AGGREGATE FACILITY– PORT OF RAMSGATE

To: Cabinet – 24 November 2005
Main Portfolio Area: Maritime
By: Head of Service (Acting)
Classification: Unrestricted
Ward: Central Harbour

Summary: To reach agreement with Brett Aggregates to improve the aggregate discharge facilities at the Port of Ramsgate.

For Decision

1.0 Introduction and Background

1.1 Currently, Brett Aggregates has a licence to discharge aggregates from a berth at the Port of Ramsgate. The licence runs from year to year (1 January to 31 December) unless it is terminated by either party giving the other 36 months prior notice in writing.

1.2 The berth was installed 7 years ago and is limited to ships of 60 metres in length or less.

1.3 Brett Aggregates would like to widen their options in the size of ships they charter and expand their business at the Port of Ramsgate.

2.0 The Current Situation

2.1 Negotiations were commenced by Captain Gray and continued and modified by Captain Evans and J Bunnett to the current draft agreement.

2.2 Brett’s are prepared to build and pay for the extension to the berth to take larger vessels, with the design subject to Thanet District Council approval, combined with an agreement to construct and install a modern concrete batching plant.

2.3 The concrete batching plant would require an additional 0.5 acre of land.

2.4 Brett’s would require an agreement to lease the site for 20 years.

2.5 A current market valuation was sought from an independent third party (Matthew & son) who are acknowledged experts in this field.

3.0 Options

3.1 Complete an agreement with Brett’s to extend the berth and construct a concrete batching plant. (Brett aggregates would arrange a visit to a similar concrete plant so that elected members could see a modern plant in operation)

3.2 Maintain the current agreement without change.

3.3 Thanet District Council could extend the berth and recoup the cost through increased charges to Brett Aggregates.
4.0 Corporate Implications

4.1 Financial

4.1.1 There would be no cost to Thanet District Council apart from officer time for the construction of the berth. The cost of the valuation has been met from current budget.

4.1.2 An exemption from financial standing orders would be required, it would not be possible to obtain additional quotations due to the nature of the agreement. (Thus the reason for obtaining the market valuation)

4.1.3 The gain to the council would be an additional 15K P.A in assured income. and the increase in harbour dues with additional vessels bringing in materials for the concrete plant, and an improved berth and facility and no cost to Thanet District Council.

4.2 Legal

4.2.1 The only legal implications are those connected to granting a 20 year lease.

4.3 Corporate

4.3.1 The corporate risk issue is minimal Brett aggregates are a national company who have operated through the port for 7 years without any major incident. The design of the berth would be checked and agreed with Royal Haskoning who are acknowledged experts in the field of berth design. There is a risk of loss of income if Brett aggregates decide to cease their operation at the port due to the restriction in vessel size. (Loss 50K P.A.)

4.3.2 The construction of the concrete batching plant would create local employment for up to 6 people directly, and temporary employment during the extension of the berth.

4.3.3 The are no environmental concerns, the modern batching plants are fully enclosed. A Defra license would be required for the construction of the berth, consideration should be given to consultation with the local community, English nature and the environmental agency reference the batching plant.

5.0 Recommendations

5.1 To instruct the Head (Acting) of Maritime Services to conclude an agreement with Brett Aggregates Limited for the extension of berth 4 at the Port of Ramsgate and the installation of a concrete batching plant, all at Brett Aggregates Limited expense, subject to the site visit detailed in paragraph 3.1 and the final decision being made by the Cabinet portfolio holder.

6.0 Decision Making Process

6.1 This decision is within the Council’s policy and budgetary framework and the decision can be taken by cabinet.

Contact Officer: D. Evans Head (Acting) of Maritime Services 2105

Background Papers
None

Additional papers attached Annex I:
Executive summary of the proposed draft agreement for the improvement of certain facilities and the operation of those facilities at the Port of Ramsgate (Exempt)
Executive summary of the proposed draft agreement for the improvement of certain facilities and the operation of those facilities at the Port of Ramsgate

1. At the moment, Brett has a licence to discharge aggregates from a berth at the Port of Ramsgate. The licence runs from year to year (1 January to 31 December) unless it is terminated by either party giving the other 36 months prior notice in writing.

2. TDC has agreed with Brett to replace the licence with a 20 year operating agreement under which Brett would re-align and carry out improvement works to the berth at their cost. The realigned berth would enable vessels of up to 100 metres in length with a draft of up to 5 metres to enter the port that cannot do so at the moment.

3. The term of the new operating agreement begins when Brett gives TDC a notice under clause 6(e) that the berth is ready for operational use.

4. Under the new agreement Brett would not enjoy exclusive berthing rights but would have priority as long as it gives TDC reasonable notice of its berthing requirements. Brett will be the only importer of aggregate materials through the Port of Ramsgate.

5. Brett would continue to store aggregates at the Port.

6. Brett is to pay TDC an annual fee of ***** plus a charge based on the throughput of aggregates. There would be a minimum throughput requirement of 50,000 tonnes per year. In year 1, the charge would be at the rate of ****per tonne for the first 40,000 tonnes and ***** per tonne for the balance.

7. Both the annual fee and the throughput charge are to be reviewed annually on 1 January in line with the preceding November RPI figure.

8. There are provisions governing the delivery of invoices by TDC to Brett and the payment of those invoices by Brett to ensure that an appropriate payment regime is in place.

9. On top of the remuneration that Brett is to pay to TDC, Brett is also obliged to pay VAT and to ensure that Port fees, dues and other standard charges are also duly paid.

10. Whilst TDC is doing the berth improvement works, Brett must apply for planning permission and any other necessary approvals to erect a concrete batching plant on the 0.5 acre site adjoining Brett's storage area. When Brett has obtained all the necessary approvals, TDC would lease the site to Brett for a 20 year term that would run in tandem with the operating agreement. The rent would be *****per annum and would be adjusted annually in line with RPI, as for the storage fee and charge for the throughput of aggregates. Rent would be payable by Brett from the beginning of the third month after Brett obtained planning permission.

11. The draft agreement contains a raft of operational duties that Brett must comply with. These duties are spelled out in clause 15. They regulate the way in which Brett must use the berth and reflect Brett’s continuing responsibility for the operational infrastructure at the berth including the conveyor. Likewise, they reflect TDC’s continuing responsibility for the fabric of the berth, except for any damage caused by Brett’s ships. Brett is also obliged to comply with the ISPS Code.

12. TDC is obliged to insure the berth and to carry public liability insurance cover for £5 million. Brett is also obliged to carry public liability insurance cover for £5 million.
13. In clause 17 there are reciprocal indemnities of a kind that would typically be found in an agreement of this sort.

14. There is a comprehensive force majeure provision in clause 18, reflecting the long-term nature of the agreement.

15. Each party has a right of termination if the other party defaults (clause 19.1). In addition there is a provision which is usually found in contracts with local authorities entitling TDC to terminate the agreement if Brett is involved in any corrupt acts.

16. Clause 20 contains mutual warranties from each party.

17. Clause 21 makes the agreement personal to the parties -- it is not assignable by either without the consent of the other.

18. Clause 22 contains a comprehensive confidentiality clause for the benefit of both parties.

19. There is also a sophisticated provision addressing the resolution of disputes.

20. Finally the draft agreement contains all of the usual boilerplate provisions that would be expected to be found in an agreement of this kind.