26. That coincided with the publication of the infrastructure investment plan covering the same period. The infrastructure investment plan

set out our priorities and, essentially, the CSR allocated the funding over the same five-year period, so there was a clear link between finance, the strategy and the priorities. However, we published that in advance of the UK Government spending review, which took place in October 2021. As a result of the UK spending review, the capital grant that we had was less than the one that we had modelled in the CSR, so we had to undertake a review to work out what to do about the shortfall. At the same time, since February 2021, when the CSR was published, there has been a significant change to market conditions: supply chain issues following Covid, issues in Ukraine and high inflation have had an impact on our capital programme. I think that that is evident from the major capital projects update that you have also received. However, we wanted to take that into consideration with the targeted review of the CSR.

The final factor that impacted and gave rise to that review was the fact that the new Government formed after the CSR had been published, and, although net zero and climate change were a feature previously, there was an increased commitment in that regard from the new Government, so there was a realignment of some priorities to invest more in those low-carbon initiatives.

Those three factors were the rationale for doing an updated review just over a year after we had published the plan, but the principles that were set out within the infrastructure investment plan and the initial CSR were, by and large, kept the same. The strategy is the same but it has meant that portfolios have had to re-evaluate the plans based on the latest projections in terms of time and budget for those particular projects and also to accommodate some increased areas of priority spend, for example, in low-carbon initiatives, including increasing active travel.

Some other priorities have been slowed down, so they will stretch out longer than the original CSR period, but the Government remains committed to those projects and programmes that were set out. There has not been any deviation from what we have set out initially, but it is absolutely a balancing act between managing the pressures, the volatile market conditions, which will change again, and the projections that are set out. I am sure that, with the best will in the world, those will ultimately change because of the uncertainty that exists within the delivery environment just now.

The Convener: Do you do any work to disentangle the relative weight and impact of Covid, the Russian invasion of Ukraine, Brexit and so on and the effect that they are having on your supply chain costs and availability?

Helen Carter: There is quite a lot of work going on in that regard, primarily led by our procurement department. The Minister for Business, Trade, Tourism and Enterprise has been involved in those discussions with the construction industry. There is certainly a lot of work being done to consider the impact and what can be done to help. It is not an issue that just relates to Scotland, though; it is a worldwide issue, so we are not alone in experiencing these issues.

Willie Coffey: Good morning. It is fair to say that this committee has been keenly focused on the capital projects report from year to year. Our approach has probably changed over the years with regard to how we ask questions in relation to that, but what has probably been a constant is a focus on projects that are delayed, overrunning and over budget. That is the first thing that jumps out at committee members, so that is still there. From my perspective, I am always interested in how we apply standards to the construction of anything, whether it is roads, bridges, schools or even ferries. In broad terms, in the suite of projects that are under way, are recognised quality management construction standards being applied across the board? Are we able to see that in a simple form that would assure the committee that that is taking place?

Helen Carter: Lawrence Shackman might want to answer that from a transport perspective.

Lawrence Shackman (Transport Scotland): In terms of roads—rail is similar—there is a suite of design standards that specify how a designer and ultimately a contractor should go about designing and building a project. For roads, it is the “Design Manual for Roads and Bridges”, which is a well-known, well-recognised document, and alongside that is a specification for highway works or roadworks in Scotland, which specifies what concrete you should use in certain locations, the quality of kerbing and all the sorts of parts of the infrastructure you would expect. That document is always under review and it is shared generally across the UK. Scotland contributes to that in terms of many aspects that are local to Scotland, so it has Scotland-specific parts to it. That is the general backbone of what we do when we are designing and building a road. For rail, there are similar standards. Bill Reeve could probably comment on that.

Once we take the process forward, there is a system of quality checks through the design process. Certainly, when we get to site, our projects have a certification requirement from the contractor to make sure that the works are not only constructed correctly but designed correctly. An independent checker is employed to ensure that the design is competent and complies with the standards and that the works have been

progressed on site into what was envisaged at the outset. There is a series of checks and balances from the point of view of the contractor and the designer. Over the top of that, Transport Scotland will have a consultant, or the employer for a contract, who undertakes monitoring of all the works and does audits on site and has eyes and ears on the ground to ensure that there is a further additional check on what is produced.

10:45

Sitting outside of that, we have the gateway review process to make sure that a project is competent at various key stages and we will also have audits by the likes of Audit Scotland to ensure that we have sense checks on what we are doing. Of course, the governance that we have in place for all our projects is very comprehensive. It depends on the scale of the project, but it could be that we have a project board for the bigger projects and a team for smaller-scale projects—there is a range of governance. I will not go into all the details but that gives you a flavour of how we make sure that projects are built to the necessary quality, to time and on budget and that they are built safely.

Willie Coffey: Colleagues will no doubt pick some examples from the portfolio, but with all those standards in place at the outset, why do projects sometimes go over budget and over time? You are applying the standards and construction and design techniques are being followed to the letter. Why do they overrun?

Lawrence Shackman: There are a number of reasons why. In the design and development phase for roads—that is, the early stage of a road project—the project needs to go through a statutory process to give people a chance to air their views on a variety of routes. At a later stage, the process involves the specifics of the chosen route. As we go through the statutory process, some people might have objections to the chosen route, and that could lead to a public inquiry, as you are probably well aware, which can take a lot of time. It can be difficult to determine how long that process will take—how long is a piece of string?

Willie Coffey: I was talking about issues during the construction phase, not from the approval. Why does a project become late or over budget if everything is agreed up front and the specifications, designs, budget and so on are in place?

Lawrence Shackman: There are a number of variables on site. For example, the weather conditions can vary greatly from what was envisaged. Normally, at the start of a contract, weather data is provided to the contractor and the

contractor can reach its own conclusion about how long it will take to do that particular project. Sometimes, the weather can be worse than normal and can cause delays that have knock-on effects to the programme that mean that the phase of the project that involves surfacing being laid will now coincide with a time of year when the temperatures are very low and are not conducive to laying surfacing. You can try to mitigate that by getting in extra resources and that sort of thing, but unforeseen conditions can mean that it is quite a challenge for a contractor to meet a programme.

Willie Coffey: If and when a project begins to slip in the delivery schedule or budget, how soon does that get spotted and who gets told about it? Where does the chain of information flow go? It will eventually come back here at some point and we will see it through Audit Scotland's reporting, but how soon is it captured that there may be an issue with delivery, timescale and budget?

Lawrence Shackman: All the projects are formally monitored monthly by Transport Scotland's site representatives. Transport Scotland itself will attend those site meetings together with the contractor and its consultant and it will address the programme—where the contractor said it would be and where it is—and flag up early warnings. It will look at the risk register and see how that is moving forward with regard to all the key risks on a particular project. That is monitored, too, as well as the spend profile. Issues such as the contractor not realising some of the milestones that are required for certain payments and them slipping from one year to the next will always be flagged up by the site team and recorded formally at a monthly progress meeting and then escalated up accordingly to a project board, if it is a big project, and then on to the infrastructure investment board and all the various other parts of the reporting structure.

Craig Hoy: Good morning. Could you expand on the present governance arrangements for roads and rail projects, including possibly a little bit of an illustration on the interactions between the Scottish Government and Transport Scotland?

Bill Reeve (Transport Scotland): Transport Scotland receives the budget for the capital programme across all modes. All major capital investments are authorised through our investment decision-making process, at which all the directors of Transport Scotland come together to advise the chief executive in his accountable officer role on the best approach to any particular investments.

For each of the modes, there is then a set of separate project delivery and governance arrangements. For example, we have a rail portfolio board—I would have to defer to Lawrence Shackman for his equivalent. The portfolio is

reviewed and then we would have project-specific review meetings with Transport Scotland project sponsors—in our case, dealing with our delivery partners in Network Rail and ScotRail—to review progress on individual projects and items needing escalation or items that have a portfolio impact. On Mr Coffey's point about what we can do to improve standards to drive through efficiency, those things would be considered at a portfolio level as well. That is very much an outline.

Helen Carter: In terms of the governance and the budget, as Bill Reeve has said, those issues are discussed within the project and then they go up to portfolio level. If an underspend—or an overspend, for that matter—is emerging, that is reported through the monthly budget monitoring to the Scottish Government. For Transport Scotland, that would be through the net zero portfolio return each month to the budget monitoring report.

Centrally, we would look at the overall capital position. That is where decisions would be taken on what to do if there is an overspend or an underspend and whether there are projects in other portfolios—if not within transport, we could look at health or another portfolio—where an underspend could be utilised. That can sometimes be very difficult depending on when the underspend emerges, because it is harder to turn the taps on in a capital project, but that is the next step.

On governance, the IIB receives six-monthly reporting as well. We would send key themes that have emerged to the IIB; it might want to explore them further and look across portfolios.

Craig Hoy: Do you have any examples, particularly in the roads area, where any reprofiling or cost overruns or any other issues are impeding progress?

Lawrence Shackman: I can give an example from the Queensferry crossing, to go back just a few years. It was such a huge project and it was quite an art to manage the spend profile between the different years of construction depending on the contractor's progress. Trying to flag and monitor the programme and being able to hit the milestones and meet the in-year budgets was a constant issue all the way through the project. Early warnings of not meeting that budget or not spending all the budget or needing further budget were flagged up appropriately at the monthly progress meetings that I mentioned before.

That project also had a project board, which was chaired by the chief executive of Transport Scotland and various other representatives of Scottish Government—finance and legal and a wide range of interested parties attended the six-weekly project board. In relation to all those issues surrounding budgeting profiling and whether we

would meet the huge amount of money that was spent on the project each year and managing that process, it was very well scrutinised and managed.

Craig Hoy: With major infrastructure projects, there are the finances, there is the planning system, and then there is the broader policy dimension. In the past 12 months, we have seen the Green Party come into Government and there is an attitude within the party—I am looking at a headline from a few years ago, which reads:

“Greens launch campaign to stop Sheriffhall spaghetti junction”.

There is a particular quote that stands out, which says:

“Since the 1960s we've known that if you build more roads, they fill up with cars. That's why the proposal to turn Sheriffhall roundabout into a spaghetti junction isn't an upgrade”.

Is there now a change in policy focus that you think will impede some of these major infrastructure projects, particularly in relation to roads?

Lawrence Shackman: Times have changed—we have the climate crisis, we have difficulties with the economy and we have a number of other factors. The impact of Covid on transport and how people are travelling is another key issue. With Sheriffhall, the key thing is that although it will help to smooth the flow of general traffic—which ultimately will become electric traffic, if I can use that phrase—it also frees up the connectivity across the junction, which is stifled at the moment. In that scheme, a huge amount of active travel infrastructure is proposed, as well as priority measures for bus traffic. It is not just about moving the cars out of the way and trying to help solve the problem in terms of car movements. That is not really what the aim is. The project will help with active travel and that is one of the key factors on a lot of the road schemes.

You might not think that building a new road is a good use of money in the current climate, but it provides the ability to go back, and for the relieved part of the town or whatever it might be, such as the Maybole bypass, which was opened earlier this year, there is a whole new lease of life. The town centre can benefit from enhanced air quality and it does not have the congestion of traffic going through. It is a much safer place to live and work and enjoy.

Craig Hoy: Is there a risk that we could get an anti-roads agenda coming in? You guys could all be out of a job.

Lawrence Shackman: We did have a large number of objections for Sheriffhall—I think that there were over 2,700 objections. The best place

to resolve the issues around the design of the project and what benefits it will provide is at a public inquiry, and that will take its course through the statutory process. The reporter and Scottish ministers will ultimately determine whether we should go ahead with the project once it has been through a public inquiry and it gets the available funding, which is obviously part of the Edinburgh city deal.

Craig Hoy: Is there a risk that campaign groups could hijack the planning process in order to slow down what you are saying is an essential infrastructure development?

Lawrence Shackman: Everyone needs to have their say, so if people do not like a project for whatever reason—it could be climate related, or it could be because it is near to their property—they need to have their say. It is very hard to say whether the term “hijack” is appropriate or not, but people have to have their say.

The Convener: I should have said, Mr Shackman—my mistake—I introduced you as being from the Scottish Government. You are in fact employed by Transport Scotland.

Lawrence Shackman: I am indeed, yes.

Colin Beattie: I will follow on from my colleague, Craig Hoy, and be absolutely parochial about this, because I am the constituency MSP for the area in which Sheriffhall falls, so I get a huge amount of correspondence on it. I put on record my support for the Sheriffhall development, but also there is massive support among residents, particularly in the Midlothian area and in the Shawfair development. There is a great deal of anxiety that the development is being delayed. There is always a fear that the longer something is delayed, the more at risk it becomes. How secure is the funding for Sheriffhall? Is it set in stone?

Lawrence Shackman: Sheriffhall has the advantage of being one of the city deal projects, so there is committed funding to that mechanism to take projects forward. Therefore, it is slightly different from some of the other projects on the book, where funding may not be quite so guaranteed. We are anticipating that the public inquiry would be later this year. I think that a reporter has just been appointed to the public inquiry and we would be hopeful of a ministerial decision in autumn 2023.

11:00

We would then have to make the road orders and acquire the land and take on the procurement of the project to get a contractor on board, with an anticipated scheme opening of probably 2028, which I think is still within the timeframe of the city

deal. It depends on how the public inquiry goes and how long that takes.

On some sections of the A9, we have had inquiries and we have been waiting a very long time for the reporter to publish their report—in excess of a year for some stages. For other stages of the A9, we have not had to have a public inquiry at all because the unanimous view has been that dualling should go ahead on that particular section.

Colin Beattie: A great number of objections have been lodged—over 2,700, you said. There has obviously been a large campaign orchestrated by one of the political parties, and I understand that the cycling organisations have geared up. I also understand that the vast majority of the objections are outside my constituency and the immediate area of Sheriffhall. Have most of the objections been satisfied?

Lawrence Shackman: We have written back to all the objectors, outlining what the scheme will do to mitigate their concerns as far as possible. Obviously, they still have their objections and we need to resolve those. I understand that a number of objections are very similar in nature and concern cycling and the active travel facilities. A review of the junction was undertaken just a few years ago, to see whether the current proposals needed to be changed to provide better facilities for active travel and public transport, and it was determined that the current design is the most appropriate.

As I say, there are extensive footway and cycleway facilities, which means that pedestrians and cyclists will not have to cross the roundabout physically. I think that five underpasses are being constructed, or are proposed to be constructed, as part of the project to enable people to go from north to south without traffic interfering with their path. With the emphasis being on active travel and public transport, the junction will be configured to encourage buses to pass through and will make sure that they can do so as timeously as possible.

There are a lot of good things in the design to make sure that active travel is encouraged as much as possible and that people who are using public transport—obviously, we want to encourage people to use public transport more—can get access between the north and the south, in particular, through the junction as smoothly and effectively as possible.

Colin Beattie: It appears to me that the design ticks the boxes for most people, which makes it even less understandable that organisations have been getting whipped up about it.

Talking about net zero and environmental sustainability, I do not think that this project has

any attachment covering that. Is it intended to develop that later?

Lawrence Shackman: In terms of sustainability and climate change, through this project we will avoid a huge amount of congestion in the short term by removing 48 per cent of the traffic that currently flows around the roundabout, which will go over the top of the roundabout. There will be a lot less congestion, and there will also be measures to minimise the amount of carbon that is generated through the construction. There are a lot of new techniques coming out in the construction industry to make sure that most of the plant is carbon free. It does not use diesel any more; it is battery powered, and there is technology to control the plant to make it more efficient and to avoid double handling of materials. In terms of the design, we are using sustainable drainage systems that have the correct capacity for future water flow through the infrastructure there. A whole host of things are being done to minimise the carbon impact of the project both during construction and after the construction is complete.

Colin Beattie: I have one final point.

The Convener: We are really pushed for time, so, if you could make your final point very short, that would be very welcome.

Colin Beattie: It is a fairly obvious one, and it probably applies to all contracts. There has been an estimate of £90 million to £120 million for this project. Inflation is galloping and we are talking about the project not being finished until perhaps 2028—which, to me, is a long time away from 2008, which is when it was first identified as being desirable. High inflation is probably going to be with us for some time. How are you going to manage that?

Helen Carter: As I said earlier, the volatility in the market is impacting on all the projects and all the projections that are being proposed. We have to use the budget that is available. If projects cannot be funded within that available budget, decisions will have to be made about which ones will be progressed, but that will be worked through at the annual budget processes. We will look at the funding that is available at the time and any decisions on borrowing. There is quite a lot to go into the mix.

As Lawrence Shackman said, the profile of the project may change, depending on those other factors, as it develops. At this point, it is not certain what the funding profile might look like, but all those projects will be managed, looking at the range of factors that exist. I am sorry, but there is no more certainty at this point.

Sharon Dowey: I will try to keep my question short. It is specifically about a road that goes

through my area, the A77. You mentioned that we have just had the Maybole bypass put in, which is great. It has a couple of passing points, but it is not a dual carriageway. The A77 is a main route from Scotland to Northern Ireland and it is a single carriageway for the majority of the way from Ayr down to Cairnryan, with the exception now of a few passing places on the Maybole bypass. When you are deciding on major capital projects, what consideration is given to spreading the allocation of funding around the country—to south-west Scotland, for example—with environmental targets having an impact on road investment?

You talked about reviewing work that is being carried out. How often are those reviews carried out? At the moment, the A77 at the Carlock wall is not even a single carriageway—it is down to one lane, and there are traffic lights that have been there for nearly three years.

Lawrence Shackman: The main means of reviewing the needs of the transport network is the strategic transport projects review, which I am sure you have heard about. That has looked at all the transport needs across the network and is coming up with a development plan, which I believe will be published later this year.

We do not have a scheme on the A77 at the moment, but it has been mentioned as part of the STPR and needs to be considered along with all the other competing priorities. One of those priorities is road safety, which you rightly state is a key aspect, as are the environmental impacts and how a project fits with the climate agenda and a range of other factors. The A77 has been mentioned as part of STPR2, and we are just waiting to see what that means moving forward.

Sharon Dowey: How often do you review the projects? The Carlock wall scheme has now been going on for three years, and a main transport route is down to a single lane.

Lawrence Shackman: I am not familiar with that scheme. It is being dealt with by another department in Transport Scotland. However, I can certainly get back to you with some information on that.

The Convener: That would be helpful.

I am conscious of the fact that Bill Reeve has not had many opportunities to come in, because all these people are asking about bypasses and roundabouts. Let me finish up with a question about the East Kilbride rail enhancement. The briefing that has been given to us describes the project as having been enhanced in size. However, my mailbag tells me that it has gone from being a project that includes dualling of the track to one that retains a single track, so the people of East Kilbride are not very happy about the project as it stands. They see it as being a

diminution of the original project. In fact, as recently as yesterday, I saw a letter that was sent by the leader of South Lanarkshire Council to the transport minister, complaining about that very fact. Can you explain why it is seen as an enhancement and where additional scope is involved? The empirical evidence that I get on the ground is that it is the opposite of that.

Bill Reeve: I am very happy to address that issue. Let us go right back. Several years ago, we considered the need to improve the capacity and the performance of the East Kilbride line, and there were a number of options for doing that. We looked at options that included full doubling of the railway as a diesel railway, electrification of the railway, partial doubling—a whole range of options, as you would imagine.

Just to be clear, at no stage was the decision taken that we would proceed with a double-track railway throughout. I think that that has been misreported in some places. At no stage have we—with our colleagues in Network Rail and, indeed, in ScotRail—ever firmly decided that that is the project that we will proceed with. What we have done, as we have gone through a proper analysis of the complex system, is work out the best value-for-money investment on that route. We have also—and I think this is important—taken the opportunity to extend the project to cover electrification of the line as far as Barrhead.

Three key factors took us to the conclusion about the best value-for-money option on the route. The first was, inescapably, the cost of the different options. One thing that we learned in working with the Network Rail project teams on the East Kilbride route was that doubling the full length of that railway would be extremely expensive. The physical constraints and the nature of the geology meant that that turned out to be more expensive than had been hoped when we first started to look at the line. That was just the physical reality on the ground.

The second thing that we did—bear in mind that, when we started, it was not necessarily committed to being an electrification project—mindful of the decarbonisation agenda but also of the superior performance and the lower operating costs of electric trains, was conclude that the railway would benefit from the superior performance, lower costs and improved emissions of electrification. One of the advantages of electric trains is, bluntly, that they go faster, so an electric train occupies a section of track for less time than a diesel train does. One of the problems with the East Kilbride line was that, given that there are some severe gradients on it, at certain times of the year, with heavy loads, the diesels were struggling to keep to time. When we looked at the

performance of the electric trains and the cost of the diesel trains, that pointed us in one direction.

The final issue that we had to take into account was the change in travel patterns as a result of the pandemic, which has become manifestly clear, and the use of digital meetings rather than physical meetings. We are seeing a very welcome return of business to the railway as we are emerging from the pandemic, but the nature and the timing of the travel patterns is quite different, so we are not seeing the Monday-to-Friday commuter peak that we used to see. The busiest time that we are seeing now, for example, is on a Saturday rather than on Monday to Friday. Friday afternoons and evenings are also very busy. Therefore, schemes that might have been focused on dealing with the Monday-to-Friday peak-hour traffic for one or two hours now do not look like the priority, because we are not seeing that level of peak traffic, but schemes that help us to address the environmentally sustainable movement of people in a more cost-effective manner through electrification come much higher up the agenda. That is true, by the way, across the entire rail investment portfolio.

After that analysis, the decision was taken to electrify the railway all the way through to Barrhead and to East Kilbride and to invest significantly in the upgrade of Hairmyres as a public transport interchange with stronger bus and active travel links as a park-and-ride site. The last bit of scope to be determined is the extent of the loop that we will put in at Hairmyres. I expect that we will reach a sensible conclusion on that shortly, which will get us the same outcomes for a usefully lower cost.

11:15

The Convener: Thank you very much indeed, Bill. I should have declared my interest as the National Union of Rail, Maritime and Transport Workers parliamentary convener. In that capacity, I might dispute some of your views about the settled patterns as they will be in the future compared to coming out of the pandemic.

Willie Coffey is trying his best to get in, and I am going to give him the last word before I conclude the meeting.

Willie Coffey: Thank you, convener. I just want to get in my parochial question. Bill, when can we expect the electrification to extend from Barrhead to Kilmarnock, in my constituency?

Bill Reeve: It was very nice to see you at the opening of the Brodie Engineering plant in Kilmarnock. It is good to see the railway industry in Kilmarnock flourishing at the moment.

It is clearly more than a gleam in our eye that extending the electrification to Barrhead is the first step of what we call the Glasgow and Southwestern main line through Kilmarnock and Dumfries to Carlisle. It is a really important strategic route, not least in terms of freight capacity. As we look to the growing use of both passenger and freight trains across the border, we know that, in the future, we will need to enhance the capacity of that route, and electrification will help us to do that.

The hard answer is that I do not have a date—there are no firm plans. However, if you read the Scottish Government's decarbonisation action plan for railways, you will see that we envisage the electrification of that route as a sensible part of the decarbonisation programme. The rate at which we can do that will depend on the availability of funding, but I would not take frightfully much persuading of the fact that it is a good idea.

The Convener: Excellent. On that positive note for public transport, I will draw this session to a close. Bill Reeve, Helen Carter and Lawrence Shackman, thank you very much indeed for your time this morning. I think that there are one or two points that we want to follow up, and we will do that. Thank you very much indeed.

I now draw this public session of the committee's deliberations to a close, and we will move into private session.

11:17

Meeting continued in private until 11:44.

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