



**FOR
THANET DISTRICT COUNCIL**

**POST IMPLEMENTATION REVIEW
BERTH 4-5 PROJECT
DRAFT REPORT**

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1. **EXECUTIVE SUMMARY & CONCLUSION & ASSURANCE**

1.1 The scope of this report was derived from recommendation 7 made by the Independent Monitoring Officer (see 4.16.1) to *'Undertake an independent review of the Berth 4/5 project with a view to identifying the causes for delay and cost overruns which have beset the project including the project governance. The results to assist in identifying lessons for the future management of large projects'*. The report is a Post Implementation Review of a Project. It does not seek to 'investigate', apportion 'blame' or 'exonerate'. It is a backwood look to identify learning and opportunities for improvement in respect of future Project Management.

1.2 The findings from the Berth 4-5 review give rise to a No Assurance opinion because the project is yet to be completed and has incurred major overspend.

1.3 In conclusion, over the period 2015 to 2019 the Council realised it could not afford to build a fixed berth and considered suitable second hand pontoons, which proved to be very rare, with only three opportunities arising over four years. When the unique, and even rarer, offer of two suitable second hand pontoons became available, the Council had an approved capital project for replacing Berth 4-5, but not for the second pontoon. Efforts to seize this opportunity and also utilise the second pontoon elsewhere, almost derailed the original project, as the impression of the two projects being merged caused confusion. Additionally, the change in advice regarding the requirement for an Environmental Impact Assessment caused 20 month's delay. The final outcome being that the replacement of Berth 4-5 has yet to be completed and is over budget. There are nine learning areas identified that should be considered to deliver successful projects in future. These are: -

- Programming should start earlier, and resources should be sufficient to create capacity to think adequately ahead and deliver projects; particularly for the replacement of Council assets before their end of life, together with a realistic estimate of costs to replace assets.
- Use the powers contained in the Constitution to enable improved Decision Making - seizing opportunities is not unlawful and may be undertaken with good governance.
- Community Engagement should be more inclusive, and the investment may prevent the escalation of views on social media.
- Communication strategy throughout the project should report key milestones being achieved.
- Greater inclusion of the specialist input required on project teams throughout the life of the project.
- Identify sooner when external resources or expertise will be required, and acknowledge the delay or cost impact this could have on a project.
- Better understanding of how long projects realistically take to complete, and build in contingency as unforeseen events will occur.
- Better feasibility of project costs, to include the modelling of the "worst case scenario" from the risk assessment, to enable contingency or 'deal break' cost points to be built into the project milestones.
- Responsibility for Project Management should be allocated, the Council should agree a Project Management Framework, provide guidance on the intranet and support relevant staff with training.

Required changes to the corporate operating environment which sets the culture of the organisation have been addressed elsewhere.

1.4 Nine recommendations have been made within this report of which all have been classified as high priority, please see the action plan at page 18-19.

2. **SCOPE OF THE REVIEW**

2.1 **REVIEW OBJECTIVE**

The requirement to undertake the review arises from the need to satisfy the recommendation received from the Independent Monitoring Officer (IMO) (see 4.16.1), to;

Undertake an independent review of the Berth 4/5 project from its inception to the present day with a view to identifying the causes for delay and cost overruns which have beset the project including the project governance. The results to assist in identifying lessons for the future management of large projects.

The key objectives of this review are to:

- Provide the section 151 Officer and Thanet District Council with a level of assurance pertaining to the governance and the project management associated with this scheme, and
- Provide learning and/or improvement actions for the future management of large projects.

2.2 **SCOPE**

The individual aspects that should be considered are detailed as bullet headings in the findings section that follows.

3. **CONTEXT**

3.1 First Principle: The Council has a Constitution setting out the rules and authority for the Council, its established committees and how authority is delegated to committees of the Council or its officers. These rules and procedures include the Contract Standing Orders and Financial Procedure Rules for the Council, from which the Procurement Guide and Capital Bid process are also derived. The process for approving capital projects commences annually around November where bids are put forward for growth, any schemes likely to move forward are worked up into a Project Initiation Document (PID) and then having been approved by the Corporate Management Team (CMT), will be submitted to Cabinet and then on to Council for approval as part of the budget ahead of the 1st April.

3.2 Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the Council, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs. The Government places strict controls on the financing capacity of a local authority. This means that capital expenditure should form part of an investment strategy and should be carefully prioritised in order to maximise the benefit of scarce resources. Capital schemes that have not been approved through the agreed process will not be supported, as this is a democratic process, usually committing long term or high values of expenditure, good governance over the stewardship of public money is therefore essential. Simply having an approved Capital Scheme does not permit expenditure to proceed, further authority to commence, or indeed adjust capital schemes 'in year', is also required, and is quite usual.

- 3.3 Second Principle: The management of risk is not only about taking mitigating action to avoid, or reduce the likelihood of failure to meet Council objectives, it is also about taking calculated risks in seizing opportunities. When councils have a high risk appetite, risk taking forms part of the culture, where officers and members are encouraged to do so. However, strong governance becomes ever more important in such cases, where taking a calculated risk to seize an opportunity is an option. Nationally some very high profile council failures remind us that some projects collapsed with a staggeringly high cost to their districts, all reportedly due to failures in governance and inappropriate risk taking (for example the corporate director of resources at Thurrock council, arranged a series of failed business deals that has left the local authority with a funding gap of £470m).
- 3.4 A post implementation review or project evaluation, such as this, is most successful when the project is well defined with key measurable milestones. Its purpose is to evaluate whether project objectives were met, to determine how effectively the project was run, to learn lessons for the future, and to ensure that the Council gets the greatest possible benefit from the project in terms of delivering the milestones on time and within budget.
- 3.5 Numerous files were examined to objectively determine the effectiveness of the project management processes and controls employed for the replacement of Berth 4-5 project which included an examination of: -
- Engineer's reports, internal project documentation and committee reports;
 - Agendas, minutes, and outcomes from meetings held;
 - Project risk management documentation;
 - Budget management information;
 - Documentation retained for each project stage;
 - Interviews were held with current key officers and members; and
- 3.6 A project Timeline is provided as Appendix 1.

4. **FINDINGS**

- 4.1 **Business Case Formation** - How the business case for the project was formed and whether it was sufficiently detailed given the size and complexity of the project.
- 4.1.1 There are two legal agreements in place: the Lease of Land and the Facilities Agreement under which the Council is required to provide a serviceable berth. Both agreements are due to expire in April 2029 but the lessee has options to extend up to April 2054; there are no break clauses for the Council, the lessee has the more favourable terms. The agreements were entered into during times of commercial activity at the Port, where all the associated dredging was already undertaken, and this enterprise was additional activity. The closure of the commercial ferry operation was not foreseen then.
- 4.1.2 The former berth was installed in 1998 and extended later in 2006. The Terms & Conditions of the long term lease places responsibility upon the Council to provide a working berth. A condition survey carried out on the existing platform in November 2019 confirmed that the berth had come to the end of its useful life.
- 4.1.3 A Capital Project Bid to replace Berth 4-5 was first submitted in 2015-16. The Council's usual process for identifying growth and capital projects was followed (see extract from Council rules Appendix 4). The proposal was detailed in the "Capital Project Bid - Port of Ramsgate Berth 4-5 Replacement" which was drafted in May 2015 and updated in September 2015, to include that consultants had been engaged to consider three options (see 4.2.1). The sum of £1m was approved for this Capital project.

The 2015 project bid identified the following key milestones and noted “*The existing berth is close to the end of its useful life and the risk of failures leading to operational downtime is relatively high. This has the potential to impact on the business of Port customers.*

The timescales indicated are realistic but allow little time for unforeseen issues and project slip. The condition of the existing berth is such that this project (once approved) should be undertaken as a priority.

The scheme will require a marine licence and environmental study work, the risk of failure of the project on the basis of a licence being withheld is thought to be unlikely but the completion of option analysis and detailed design work will allow this risk to be better evaluated”.

Milestone	Date Due for Completion
Maritime design consultant commissioned	September 2015
Site investigation, option assessment, preliminary consultation	November 2015
Environmental assessment	December 2015
Planning consent	January 2016
Detailed design	January 2016
MMO license granted	April 2016
Assembly of tender documentation	April 2016
Contractor procurement completed	June 2016
Construction works completed	October 2016

4.1.4 The dates shown in the timeline above acknowledge 12 months for completion for the whole project. This underestimated the complexity of the project. Indeed, the Project Timeline produced in 2019 also allowed 12 months from start to finish, see Appendix 3. The project started in July 2019 and is yet to be completed, **see Recommendation 1**.

4.1.5 There is little information contained in the bid substantiating how the costs were estimated the financial table simply shows estimates as follows;

New construction works	£800,000
Adaptation works	£100,000
Fees – Capital salaries	£15,000
Fees – External (Consultants etc.)	£45,000

4.1.6 The first activity of the Project was to appoint maritime consultants to advise on the design options, and cost them, see 4.2.1. The value of £1m secured in the September 2015 bid was insufficient to deliver a replacement Berth 4-5 and no contingency had been built in regarding cost overruns, **see Recommendation 2**.

4.1.7 A new or updated Business Case was not submitted. Additional Capital was allocated to the project and in April 2019 the sum available was £1,501,174.33. The Capital Project Bid to replace Berth 4-5 was not sufficiently detailed, all design options to this point had identified costs of between £4m and £37m (see 4.2.2 /4.2.3). The lesson learned is for projects to have realistic financial and timeline detail with robust contingency built in.

4.2 Option Appraisal - including the consideration of alternative options to the chosen solution.

4.2.1 The original berth experienced issues with the wave climate and being two pontoons hinged together had proved to be a poor design in that environment. Options to replace

them were considered and Atkins Ltd were commissioned, following a tendering exercise in 2016, to undertake an appraisal on three agreed options and produce outline designs including finance estimates in accordance with a detailed brief. The options to be considered by Atkins Ltd were as follows:

- Option A - Quay to accommodate self discharging aggregate vessels up to 110m in length with a maximum draft of 6.5m with the sole purpose of aggregate handling.
- Option B - Berth to accommodate vessels up to 110m in length with a maximum draft of 6.5m with the ability to handle aggregate and alongside loading/unloading of project cargo via a 500 tonne mobile crane.
- Option C - Berth to accommodate vessels up to 180m in length with a maximum draft of 6.5m with the ability to handle aggregate and alongside loading/unloading of project cargo via a 1000 tonne mobile crane.

4.2.2 The September 2015 Capital Project Bid was approved for £1m based on Option B. However, when Atkins Ltd submitted their report to the Council in April 2016 it contained the three options with three possible variations, they ranged from an anticipated cost of £5.4m through to £37.895m. These designs were not to be progressed on the basis of cost.

4.2.3 A year passed. In order to consider further options, in April 2017 further designs were submitted for consideration by two different consultants. Consultant One provided two options ranging from £6-8M, Consultant two identified three options ranging from £4 - 6.5m. Both sets of proposals exceeded the £1.5m allocated to the project, and were not progressed. In 2017 the Council was therefore aware that the lowest design estimate to replace the berth was £4m.

4.2.4 Options for the Council to potentially terminate the agreements were considered not cost effective at the beginning of the process. The lessee was asked whether they would continue to require the berth in the future (if they had alternative options) and the requirement for the Council to provide the Berth was confirmed. The option to terminate the agreement could have been reconsidered at this point though in the knowledge that to build a new berth was likely to be between £4m and £37m, and the Lessee has a break clause in the agreement in 2029.

4.2.5 A year later, a good quality second hand floating option was also being considered, barge "Pontoon E 3801" was inspected by consultants on 27 April 2018 whilst lying alongside at Ravestein ShipYard, Deest, Netherlands, their inspection report revealed that it had come to the end of its useful life, so was not further pursued. A second 'Barge 1254', identified in January 2018 also proved not to be suitable.

4.2.6 Another year on, in March 2019 the Council was contacted by BAM regarding the decommissioning of two pontoons which would be available from September 2019.

4.2.7 Robert West Consulting Ltd were appointed in May 2019 to further consider options. A lesson to be learned is that with each year that passed the costs to deliver the project were only likely to increase, and the existing berth more likely to fail. The consultant's brief was amended part way through their work to include the floating berth option, and they inspected the BAM pontoons. Their proposal was dated July 2019.

4.2.8 The results of the identification of possible options was presented in July 2019 to a cross party working group made up of Members, called the Port Working Party. The resulting recommendations were first presented to Cabinet 14 November 2019, and then agreed

by Cabinet on 16 December 19. This decision enabled the replacement of Berth 4-5 to start.

4.2.9 The files show the floating berth (pontoon) option was first formally considered by the Council in July 2019. No decision had been made prior to 25 July 2019 when the Port Working Party made the recommendation to consider the floating option.

4.2.10 Further option appraisal was considered in the Cabinet report of 16 December 2019 where members took the decision to move forward with Option 4. The four Options from the Cabinet report are shown here- (see also 4.7.6).

***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*

***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.*

***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.*

***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.*

***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.*

4.2.11 With the benefit of hindsight, not all options were fully explored. The Council could have been authorised to negotiate further options (see Appendix 1 at entry against 12 August 2019). For example, as the offer was within the allocated budget, to buy both pontoons, complete the replacement of Berth 4-5 and store the other. The Council could then have taken time to assess whether to sell on or scrap the second pontoon, or in accordance

with the requirements of the Constitution, consider a further capital scheme to utilise the second pontoon elsewhere. **See Recommendation 3.**

- 4.2.12 The lesson learned is to have undertaken this detailed assessment of costs earlier, better programming should have ensured that this exercise was undertaken before the anticipated end of life of the existing structure, so that realistic costs for the replacement could be identified.
- 4.3 Corporate Project Evaluation Process** - how the project was evaluated, from a financial & non-financial perspective, and what key criteria were met.
- 4.3.1 The Capital Project Bid submitted in September 2015 followed the prescribed process, was approved and the project became part of the Capital Programme with a provision of £1m. External consultants were appointed to assist with identifying possible options in April 2016. The fixed berth option was priced beyond affordability and the floating berth option (later chosen) was identified as providing operational advantages, as using the berth does not rely on the tide.
- 4.3.2 The evaluation process follows a standard form which requires the business case for the project and financial information to enable the bid to be considered and authorised.
- 4.3.3 The submission does indicate that the existing berth was serviceable (then in 2015) “ *but is subject to frequent reliability problems and could suffer major damage making it uneconomical to repair in a significant storm event. This would mean that TDC would be unable to honour the lease agreement with Brett Aggregates. This could risk action against TDC for being in breach of lease conditions or at the very least, loss of revenue and reputational damage*”. It summarises “*If TDC breaches any obligations under the Facilities Agreement then Brett will be entitled to terminate it and the Lease agreement. Any failure of the Berth therefore would result in either considerable expense by TDC in relocating Brett to a suitable alternative or loss of income if Brett terminates. The total minimum income we currently receive from Brett under the existing agreements is £96k per annum. Furthermore if this project is not taken forward, Brett will not pursue the new agreement for additional land and will not increase their aggregate throughput at Ramsgate. Together these proposals have potential to increase annual income to approx. £300k PA*”.
- 4.3.4 Reviewing the 2015 Capital Project Bid now with the benefit of hindsight, and with the knowledge that the reasons for undertaking the project at all have been heavily challenged, the business case should have had greater (broader) input and understanding at the outset. The Council's legal liabilities under the two agreements were known facts, however, the 2015 supporting bid indicates that the site is being somewhat improved to enable potential expanded commercial activity - which itself is dependent on a few variables. This information is at the centre of why opposition views are so strong. See 4.14 Communication Strategy.
- 4.3.5 This case is complex because capital bids are usually for Council schemes regarding their direct use of their assets and resources. The bid to improve an asset for a tenant which in turn could generate more income over the life of the agreement needed to be better understood by members and residents alike, with the opportunity to scrutinise the decisions being made.
- 4.3.6 The lack of clarity in the community has led to mistrust regarding the Council's reasons for undertaking the project. Some suggest that the criteria for undertaking the project changed over time, and have challenged the openness and transparency of the matter. **See Recommendation 3.**
- 4.3.7 The timeline (Appendix 1) records the approach received from BAM on 01 August 2019 to

supply and install both pontoons for a lump sum cost of £1,250,000. On 12 August BAM made a reduced offer of £1,050,000 for both - other project costs were estimated to take the total to £1.415m leaving a contingency of £85k in the total allocated budget of £1.5m. Even if the Council had scrapped or sold the second pontoon, this was the first time in over four years of scoping the work, where Berth 4-5 could potentially be replaced within the budget available. Not only was the offer timely, it was unique, in that these second hand pontoons were confirmed by the consultants as being sound and fit for purpose. Had there been a different vision, it is possible the project could have progressed in a different direction at this point. The replacement Berth 4-5 may have been delivered on budget - especially if the second pontoon had generated income in being either sold on or scrapped. The issue at the heart of this was the second pontoon. There had not been any formal consideration of any project for the second pontoon by the Council at this stage. The client had identified an opportunity for making use of the second pontoon, and was working on the draft Capital Project Bid in August 2019. There is no trail of community engagement or member briefing regarding possibilities for the second pontoon at this time. **See Recommendation 4.** and 4.7.8.

4.3.8 The advice provided by Finance to the client was to submit a Project Capital Bid for the new scheme and if approved, then to bring the project forward in the Capital Programme. The Project Initiation Document (PID) for the Royal Harbour was submitted dated 11 October 2019 with a project timeline from April - November 2020. The bid described as *“Provision of new commercial berth facility in Ramsgate Harbour”* was for £650,000 *“To provide a new berth in Ramsgate Harbour to facilitate additional commercial business such as:*

- *berthing for wind farm support vessels (temporary or permanent)*
- *works vessels including tugs and multcats*
- *works barges*

The proposed berth will offer modern and improved facilities which remove the H&S risk associated with ladder-only access to tidal berths”.

4.3.9 There are several elements required for a Capital project to proceed. There must be an approved budget allocation in the Capital Programme, there must be the political will to deliver the project and there must be authority to do so. Just having agreed funding in the capital programme does not permit it to progress. The next step was to allocate the money. A Decision Notice was signed by Cllr Bayford 20 September 2019 as portfolio holder to approve the addition to the 2019-20 capital programme of a capital project to deliver the “Commercial Berth in the Eastern Gully of the Royal Harbour”, to be funded from the realignment of the existing 2019-20 budget for Berth 4-5. This published decision would (if implemented) have split the budget as follows: Berth 4-5 - £887k, Commercial Berth - Eastern Gully, Ramsgate Harbour project - £590k. The chair of the Overview and & Scrutiny Committee (O&S) gave notice by email 23 September 2019 that the record of decision made on 20 September 2019 would be called into O&S. This process resulted in a ten day standstill being applied. Following a change in Council administration 10 October 2019 the individual Cabinet member decision of 20 September 2019 was not implemented; instead a Cabinet report was requested with options to take the project forward.

4.3.10 The PID for the Royal Harbour was approved by CMT and was added to Forward Plan 8 November 2019 for Cabinet 14 November 2019.

4.3.11 The evaluation of the four options resulting in a decision to move forward was taken by Cabinet on 16 December 2019. The option chosen was to *‘Approve the expenditure of the budget allocation for Berth 4/5 only and seek tenders via an open route’*. This would therefore proceed with only the replacement of Berth 4-5, not the new commercial berth facility in Ramsgate Harbour. There is no current approved capital bid for this work,

however, new plans for Ramsgate Harbour form part of new investment to the area as part of the Levelling Up funding.

4.4 Procurement Process Followed - The appropriateness of the process that was followed. The consideration of the advice that was received from procurement professionals.

4.4.1 The timeline at Appendix 1 records the stages for the procurement process. The formal tender route commenced in January 2020 and completed in March 2020, where two tenders were received. However, before that process started in earnest there were differing views on the correct procurement route.

4.4.2 The risk being that if the activity under the contract was deemed to be “works” or “services” there are specific parts of the law that need to be followed. This issue is a different matter entirely to the risk of being challenged by another potential supplier who is not given the opportunity to bid, for example if a waiver is granted and a direct award made to any supplier. This risk needed careful consideration, as in fact the question whether this proposal was a works or services contract is not straightforward. Consequently an external legal view on the matter was obtained. Comments from the Cabinet Report 14 November 2019 read “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:

- 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.*
- 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.*
- 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.*
- 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.*
- 5 *The Advice makes clear that this is ultimately a question of judgement for the Council, after considering the risks and mitigation measures.”*

4.4.3 Thus, in order to avoid the risk of possibly breaching the law, and (secondly) the risk of challenge, the open tender route was followed (see 4.2.10).

4.4.4 The offer from BAM to the Council was unique meaning that a procurement route risk assessment could have been undertaken. There were concerns over ‘predetermination’ once the first offer had been received from BAM, however, with good governance the Council is permitted to negotiate with suppliers in certain circumstances. Further advice regarding the direct award route could have been obtained sooner, so that it could have been further considered as taking a ‘calculated risk of being challenged for predetermination’. This had the potential to save the Council money and time in the long run. In the absence of an agreed Capital Project for the second pontoon, the Council

could have sold it on or scrapped it - either would have generated income.

4.5 Initial Supplier Engagement - At what point were BAM engaged with as a potential supplier and whether any commitments (contractual or otherwise) were entered into prior to the necessary approvals being obtained.

4.5.1 In the knowledge that the Council were in the market for a good quality second hand pontoon, BAM contacted the Council in March 2019 drawing attention to two that would be available from September 2019. The Council commissioned consultants to consider the floating option as part of their brief, their report was received by the Council in July 2019.

4.5.2 The Council wrote to BAM on 2 August 2019 making no commitment (see Appendix 2). The pontoons arrived in Ramsgate ahead of any decision made by the Council to purchase one. BAM had to move the pontoons from their location by September, and safe harbour was sought in Ramsgate ahead of determining where BAM would move them on to. The Council generated income from the berthing of the pontoon(s) for the period September 2019 to June 2020.

4.5.3 The open tender route chosen by Cabinet in its meeting 16 December 2019 resulted in two tenders being received, one being the winning bid from BAM. After the tender opening, the full and detailed evaluation and clarification process followed, this ultimately resulted in a contract award to BAM sealed on 30 September 2020.

4.6 Commissioning and Consideration of Legal Advice - how the legal advice that was obtained was considered and applied.

4.6.1 Two key sets of external advice applied to the project. A legal view sought on the procurement route to be taken; and a legal view on the detailed specifics of the first view determined by the MMO regarding the planning requirements.

Procurement Advice

4.6.2 The Council had a commitment to replace Berth 4-5. It was keenly aware, having commissioned three different consultants to design and scope the project, that it was not affordable, and it was also looking at second hand floating options. Whilst two were examined by marine consultants on behalf of the Council in 2018 the Council had not considered which procurement route would have been advised had either been suitable. The question was not raised then. As set out in 4.4.2 when the advice was sought in late 2019, there was little clarity on the risk being taken. However, this could have been thought through in 2018. A different approach would have been to request the advice ahead of time - this may have generated a culture where some level of risk taking for a direct award was acceptable (as the item being purchased is so rare). It is possible to challenge that had a direct award in fact been made in 2019 the Council may have achieved the project to budget.

4.6.3 The open tender route, later taken, was completely without risk and in accordance with the legal advice received. The impact of this though, took the offer made by BAM to supply and install both pontoons for £1,050,000, to the tender value to supply and install one for £1,299,986.95. An increase in costs of £249,986.95, and a reduction of the works to be completed (i.e. install one pontoon only).

Planning Advice

4.6.4 See also 4.11. The Project Manager knew that an Environmental Impact Assessment

(EIA) was a likely requirement at the outset. Planning Advice and the route to be taken was therefore sought. The internal advice was to submit an application and let the Marine Management Organisation (MMO) determine what would be required, as they are indeed the experts of the marine environment.

4.6.5 The legal view regarding the licences required to undertake the work changed as the project developed. The Project Manager could not have tried to obtain this earlier (i.e. in 2015) as the design solution for the replacement of Berth 4-5 was not known then. The opinion on the correct planning route could only be requested once the project was live and the option for the berth had been chosen. The Project Manager had been provided with the outcome of the Screening for the Planning Application result on 17 August 2020 with the MMO then confirming that an (EIA) was not required.

4.6.6 The professional planners were concerned by the reasoning provided with the MMO outcome, and sought an external legal view on 5 October 2020. The Local Planning Authority knew the community held strong views regarding the development and predicted that there was likely to be a challenge creating the risk of further delay to the project (Judicial Review). The external advice received 13 October 2020 challenged the outcome of the screening by the MMO and this process ultimately identified that an EIA would now be required before Prior Approval application could be determined. The first planning application PA/TH/20/1092 was withdrawn. This impacted the project and caused a delay from October 2020 to May 2022 when the Planning Permission to proceed on application PA/TH/22/0132 was approved 19.05.22 (see Timeline for full details of the delay).

4.7 Decision Making, Governance and Approval Process - the adequacy of the governance arrangements, including whether the dispute between the members of CMT affected the process. Whether sufficient weight was given to the advice of all of the statutory officers.

4.7.1 O&S Cttee 18 July 2019 received a presentation on “The development work going on and the future of the Ramsgate Port”. Members re-established the Port Working Party which met 25 July 2019 to consider the two options of fixed quay or floating pontoon for replacing Berth 4-5. The outcome of the meeting was that *“the pontoon option should be taken forward and developed with costs sought as this appeared to represent best value”*. This was the first time the floating berth option had been considered by members, it shows that no decisions had been made by the Council yet, that options were being considered.

4.7.2 Following the decision of the Port Working Party, the consultants appointed in July 2019 were asked to look at the floating berth option. The Council wrote to BAM 02 August 2019 to confirm that there was no commitment at that time. The letter was written with input from colleagues in Legal, please see Appendix 2.

4.7.3 In accordance with the Constitution a process utilising a statutory notice to enable a decision for the *“Purchase of the pontoon for Ramsgate Port”* was placed before the leader on 16 August 2019, this required consultation with the Chairman which would have been effective on 23 August 2019. This process of decision making was not completed, at the time the Council was aware of a likely change in administration. Using the powers of the Constitution in this way, as long as there is an allocated budget, authority to spend and political agreement, is lawful and would enable a Council to seize an opportunity.

4.7.4 The next formal decision was a Decision Notice signed by the then Leader, Cllr Bayford on 20 September 2019. This was called in by O&S who held an extraordinary meeting on 1 October 2019 and a ten day standstill was requested during which arrangements were

made for the O&S Panel to view the legal documents relating to the procurement process of the two pontoons. <https://democracy.thanet.gov.uk/mgAi.aspx?ID=35446>

4.7.5 There was a change in leadership on 10 October 2019 a Cabinet report was requested with options to take the project forward.

4.7.6 The Cabinet report for 16 December 2019 contains lengthy Statutory Officer comments. https://democracy.thanet.gov.uk/documents/s66823/20191126%20Berth%204_5%20and%20Commercial%20Berth%20-%20Report%20to%20Cabinet.pdf Good governance was missing regarding the transparency and openness of issues for the project. At this time, all of the statutory officers were not working collectively. It is possible that an entirely different outcome may have been achieved. It is possible that (subject to the necessary consents being obtained), the Council could have seized a good opportunity - taking calculated risks following a robust process.

4.7.7 In the absence of an approved scheme for the Royal Harbour, Cabinet made an authorised decision from the options before them in choosing Option 4 to deliver the replacement Berth 4-5 only.

4.7.8 With hindsight, there could have been more options available for consideration.

4.8 Project Chronology - the review should consider the sequencing of events and whether this has contributed to any of the perceived project failures.

4.8.1 Appendix 1 shows a detailed timeline for the project. Each stream such as "Consents and Licencing", "Procurement" and "Contract Award" are shown chronologically.

4.8.2 The initial learning from the sequence is that the Council should have commenced the process to produce a detailed PID sooner in order to secure sufficient Capital to undertake the project. In the period 2016 to 2019 the Council obtained different design options from three different consultants (which were all not affordable see 4.2) extending the replacement of the berth another 3 years. The Timeline attached therefore commences in 2019. There are three issues with the sequence that led to extra delay and costs regarding Procurement (see 4.6.2), Permissions and Contract Award.

4.8.3 The Council could have sought specialist advice regarding procurement and planning sooner. This has to be balanced with acknowledging that it is a complex project and advice could only be sought once an actual proposal was sufficiently scoped, however, obtaining specialist advice at different intervals caused further delays which impacted the timeline.

4.8.4 The Council undertook the open tender exercise in January 2020 which concluded in March 2020 where two competitive tenders were received. These were evaluated and a winning bid was declared. The prices quoted in the winning tender were secure for a limited time, the timeline shows this being extended to June 2020.

4.8.5 The Council entered into the contract with the Contractor before all the necessary Licences and Permissions were received because there was a serious risk of the tender expiring and the Council losing the option to purchase the pontoon. The signed contract was sealed 30 September 2020. The Planning Application (later withdrawn) required specialist advice (obtained 13 October 2020) which led to the MMO changing their initial decision. The impact of having entered into the contract and then delaying the start is financially quantifiable, it has led to an uplift of costs payment of £311,990.99.

4.8.6 Works for the contract (sealed 30 September 2020) were not able to commence on site until late 2022. In addition to uplift charges on the originally tendered prices, further 'compensation events' apply which are not resolved at the time of writing this report.

4.8.7 The requirement for the EIA to be completed (17 months) detrimentally impacted the project in terms of both the additional cost and the time that it took to complete (see 4.11).

4.9 General Project Management - whether appropriate project management tools, techniques and controls were deployed.

4.9.1 Searches on the intranet for officer guidance on "Project Management Framework", "Project Risk Management" or just "Projects" or "Risk Management" all returned no hits. The Council does not currently have Project Management allocated to a responsibility or a framework in place (see Recommendation 5).

4.9.2 The Internal Controls expected for the project are partially evidenced by means of project milestones, project meeting agendas and minutes. Despite which the project encountered delay and overspend. (see later 4.12.3)

4.9.3 The project was assembled with the following key roles:
Project Sponsor - Corporate Director Communities
Project Manager - Levelling Up Project Director, supported by the appointment of Robert West Consulting Ltd.
Project Team - Port & Harbour Engineer.

The Project Team should have included all internal expertise required to deliver the project at the outset. Specialist staff covering every aspect (such as finance, legal, planning, democratic services, procurement, HR, ICT etc) should have provided continuity throughout the life of the project, with the team assembled being up to date on each stage of the project, agreeing actions to achieve milestones and reduce risk, and seeking approval from the Project Sponsor / Board to move forward to the next stage of the project.

4.9.4 The capacity of staff and the resources required to deliver projects should not be underestimated. Projects often create a huge workload on top of the day job which means there are many pressures, and the ability to focus on the project is limited.

4.10 Risk Management -whether appropriate RM tools have been applied.

4.10.1 As noted above, the Council does not have a Project Management Framework in place, nor does it have guidance on managing project risks. The project does have an undated Risk Log, which lists 21 perceived risks and shows only the original risk score, the mitigating action to be taken, and the residual risk score - even against risks that materialised.

4.10.2 Project risk management guidance needs to be agreed and implemented to help project managers identify and evaluate project risks to keep costs under control and minimise or help foresee and plan for likely time delays during each stage of a project. This process should consider 'deal break' risks, evaluate the worst case scenario to assess if there should be project termination milestones built in at the outset.

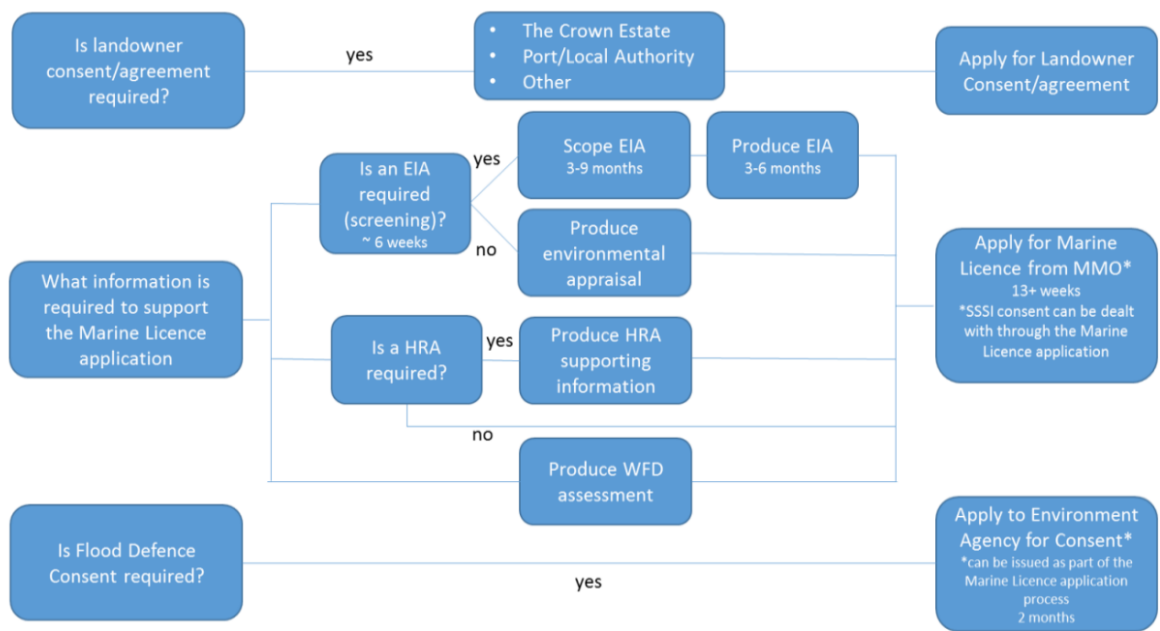
4.10.3 When risks materialise they should be escalated to the Project Sponsor for authority and agreement on how to proceed. Resulting actions should then be added to the Risk Log and scored, and reevaluated to ensure the mitigating action does indeed reduce the risk of delay and overspend. All actions should be allocated to an individual with a due date,

and should be regularly updated to be an effective Risk Management Tool. See Recommendation 5.

4.11 Granting of Necessary Permissions - much of the delay and overruns have been cited as being due to the requirement to obtain further permissions. The review should consider whether it would be reasonable for the officers to have anticipated these requirements from the project outset.

4.11.1 The Capital Project Bid from May 2015 (updated September 2015) identified in section 4.3 Environmental Impact “An environmental impact assessment (EIA) will be undertaken for the project. This will be necessary to inform an application for a Marine Management Organisation licence.

Works will be undertaken within the commercial port which adjoins SSSI, RAMSAR and MCZ designated areas. An Appropriate Assessment (Habitats Assessment) may need to be undertaken to assess potential impact on the designated sites resulting from the proposed project”. The consultants engaged in 2016 also advised further on this quoting that “The Marine Licensable aspects that are outside of the Harbour Authority powers will require a Marine Licence from the Marine Management Organisation (MMO). The environmental and consenting process for marine licensing and other relevant marine based permissions are set out in Figure 4-1(below) which outlines marine based permissions. Planning permission has been omitted from the diagram”.



4.11.2 When added together, the stages to achieve an EIA to support the MMO application is estimated by the consultant’s flowchart above, to be a minimum of 43 weeks (circa 10 months) or a maximum of 91 weeks (circa 22 months).

4.11.3 The Project Manager sought advice from Planning regarding a view in advance of submitting any application for the necessary route and considerations. Advice was given 14 August 2019 confirming

- that a legal opinion is sought to provide a definite view that TDC is the relevant Local Planning Authority.
- due to the complexity arising from the interaction between the General Permitted Development Order (GPDO) and the EIA regulations an application should be submitted to find out if full planning permission was needed, this would take 8 weeks to consider, and

- the (second) “pontoon potentially to be attached in the Harbour would need Listed building consent”.

4.11.4 Appendix 3 showing the Project Timeline (dated June 2019) allows 23 weeks to complete necessary permissions. This did not acknowledge a realistic time allowance for completing the consents.

4.11.5 As detailed in 4.6.2, earlier consultation (2017 or 2018) with Procurement on what route could be taken if a good enough quality second hand pontoon became available should have been obtained. Whether it would likely be deemed “works or services” under the law and (given how rare they are) to consider the risks and implications of making a direct award ahead of time.

4.12 Budget Control and Monitoring - the accuracy of forecasts and robustness of controls.

4.12.1 The available budget at April 2019 was £1,501,174.33, Capital spend to the end of December 22 was £1,730,092.15.

Budget	£
Opening budget	1,501,174.33
Budget allocation - capital salaries	46,335.72
Budget increase as per 29 July 2021 Cabinet	380,000.00
Total	1,927,510.05
Committed Capital Expenditure	£
BAM	1,256,624.33
Consultancy	315,439.90
Dredging	55,000.00
Licences & Legal	42,567.98
Other	14,124.22
Capital Salaries	46,335.72
Total	1,730,092.15
Uncommitted budget as at 31 Dec 2022	197,417.90

Committed Revenue Expenditure	
Berth Replacement Additional Costs	261,000.00
Licences /Legal	4,000.00
Berth Outage Costs	180,000.00
	445,000.00

The total cost of the scheme up to January 2023 is provided for as £2.322m. An

overspend on the original provision of £825,000. At the time of this report the project is not yet completed and it is possible that further spending may be incurred. The allocation of the (known) overspend and reasons for the additional cost is detailed in Appendix 5 as at 16 June 2022. A point worth making, is that whilst this project has indeed overspent against the original provision set out in the Capital Programme, when it is finally completed, it will have been delivered for less than the lowest estimate (£4.5m) made by any of the consultant's projections listed in paragraph 4.2.2.

4.12.2 One improvement that should be considered is the need for a finance and/or risk management professional to be included within the project team. This will help project managers identify and assess risk and help ensure financial risks and other considerations are fully understood and fully considered to deliver a project of this nature and complexity.

4.12.3 The cost overruns were incurred because;

- Decommissioning and removing the existing berth before all permissions were received and the construction phase of the replacement berth agreed, leading to a compensation event with the tenant (noting there was little choice given the failure of the structure in November 2020).
- Awarding the contract to BAM on (signed contract copy) 30 September 2020 without being able to proceed on site, leading to the contract being paused with penalties being applied and uplift clauses.
- Changes in advice regarding the necessary licences leading to engaging additional legal advice, consultants, and both the cost of carrying out a full EIA and the extended delay that this caused (impacting the uplift costs for the construction contract and extending the use of consultants further).
- To enable the contractor to comply with the MMO licence date, work was descoped with BAM. Retendering the descoped work has resulted in increased prices to complete the project (original tender March 2020 - revised quotes January 2023).

4.13 Member Engagement - The involvement of members in the decision making process and the allowance for appropriate opportunities for scrutiny.

4.13.1 All key decisions were made by members, the project was discussed at O&S on several occasions who utilised their call in powers and held an extraordinary meeting.

4.14 Communications Approach / Strategy - consideration of how residents and other stakeholders were informed or engaged with throughout the project.

4.14.1 It is necessary to highlight that, the way the Constitution allocates authority and the way the Council is set up to operate, means not all members are able to know everything about everything, and some matters are taken by Cabinet in private. Much of the detail for this project generated keen interest, frustrations and rumour grew which in turn generated numerous requests for detail and further information.

4.14.2 A briefing and coffee event arranged by officers for members on 16 July 2019 was poorly attended. Several press releases were issued providing an update on activity with the project. The correct balance regarding providing opportunities for openness and transparency and the need to engage with the community and elected members may often be difficult to achieve, but few attempts were made with this project, despite there being high levels of activity in the community and on social media.

4.14.3 The need for the works to be undertaken was known and planned for by the Council. Whilst officers do need the space to be able to get on with delivering objectives, the community engagement surrounding this project was largely missing. Even with there

being known strong views in the community about the agreements in place and the responsibilities of the Council, which residents have indicated they have been ignored. Residents and some members would wish to challenge that the Council did indeed need to replace Berth 4-5 either at all (that the Lessee could utilise alternative methods for moving aggregate) or that the existing Berth 4-5 was repairable. Attempts to seek information regarding this from the Council utilised the Freedom Of Information requests (FOI) process. The lack of transparency is a symptom of poor governance (see Recommendation 6).

4.15 Application of Commercial Sensitivity Restrictions - provision of a view on whether the application of these restrictions was appropriate and in what circumstances they may or may not be for future large projects.

4.15.1 There is a balance to be struck between openness and transparency with the democratic process and allowing officers to deliver approved projects, to act within their authority, sometimes protecting the need for confidentiality for commercially sensitive reasons. See also 4.14.1.

4.15.2 The use of the FOI process has not been covered by this review. All key decisions have been taken by Members in public session.

4.16 Corporate Operating Environment - all of the above should be considered in the context of the environment that TDC's CMT was operating in.

4.16.1 The [Independent Monitoring Officer's Report](#) makes conclusions regarding the Corporate Operating Environment, these need not be duplicated here. The IMO report identifies that whilst *"The analysis in the report has focussed primarily on the governance regarding some processes within TDC and has not reviewed the wider operational performance of the Council in delivering its services and activities. However, during the interviews one area of the operation was mentioned with such regularity that it warrants a mention in the lessons learned report. The resounding consensus was of concern regarding the quality of project management and the significant unforeseen expenditure"*.

4.16.2 The timeline for the Berth 4-5 project runs alongside the timeline for the staffing matters in 2019, which led to the governance concerns at the Council, resulting in the Statutory Recommendations report.

4.16.3 All of the Corporate Management team have since left the Council and were not interviewed as a part of this review.

4.17 Current position

The berth is not yet in service because there is some work that still needs to be completed. This includes:

- remedial work to the gangway where it meets the pontoon - this is about improving the design of the current connection and reducing future maintenance requirements (it will also include some welding work)
- electrical supply and service lighting installation
- installation of the aggregate conveyor.

Works to address the first two points are anticipated to take place in March. The timescale for the installation of the conveyor by Brett Aggregates has not yet been confirmed, but this is not reliant upon completion of the works mentioned in the first two points.

Brett Aggregates will continue to bring coarse aggregates to site via road until the berth is operational however the total additional cost of road haulage following the decommissioning of the former berth is still expected to be less than the £180k estimated in the July 2021 Cabinet report. Brett Aggregates continue to bring fine aggregates (sand) to site via sea.

The final cost to deliver Berth 4-5 will be available following conclusion of the project.

5. **DISTRIBUTION LIST**

Prepared by: - Christine Parker	Reviewed by: -	Date	To
Draft Report	Deputy Head of Audit Partnership (SAW)	23/01/23	Chief Executive
			s.151 Officer
			Project Manager
Final Report to Cabinet	Deputy Head of Audit Partnership (SAW)	xx/01/23	Chief Executive
			s.151 Officer
			Project Manager

List of Appendices

- Appendix 1 - Berth 4-5 Timeline
- Appendix 2 - Letter to BAM 02.08.2019
- Appendix 3 - Project Programme 10.06.2019
- Appendix 4 - Extract from Financial Procedure Rules - Capital
- Appendix 5 - Budget Summary and Additional Estimated Costs at 16.06.2022
- Appendix 6 - Statutory Notice 23.08.2019

RECOMMENDATIONS AND ACTION PLAN

Priority	Main Control Risk	Recommendation to Mitigate Risk	Proposed Action or Action Taken	Proposed Completion Date & Responsibility
High	The absence of a realistic and sufficient time allocation to a project may limit the likelihood of achieving the desired milestones and outcomes.	1. Time allocations for achieving project milestones must be well researched, be realistic and include a healthy contingency to cover unforeseen project slips that will inevitably materialise.		
High	The absence of a realistic and sufficient budget allocated to a project may limit the likelihood of achieving the desired milestones and outcomes.	2. Cost estimates included in Capital Project Bids must be well researched, be realistic and include 'deal break' points and a healthy contingency to cover unforeseen risks that will inevitably materialise. Consideration to introduce a requirement for a provisional valuation of schemes over £1m threshold, to be undertaken before they are included in the capital programme, and further consider adding inflationary uplift to capital programme slippage in future years.		
High	A risk averse culture and vision may lead to missed opportunities. To seize opportunity is not unlawful and may be undertaken with good governance.	3. The culture of the Council should encourage all options that benefit the Council to be worked through for consideration, including taking calculated risks with good governance to secure value for money, and utilise the powers contained in the Constitution to enable improved Decision Making.		
High	Decision making with a lack of openness and transparency may impact the culture of the	4. There must be better scrutiny of Capital projects where the Council indirectly benefits from the investment, to ensure good governance and robust challenge		

	Council such that it misses out on potential opportunities.	is fully explored before decision making is completed.		
High	The lack of a Project Management Framework means project managers are likely to produce their own template, and use documents which may not be consistent with good governance or best practice and may not be sufficient for assurance purposes, hindering the ability for the Council to learn from project to project.	5. The Council should allocate responsibility for Project Management, agree a Project Management Framework, provide guidance on the intranet and support relevant staff with training.		
High	The lack of an effective project communication strategy may generate numerous FOI requests (which are timely to resource) and may lead to reputational damage on social media.	6. Each project plan should include a detailed communication strategy considering the needs of all stakeholders to include community engagement opportunities to enhance good governance, (transparency and openness).		
High	If all the specialisms are not consulted, key risks may not be addressed in good time (even risks that may terminate the project), which later may detrimentally impact the project in terms of both delay and cost.	7. Create capacity for greater inclusion of the specialist input required on project teams throughout the life of the project. Ensure the project team agrees (or escalates) that each milestone has been achieved before proceeding, and any 'deal break' points are fully considered.		
High	There may be additional delay if the need to bring in external expertise or resources is not identified early in the project.	8. Identify sooner when external resources or expertise will be required, and acknowledge the delay or cost impact this could have on a project.		
High	Poor programming may lead to retrospective decisions under	9. Programming of Capital works should start earlier, and resources should be		

	urgent arrangements which creates a culture of poor governance.	sufficient to create capacity to think adequately ahead; particularly for the replacement of Council assets before their end of life.		
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