

EXECUTIVE COMMITTEE – 29 OCTOBER 2007

LEISURE & COMMUNITY POLICY PANEL – 9 OCTOBER 2007

PART II – NOT DELEGATED

2b. WILLIAM PENN LEISURE CENTRE REFURBISHMENT - PROGRESS REPORT
(DLE)

This report is NOT FOR PUBLICATION because it deals with information relating to the financial or business affairs of any particular person (including the authority holding that information), and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings (paragraphs 3 and 5 of Schedule 12A).

1. Summary

1.1 This report describes current progress on the refurbishment of William Penn Leisure Centre.

2. Details

a) Site Progress

2.1 The main contractor for the refurbishment of William Penn Leisure Centre (WPLC) is Gee Construction, whose appointment was approved by the Executive Committee on 8 January 2007 (EX131/06 refers), and who started on site on 19 February. After 32 weeks on site (as of 17 September) they are approximately 12 weeks behind their initial programme (the sequence of works has been re-ordered since the initial programme, making direct comparisons difficult).

2.2 As of 27 September the steel frame has been erected for the front extension and connecting learner pool building. Foundations are complete, and groundworkers have begun casting concrete for the main pool. A verbal update on latest site progress will be made to the meeting.

b) Quality control

2.3 The contract was prepared and is being supervised by the design team (Atkins), supported by an independent project manager and a full-time clerk of works on site, as approved by the Executive Committee on 27 March (EX176/06 refers). A description of project management roles is enclosed as Appendix A. Following the demolition phase (see 2.7 below), the design team became increasingly concerned about progress on site due to factors such as:

- Poor quality of work by sub-contractors (e.g. quality of concrete, reinforcement and location errors), leading to work being rejected and having to be repeated
- Poor co-ordination of sub-contractors, leading to further delays and abortive work

2.4 Following director-level meetings between TRDC, the design team and Gee, a number of measures were introduced in July to improve performance on site:

- Doubling the frequency of site meetings, with senior representation of all parties

- Strengthening reporting procedures, including rolling projections of completion dates, and detailed 'look ahead' programmes for the month ahead

2.5 Unfortunately the agreed improvements have not been sustained, and the clerk of works has reported increasing concerns with the work rate on site, and with the quality and safety of work produced by Gee's groundworks sub-contractor. The clerk of works has therefore been instructed to monitor daily labour levels, and the quality and safety of works very closely and to issue formal notices of non-compliance for poor quality or unsafe working practices. This is particularly critical while the lining of the swimming pool tanks are being formed, as any errors at this stage could have serious implications later.

2.6 Further director-level meetings have also been held, and Gee have put an additional foreman on site. They have also committed to improving contract co-ordination by having one of their directors visiting the site twice a week. As of 27 September the clerk of works has reported a recent increase in labour levels, and in the rate of progress on site; it remains to be seen whether this will be maintained.

c) Programme & Completion Date

2.7 The start of the contract was delayed due to the discovery of previously unsurveyed utilities on the site which had to be removed by statutory suppliers, as reported to the Leisure & Community Policy Panel on 12 June 2007. A three week extension to Gee's contract was accepted due to this delay. A claim from Gee for an 11 week extension has been rejected on advice from the design team (see Costs section below for the financial implications of delay claims). Gee continue to dispute this claim, arguing that elements of the design have been incorrectly specified by the design team. The design team and project manager advise that Gee are likely to refer their claim for adjudication by the Construction Industry Council. See Legal Implications for a recommendation from legal officers on preparing for such adjudication.

2.8 Gee's initial programme projected completion on 22 February 2008. In July they revised their programme to show completion in April 2008. On 12 September the programme was revised again, with completion projected for 6 June 2008 (i.e. assuming that there will be further delays, and that final completion will be 15 weeks later than initially shown). However the design team report that the final stages of the programme are heavily 'telescoped', and doubt its feasibility. Gee have been instructed to formally update their projected completion date each month as part of their written project report, and to track progress against each element of the programme.

2.9 There will need to be a period of around three weeks following completion of the main contract, to allow for the installation and commissioning of equipment, and staff training prior to opening. Officers are working with Hertsmere Leisure over these preparations.

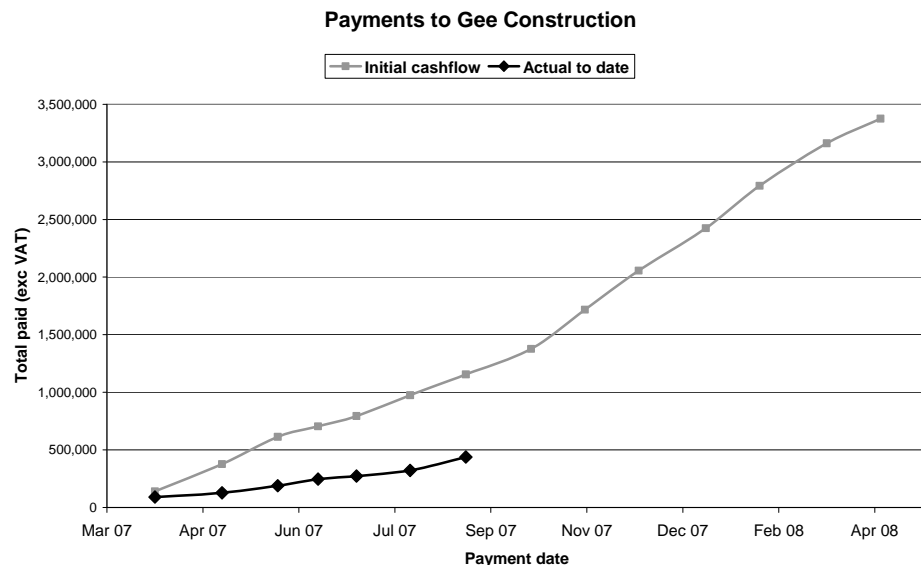
d) Costs & Liability

2.10 Gee have contracted to complete the main contract for their tendered price of £3,426,805 and can generally only claim for additional costs under one of the following grounds:

- a) Architect's Instructions to account for
 - unforeseen circumstances on site
 - additional requirements from the client
 - clarification of omissions from the design

b) Additional 'prelims' due to accepted claims for extensions of time

- 2.11 There have been few variations due to Architect's Instructions to date, and no client variations. The costs of granting additional prelims vary, but the design team estimate the cost of the three week extension granted to date (see 2.7 above) at £8,000 per week. The design team report that all of the additional costs incurred to date can be accommodated from within the main contract's own contingency sum.
- 2.12 There is a further project contingency provision outside of the main contract budget, none of which has yet been allocated, as well as the spa equipment budget which has been frozen as requested by Leisure & Community Policy Panel on 12 June (L.PP07/07 refers). Legal officers have estimated the initial costs of specialist legal advice at £5,000; it is proposed that these costs are met from within the project contingency.
- 2.13 Delays to completion will have indirect financial consequences, as Hertsmere Leisure will seek to recover lost net income incurred due to delays in the relaunch of the building through their management fee. Hertsmere Leisure has already agreed to absorb the costs of delays up to 31 May 2008, and have estimated the net monthly cost of delays beyond this point at £16,000 per month. A delayed completion date will also result in additional design team and clerk of works fees.
- 2.14 There is a provision for liquidated and ascertained damages within Gee's contract, under which the Council can recover costs incurred due to delays in completion of up to £4,500 per week.
- 2.15 An open tender for the provision of fitness equipment has been advertised in the Official Journal of the EU. The results of the tender will be reported to Leisure & Community Policy Panel following the return of bids on 29 October.
- 2.16 At the start of construction, Gee submitted a cashflow projection which anticipated that £1,154,805 of work would be completed by September. Monthly claims for payment to date, certified by the design team's Quantity Surveyor, value works to date at only £438,893:



- 2.17 Overall, the scheme currently remains within budget. Delayed completion will require further re-phasing of the contract budget into the next financial year. This will be reported and updated through the Council's budget setting and monitoring procedures.

3. **Options/Reasons for Recommendation**

3.1 To note progress on the refurbishment of William Penn Leisure Centre.

4. **Policy/Budget Implications**

4.1 The recommendations in this report are within the Council's agreed policy, specifically the 'Healthy Communities' theme and 'Providing a mix of leisure facilities for all ages'.

5. **Financial Implications**

5.1 There are no changes to agreed capital or revenue budgets as a result of this report. Rephrasing of the project budget will be reported through the Council's budget setting and monitoring procedures.

6. **Legal Implications**

6.1 The contract documentation has been prepared by the Design Team and the matters following result from a perusal of it. The contract itself is a standard form JCT contract, as used throughout the construction industry. Clause 8 deals with termination and consequences of termination. The employers termination provisions are at 8.4

6.2 Client Officers have requested a summarised report from the Design Team and Project Managers. This should provide up to date and on the spot knowledge of the true state of contractual performance. Legal Officers can here only give a broad view of the contract provisions. The Architect or Contract Administrator has the right to issue an instruction specifying defaults under clause 8. Failure to comply with such a notice of default ultimately leads to the right for the employer to terminate the contract. This is not normally a course to be recommended. It is basically a collision course and there may be many reasons why a contractor has not performed as expected, such as unanticipated problems on site or problems with sub contractors. Little or nothing is known of Gee's version of events. The Council has only its Consultants' version at this stage. If the contract was to be terminated after service of the requisite notices, there is then to consider the question whether getting in another contractor to finish off is more expensive or problematic than remaining with the original contractor, albeit that there are disputes and poor performance. One certain result is that the various consultants would all be demanding more fees, concerned to protect themselves from "fallout" and insisting it was not their fault. The Council has no real means of checking this. They would be on the defensive and do nothing unless they were certain of being paid. Their co-operation in pursuing Gee would of course be essential to success. One cannot ignore budget implications on this.

6.3 A warning could be issued about non-compliance, but stopping short of issuing notices of default. That would put pressure on the contractor if there was clear and unarguable evidence of its default. There are few cases where site problems are 100% down to the main contractor. Legal do not advise that the Council get involved in a long and expensive arbitration or adjudication, which would require the appointment of specialist construction litigation lawyers, but understand from client Officers that Gee have applied for an extension, which is likely to be refused. They (Gee) have indicated an intention to refer a refusal decision to adjudication. It is therefore recommended that Members authorise the seeking of specialist construction litigation lawyers advice to protect the Council's interests pro actively from the early stages, rather than reactively deal with any claim by Gee. Atkins must also be asked for a view on this possible development as they would appear to be in possession of the material facts and no decision to unilaterally terminate the contract should be taken without the

clearest advice from the design team at first instance.

- 6.4 Gee Construction Ltd. is understood to be a subsidiary company. Members will wish to keep in mind solvency issues and Atkins should also be asked for a view on this also.

7. Equal Opportunities Implications

7.1 *Relevance Test*

Has a relevance test been completed for Equality Impact?	No
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A relevance test is not appropriate for this recommendation

8. Risk Management Implications

- 8.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. The risk management implications of this report are detailed below.

- 8.2 The subject of this report is covered by the Leisure service plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this plan.

- 8.3 The following table gives the risks already identified for this project, together with a scored assessment of their impact and likelihood.

Description of Risk		Impact	Likelihood
1	Project over-runs budget	IV	B
2	Project is delivered late	III	A
3	Loss of key project personnel	III	D
4	Project does not deliver the required outputs	III	D
5	Contractor fails	III	E

- 8.4 There are no additional risks arising from the recommendations of this report, however the likelihood of risk No. 2, and the impact of risk No. 4 have been increased. The impact of risk No. 2 has been mitigated by Hertsmere Leisure's agreement to absorb their costs to May 2008 (see 2.13 above). See the Quality Control section above (2.3 – 2.6) for descriptions for measures taken to mitigate the likelihood of risk No. 4. All the risks detailed above are already managed within the Project Initiation Document for this project, and the Leisure service plan.

- 8.5 The existing risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

Likelihood ↑	A			2			Impact V = Catastrophic IV = Critical III = Significant II = Marginal I = Negligible	Likelihood A = >98% B = 75% - 98% C = 50% - 75% D = 25% - 50% E = 2% - 25% F = <2%
	B				1			
	C							
	D			3	4			
	E			5				
	F							
		I	II	III	IV	V		
Impact →								

8.6 In the officers' opinion none of the risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan, and are therefore operational risks. The effectiveness of treatment plans are reviewed by the Audit Committee annually.

9. **Customer Services Centre and Website Implications**

9.1 Information on the progress of the refurbishment will continue to be posted on the Council website. CSC staff will be briefed as required.

10. **Staffing, Environmental and Community Safety Implications**

10.1 None specific.

11. **Recommendation**

11.1 That the progress report is noted.

11.2 That Leisure & Community Policy Panel recommend to the Executive Committee that specialist legal advice is commissioned, in order to protect the Council's interests in the event of a claim for adjudication by the main contractor. Costs are to be met from within the project's contingency budget.

11.3 That officers continue to aim to ensure that the project is completed as soon as is practicable, within the fixed project budget and the Council's quality requirements.

11.4 That public access to the report be denied until issue resolved.

11.5 That public access to the decision be denied until issue resolved.

<ol style="list-style-type: none"> 1. Public access to report - denied until issue resolved (see future agenda) 2. Public access to decision - denied until issue resolved (see future agenda)
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Report prepared by: Patrick Martin - Leisure Performance & Contracts Manager

Background Papers

WPLC refurbishment files

The recommendations contained in this report DO NOT constitute a KEY DECISION.

APPENDICES / ATTACHMENTS

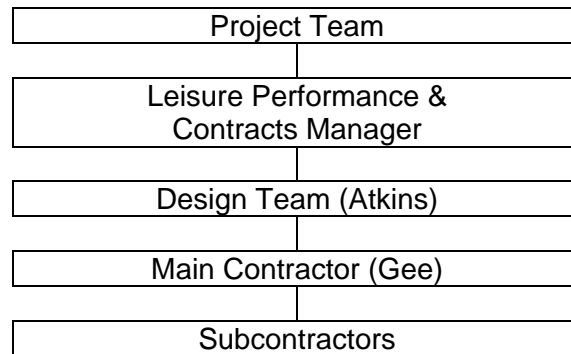
Appendix A - WPLC Refurbishment Project Management

APPENDIX A

WILLIAM PENN LEISURE CENTRE REFURBISHMENT PROJECT MANAGEMENT

1. Instruction

There is a direct line of instruction for this project from officers, through the design team, to contractors:



The Project Manager and Clerk of Works have limited powers to issue instructions under directly delegated authority. See below for further descriptions of roles and responsibilities.

2. Responsibilities

a) *Project Team*

TRDC officer team which meets regularly (currently monthly) since January 2006 to oversee the Project Initiation Document (PID) and the scheme, and receive progress reports from Leisure Performance & Contracts Manager (LP&CM). Oversees reports to Members (Leisure & Community Policy Panel and Executive Committee). Includes the Director of Leisure & Environment, Head of Building Control, Accountancy Manager and Head of Leisure. Hertsmere Leisure's Operations Director observes and advises.

b) *Leisure Performance & Contracts Manager*

Acts as single point of contact between the Council and all consultants & contractors. Attends site meetings and design team meetings as client representative, and maintains day to day contact with clerk of works and Hertsmere Leisure over site issues and operational requirements.

c) *Design Team (Atkins Design Solutions)*

Appointed October 2005. Include all design disciplines (architects, structural, mechanical & electrical engineers, quantity surveyors) within a single firm. Design team is lead by Principal Architect, who reports to the Practice Manager. All instructions to the main contractor are issued by the Principal Architect, who chairs site meetings. The Practice Manager now attends site meetings.

d) *Project Manager (Press & Starkey)*

Appointed July 2006, to provide independent professional monitoring of the work of the design team and contractors, and to advise the LP&CM and Project Team. Can only instruct the design team under direct authority from LP&CM. Attends site meetings.

e) *Clerk of Works*

Appointed February 2007, following a recommendation from the Design Team that the main contractor would require high levels of supervision. Based on site full time to monitor quality and safety of works, and advise the Design Team, Project Manager and LP&CM. Contracted directly by TRDC, reports to the LP&CM & Principal Architect. Has delegated authority to issue directions subject to immediate confirmation from Principal Architect.

f) Main Contractor (Gee Construction Ltd)

Appointed January 2007. Responsible for all aspects of delivery of the project, including co-ordination of all subcontractors. Site Manager reports to Contract Manager who negotiates with subcontractors, and reports to Director. Have recently added an additional site foreman to support the Site Manager. The Director has recently committed to visiting the site twice weekly, and to attend site meetings.

3. Site Meetings

Initially held monthly, increased to twice monthly from July 2007 to strengthen supervision. Chaired by Principal Architect (Atkins). The client side includes Quantity Surveyor (Atkins), Project Manager (Press & Starkey), Clerk of Works & LP&CM (TRDC). Since July 2007 representation has been strengthened, to include Atkins Practice Manager and TRDC Director of Leisure & Environment or Head of Leisure. Contractor representation now includes Director. Additional progress and programme information now to be supplied in contractor's monthly report.