

## Replacement of Berth 4/5 (Port of Ramsgate) and Provision of Commercial Berth (Ramsgate Harbour)

Cabinet	<b>16 December 2019</b>
Report Author	<b>Mike Humber - Head of Maritime and Technical Services</b>
Portfolio Holder	<b>Cllr Rick Everitt - Leader of the Council and Portfolio Holder for Port and Harbours</b>
Status	<b>For Decision</b>
Classification:	<b>Unrestricted</b>
Key Decision	<b>Yes</b>
Reasons for Key	<b>Entering into a contractual obligation with a value in excess of £750,000</b>
Ward:	<b>Central Harbour Ward</b>

### **Executive Summary:**

This report describes the need to urgently replace the existing Berth 4/5 (aggregate berth) at the Port of Ramsgate which has reached the end of its operational life and summarises the two primary options to achieve this including estimated costs. The report includes details of an existing opportunity which offers significant advantages in terms of cost and long term operation. Importantly, this opportunity also allows the delivery of a Commercial Berth project in Ramsgate Harbour to address the current and anticipated long term shortage of berthing space for wind farm support vessels. A total of 4 options are listed in this report which describe two berth design solutions for the project and two separate procurement routes.

A budget for both of these projects is allocated in the 2019/20 capital programme. This report seeks Cabinet's approval to commit these funds and deliver both projects via a single contract.

### **Recommendation(s):**

1. That Cabinet approve **OPTION 1** as indicated in section 6 of this report to permit the expenditure of the allocated budgets for the two capital projects to replace the existing Berth 4/5 at the Port and to provide a new Commercial Berth in Ramsgate Harbour using a direct award tender route;
2. That Cabinet give delegated authority to the Head of Maritime and Technical Services, in consultation with the Director of Operational Services and the Leader of the Council (Portfolio Holder for Port and Harbours), to negotiate and agree the contract documents;
3. That Cabinet gives delegated authority to the Head of Legal and Democratic Services, in consultation with the Director of Operational Services and the Leader of the Council (Portfolio Holder for Port and Harbours) to sign the contract documents and any necessary documents to give effect to this decision.

**CORPORATE IMPLICATIONS****Financial and Value for Money**

The Section 151 Officer has had concerns regarding the nature of the contract (whether it is a works or supplies contract, with the consequential requirements to follow Public Contracts Regulations 2015); and the procurement process to be followed, i.e. the justification for direct award, over a competitive process. The Section 151 Officer has not seen the latest specialist legal advice, but he is confident that the Monitoring Officer has done so, and assessed the risk to the council of the various options. Cabinet must seek assurance from the legal comments, and obtain confidence in the legality of the decision to treat this contract as a works contract, and the decision to award the contract direct to BAM Nuttal without competition, when making its decision.

There remain the questions as to whether or not a competitive tendering process or processes would offer a route that would provide better value for money; and whether or not alternative contract packaging would provide better value for money. This decision is finely balanced, bearing in mind the risks, the novel nature of the proposal, and the substantial value of the contract. By directly awarding a combined supply and installation contract for two pontoons with a value of £1.477m, it will never be known if a different packaging and/or competitive route would have yielded better value for money.

Having said this, the estimates included in the report would suggest that the proposed approach offers value for money, but ultimately it is for Cabinet to decide on the proposed route, or one of the alternative options, whilst giving due consideration to the risks presented. Based on the estimates provided in this report, the original plan for the replacement of berth 4/5 with a fixed berth option will cost between £223k and £1.23m more than the proposed option. The estimated cost of replacing berth 4/5 with a floating berth is £723k more than the proposed option. The conservative estimates of additional income in paragraph 3.6 will be built in to the 2020-21 budget and 2020-24 Medium Term Financial Strategy if the recommendation in this report is approved.

The Section 151 Officer has not seen the project programme (Annex A) when providing his comments. It is presumed that the programme associated with the recommended option will minimise the risks of the failure of berth 4/5.

**Legal**

The Council has a long term lease agreement with its customer Brett Aggregates. This lease requires the Council to provide a berth for the purpose of discharging aggregates brought to the port via sea. If the berth becomes unserviceable or is required to be decommissioned the Council would be in breach of this legally binding agreement with the lessee. The

	<p>existing berth is at the end of its operational life and there is a high risk of service failure and the need to permanently decommission the berth in the near future.</p> <p>The Council has taken specialist external Legal Advice from Blake Morgan Solicitors about both the procurement route and the risks of challenge involved in making a direct award. This advice has been reviewed and agreed by the Head of Legal and Democratic Services. In summary, the situation is:</p> <p>1 It is not possible to say definitively that this is a works or supplies contract. This is important as a works contract would come underneath the EU Procurement threshold but a supplies contract would not. This question would only be answered by a court, if a challenge were raised.</p> <p>2 However, there are sufficient arguments to support an assessment that this is a works contract and those arguments are set out clearly in the legal advice.</p> <p>3 In respect of making a direct award, there are several variables to consider when determining the risk to the Council, including whether there is a competitive market for the Council's requirements and the attitude of any such market. For example, if there are no competitors in the market who could meet the Council's specification or if the market has a laissez faire attitude then the risk of entering into a public works contract without undertaking a procurement process would be reduced.</p> <p>4 The Advice clearly sets out the risks and mitigation to consider in assessing this as a works contract and in making a direct award.</p> <p>5 The Advice makes clear that this is ultimately a question of judgement for the Council, after considering the risks and mitigation measures.</p>
<p><b>Corporate</b></p>	<p>The objective of this project is to meet and sustain our existing contractual commitments to provide an aggregate berth at the port. It will also protect long term income associated with this agreement.</p> <p>Option 1 also delivers an improvement to harbour facilities in the form of a new Commercial Berth to meet increased demand for wind farm support vessel berths. This will support our two wind farm customers who have operation and maintenance bases at Ramsgate (which are the subject of long term lease agreements with the Council). Furthermore the project will generate new income as well as protecting existing long term wind farm related income.</p> <p>Specialist external legal advice has been sought on the planning process for both of the proposed berths. The advice indicates that the berths can be installed under permitted development rights subject to a prior approval by the Local Planning Authority (this process being described in the GPDO).</p> <p>A marine licence administered by the Marine Management Organisation will also be required for each of the proposed berths.</p>

<b>Equality Act 2010 &amp; Public Sector Equality Duty</b>	Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.	
	Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.	
	Please indicate which aim is relevant to the report.	
	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	Due to the limited relevance to the PSED it is not possible to further this aim of the duty. However, the proposal is non-discriminatory and does not contravene equality legislation.
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it	
Foster good relations between people who share a protected characteristic and people who do not share it.		
The proposal has limited relevance to the duty in respect of the protected characteristics and no impacts have been identified. However, should any issues arise as a direct result of this proposal in the future, they will be assessed accordingly.		
It is the officer's assessment that the duty is not engaged by this proposal and no impacts have been identified. It is therefore proposed to seek Cabinet's approval of Option 1 as listed below.		

<b>Core Business Objectives</b>	<b>(tick those relevant) ✓</b>
Growth	✓
Environment	
Communities	

## 1.0 Introduction and Background

- 1.1 The existing aggregate berth (Berth 4/5) at the Port of Ramsgate is at the end of its operational life. There is no viable option to refurbish or continue to maintain the existing berth. A long term contractual commitment with a customer exists such that the Council must maintain an operational berth or risk the consequences of breaching the contract agreement.
- 1.2 In Ramsgate Harbour there is a separate need to increase the number of available berths for commercial vessels associated with the offshore wind farm industry. It is already difficult to accommodate all existing wind farm customer vessels, particularly during poor weather. Demand for such berths is anticipated to increase over the next 2-3 years.

## **2.0 The Current Situation**

- 2.1 Feasibility work has been undertaken to assess options for the replacement of Berth 4/5. A fixed structure option constructed on site i.e. a quay which is piled into the seabed has been estimated to have a cost of between £1.7 and £2.6 million which is in excess of the combined remaining £1.477m capital budget.
- 2.2 An alternative approach is to provide a floating berth, this has the operational advantage of offering a platform for discharge and loading of cargoes which is at a similar height to the vessel deck at all states of the tide.
- 2.3 The manufacture and installation of a floating berth with the required attributes would have a cost which is far in excess of the available budget. The estimated cost of providing and installing a single new rather than pre-used pontoon is £2.2m. Therefore in order to progress the proposal described in 2.2 above an existing (pre-used) berth would need to be found.
- 2.4 Two large commercial pontoons have been identified which are currently on the market, either pontoon would be ideally suited as a replacement for Berth 4/5. Each pontoon is 75 metres long and therefore larger than the existing berth 4/5 (which consists of two hulls with a total length of 46 metres). However this additional length and the lack of any articulation offers an advantage in terms of operational service in poor weather, stability of the berthing platform and a reduced maintenance burden.
- 2.5 The pontoons are currently owned by the contractor BAM Nuttall Ltd (BAM), and were previously used in connection with the Crossrail project. Discussions have taken place with BAM regarding the cost of the reutilisation of one of the pontoons at the port. However, BAM has indicated that it wishes to dispose of both pontoons together and has indicated that it could undertake the major works elements including the required piling, modification/installation of the pontoons and provision/installation of gangways and shoreside works.
- 2.6 Following a marine survey of the pontoons they have been found to be in very good condition with only minor cosmetic type defects, (e.g. local corrosion where the paint system needs recoating). However no loss of structural steel thickness was found on either pontoon. This has led to the conclusion supported by specialist external surveys that the berth will achieve the required design life of 30 years with routine maintenance. This clearly demonstrates value for money when compared with the estimated price of a brand new installation.

## **3.0 Commercial Berth, Ramsgate Harbour- Business Case**

- 3.1 Far from being a problem to solve, the second pontoon presents a further opportunity as it would form an ideal commercial berth providing much needed additional space for wind farm support vessels in Ramsgate Harbour whilst also unlocking additional capacity for any further activity around the proposed extension of the wind farms.
- 3.2 The Commercial Berth is proposed to be situated in the Eastern Gully of Ramsgate Harbour and will improve berth quality and commercial berthing capacity for larger wind farm support vessels and other works vessels. One of the drivers for this project is the long term trend of wind farm support vessels increasing in size. In 2010 the

Southern Breakwater Project was delivered. This project provided 16 dedicated wind farm vessel berths alongside 9 heavy duty mooring pontoon fingers. This capacity is now significantly reduced due to the need to accommodate larger craft. This is because the beam of these larger vessels is such that only 1 can fit in the space between two mooring pontoons, this effectively means that one of the larger vessels occupies the berthing space of two standard size vessels. Relocating four of the larger vessels onto the proposed Commercial Berth in the East Gully would free up eight berths on the existing infrastructure; these will be required to meet demand for additional vessels for both London Array and Vattenfall for planned/reactive works. We currently find it hard to accommodate all vessels of this type that wish to use Ramsgate, this is particularly so in rough weather.

- 3.3 The construction of the extension of Thanet Offshore Windfarm is (subject to approval) anticipated to take place between 2021 and 2025, this will likely require 6 additional vessels during the works and an additional 1 or 2 full time crew transfer vessel/s following completion.
- 3.4 The commercial berth project proposes to provide a new heavy-duty floating berth with 90-100m of linear berth capacity for large (20-25m long) wind farm support vessels. The berth will provide:
- safe and convenient user access from the East Pier
  - alongside working space adjacent to the berths to allow transfer of materials, plant and equipment
  - level access from berth to vessel at all states of the tide, (note this is a key point for customers and represents a significant risk reduction compared with ladder only access which is unsuitable for permanent use by wind farm vessels).
  - reduced maintenance burden on existing berths which have suffered damage such as sheared mooring cleats (which damages the breakwater's concrete surface) and broken fendering; both issues being a result of the larger vessel size and greater mooring loads
- 3.5 There are two main locations within the harbour currently available for commercial vessels (mainly wind farm crew transfer and works craft). These locations are the Commercial Quay and the Eastern Gully (adjacent to the East Pier). These berths allow for ladder access only and vessels must be attended to ensure lines can be adjusted to accommodate the 5m tidal range. Some limited electrical power is available on the commercial quay but no power is available at the Eastern Gully. The project will significantly improve accessibility and H&S for users by allowing level access at all states of the tide and access from the East Pier via the existing Jubilee steps and a ramp. Users will be able to connect to shore power and will have space to load and transfer equipment and materials.
- 3.6 Income projections are provided below for the proposed commercial pontoon. The figures do not include any uplift for inflationary increases in future years. The proposed pontoon can accommodate up to four of the larger (20-25m long) wind farm vessels. By moving these from the existing berthing facility on the southern breakwater it will therefore be possible to free up a maximum of eight berths for slightly smaller (17-20m long) vessels. The projections are based upon current vessel numbers and the likelihood of additional demand for berthing space due to the proposed Thanet Offshore Windfarm extension.

**Anticipated income - conservative projection (5 years)**

	No. of vessels	Length (m)	Charge per metre (19/20) (£)	Port Control & Nav Aids (19/20) (£)	Total
2020/21	3	18	401.98	8094.88	£45,991.56
2021/22	4	18	401.98	8094.88	£61,322.08
2022/23	5	18	401.98	8094.88	£76,652.60
2023/24	5	18	401.98	8094.88	£76,652.60
2024/25	5	18	401.98	8094.88	£76,652.60
				<b>TOTAL 5 years</b>	<b>£337,271.44</b>

**Anticipated income - maximum projection (5 years)**

	No. of vessels	Length (m)	Charge per metre (19/20) (£)	Port Control & Nav Aids (19/20) (£)	Total
2020/21	5	20	401.98	8094.88	£80,672.40
2021/22	8	20	401.98	8094.88	£129,075.84
2022/23	8	20	401.98	8094.88	£129,075.84
2023/24	8	20	401.98	8094.88	£129,075.84
2024/25	8	20	401.98	8094.88	£129,075.84
				<b>TOTAL 5 years</b>	<b>£596,975.76</b>

- 3.7 The estimated cost of delivering the two projects described in Option 1 below (i.e. the replacement of Berth 4/5 at the Port of Ramsgate with a floating pontoon and the provision of a commercial berth in Ramsgate Harbour) is anticipated to be £1.477m including contingencies.
- 3.8 A project titled Ramsgate Harbour Commercial Berth has recently been added to the 2019/20 capital programme (budget value £590k) with funds realigned from the existing Berth 4/5 Replacement Capital project which now has a budget value of £887k.
- 3.9 It is proposed to deliver both of the above projects via a single directly awarded works contract to the contractor BAM Nuttall Ltd, the current owner of the two large pontoons described further in this report. Specialist legal advice has been sought prior to selecting this procurement route. This route will require the suspension of Contract Standing Orders relating to financial thresholds and procedures.
- 3.10 The estimated cost of providing and installing two new rather than pre-used pontoons is £3.7m. This figure which is significantly in excess of the available budget has been derived from actual fabrication costs so is considered to be accurate. Therefore in order to progress the proposal to deliver both projects, existing (pre-used) berths must be used.
- 3.11 Some dredging will be required to accommodate the proposed pontoons in both locations. This dredging is of relatively low volume and can be undertaken alongside

annual maintenance dredging requirements using existing revenue dredging budgets. Undertaking this work at the same time as annual maintenance dredging will save on mobilisation costs i.e. the cost of bringing the dredging to Ramsgate.

#### **4.0 Procurement Route**

- 4.1 If Option 1 in section 6 below is approved, it will be delivered via a direct award to BAM Nuttall Ltd. This will mean that only BAM will receive tender documentation for pricing.
- 4.2 The proposal to take a direct award route follows technical feasibility work on the method of construction for the replacement of berth 4/5. The estimated cost of the alternative option (a fixed quay to replace berth 4/5) is up to £1.1m in excess of the estimated value of the project to deliver the replacement berth 4/5 and the Commercial berth in Ramsgate Harbour using the available floating pontoons.
- 4.3 A survey and technical review of the pontoons indicates that they will achieve the design life of 30 years with routine maintenance. This clearly demonstrates value for money when compared with the estimated price of a brand new installation.
- 4.4 The proposed direct award route will require the contractor to download a tender pack from the Kent Business Portal and complete a tender response document in the same way as for a compliant open tender route. The tender will be required to be received by a deadline date at the end of a tender period and will be opened at a tender opening meeting in the presence of at least 1 elected member.
- 4.5 The single tender received from the contractor will be the subject of detailed checks on the company's economic and financial standing. A further pass/fail assessment will be required using the Council's standard due diligence tender questionnaire. A quality assessment will be made based upon technical questions with a minimum score threshold. The price element of the tender will be the subject of a value for money exercise. Post tender negotiation may be proposed in the interests of securing a project package which achieves value for money.
- 4.6 If Options 3 or 4 are selected then the direct award route will not apply. Instead competitive tenders will be invited. A full procurement exercise is the optimum way of mitigating any residual risk of legal challenge indicated in the specialist legal advice however there are other mitigation methods the Council can use short of a full procurement exercise. Options 2, 3 and 4 are unlikely to deliver a project within the current allocated budget of £1.477m. For Option 2 this is due to the construction cost estimate being up to £1.1m higher than for Option 1. For Options 3 and 4 the reason for the anticipated higher project cost is because the tender document will need to be structured such that the majority of the design responsibility rests with the contractor. This is necessary as the design of the tender proposals will be unknown due to the open nature of the procurement exercise. The design solution is known for Option 1 and the design responsibility can therefore be better shared between TDC as client and the Contractor. In this instance TDC's design responsibility is largely delegated to a marine engineering consultant employed by TDC as client.

## **5.0 Project Programme**

5.1 A programme is provided at Appendix A for the implementation of the project. This programme is based upon the recommended option (Option 1) being approved by Cabinet on 14th November 2019. A programme has not been developed for options 2, 3 or 4 as the contract duration will need to be informed following the review of budget allocation.

## **6.0 Options**

### **6.1 OPTION 1**

After taking into account this report, the specialist Legal Advice, the risks and the mitigation measures, approve the classification of this contract as a works contract, accepting that there are sufficient arguments to support the assessment.

Approve the expenditure of the budget allocations in the capital programme for the following 2 projects which would be delivered via a single directly procured contract between TDC and BAM Nuttall Ltd:

- Port of Ramsgate Berth 4/5 Replacement - £887k
- Ramsgate Harbour Commercial Berth - £590k

### **6.2 OPTION 2**

Do not approve Option 1 and instead pursue the alternative (a fixed quay design). Note: This would delay implementation of this project and would require additional budget allocation of up to £1.1m for the replacement of berth 4/5. This would also mean that the Commercial Berth project in the harbour could not be delivered as described which would require other options to be pursued to address the shortage of berthing capacity. In summary this would delay implementation of both projects and would have a higher project cost.

### **6.3 OPTION 3**

Approve the expenditure of the budget allocations in the capital programme for the Berth 4/5 and Ramsgate Harbour Commercial Pontoon projects and deliver these projects via an open tender.

Note: It is likely that this option will have a higher project cost than the direct award route. There is also a significant chance that BAM Nuttall would not submit a bid. If this was not through competitive dialogue but restricted process then a significant increase in project cost is likely to materialise. This is irrespective of whether any other party could provide a bid compliant with the specification which is also a significant risk.

### **6.4 OPTION 4**

Approve the expenditure of the budget allocation for Berth 4/5 only and seek tenders via an open route. Note this option would leave the current issue of wind farm berthing space unresolved and would not generate the income associated with the provision of additional wind farm berthing. Again with this option it is possible that

BAM Nuttall will not engage as they have made it clear that they wish to sell both pontoons together.

Note: It is likely that this option will have a higher project cost than the direct award approach as it may be that the only alternative is via a contractor offering a brand new pontoon. This would therefore also be in excess of the total budget available of £887k and the original budget value of 1.477m. If this option is selected it is therefore likely to be necessary to identify further project funding. This can only be informed following receipt and evaluation of tenders received.

- 6.5 No 'do nothing' option has been proposed in this report as this would leave the Council in a contract breach situation with the lessee due to the likely need to decommission the existing aggregate berth in the near future. Under this option the Council's ability not to provide suitable berthing provision for Brett's vessels in accordance with the Facilities Agreement would have catastrophic financial consequences.

Contact Officer:	Mike Humber - Head of Maritime and Technical Services
Reporting to:	Gavin Waite - Director of Operational and Commercial Services

### Annex List

Annex A	Project Programme
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### Background Papers

Title	Details of where to access copy
none	n/a

### Corporate Consultation

Finance	Tim Willis, Deputy Chief Executive and S151 Officer
Legal	Estelle Culligan, Head of Legal and Democratic Services