

EXECUTIVE COMMITTEE – 6 APRIL 2009

PART II - NOT DELEGATED

1. WILLIAM PENN LEISURE CENTRE REFURBISHMENT (DCES)

This report is NOT FOR PUBLICATION because it deals with information relating to the financial or business affairs of any particular person (including the authority holding that information),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 updates Members on matters relating to the refurbishment of William Penn Leisure Centre, and recommends that authority is delegated to the Chief Executive to initiate action if appropriate.

2. Details

- 2.1 Executive Committee (9 March 2009) and Leisure & Community Safety Policy & Scrutiny Committee (10 March 2009) received a progress report covering the termination of Gee Construction's employment as main contractor, and the resulting completion plan. This report described the appointment of a solicitor specialising in construction disputes (John Wright of Bird & Bird) to advise the Council, and his advice on the potential for recovering the costs of completing the project from Gee. The Executive Committee meeting resolved (EX124/08 refers) that

'subject to the continuing external legal advice received, action is taken to recover remedial and other costs as far as is practicable.'

- 2.2 The meetings referred to above also discussed the formal Notice of Adjudication which Gee claimed on 26 January 2009 to have issued, but which was never received by the adjudicating authority (the Royal Institute of Chartered Surveyors). To date no further adjudication action has been initiated by Gee.
- 2.3 Following a review of contractual issues John Wright advised the Council that a further 5 weeks Extension Of Time should be issued to Gee, taking their total extensions from 12.14 weeks to 17.14 weeks. Atkins therefore notified Gee on 12 March that their contracted completion date (which was initially set at 22 February 2008) had been extended to 24 June 2008. John Wright has advised the Council that the terms of its contract with Gee provides that it is not liable to make any further payments to Gee at this stage.
- 2.4 Gee have now confirmed that they have appointed their own solicitors (Herbert Smith) to represent them. Following recent correspondence, John Wright issued updated advice to the Council on 27 March, covering adjudication issues and tactics. Copies of this advice will be available in the Penn Chamber, for Executive Committee members only, fifteen minutes before the start of the 6 April meeting and the advice collected back by the Committee Manager after the debate. This is to prevent any possibility of Gee Construction learning of the matters raised in the advice. John Wright will also attend the meeting to answer members' queries.

3. **Options/Reasons for Recommendation**

3.1 To allow members to consider legal issues relating to the refurbishment of William Penn Leisure Centre.

4. **Policy/Budget Reference and Implications**

4.1 The recommendations in this report are within the Council's agreed policy and budgets. The relevant policies were agreed as part of the 2009-12 Strategic Plan on 24 February 2009, and are entitled:

2.1.5 To improve and facilitate access to leisure and recreational activities

3.2.1 We will ensure our services provide value for money

5. **Equal Opportunities, Staffing, Environmental, Community Safety, Customer Services Centre, Communications, Website and Health & Safety Implications**

5.1 None specific to this report.

6. **Legal Implications**

6.1 As described in 2.1 - 2.4 above.

7. **Financial Implications**

7.1 None specific to this report. Provision has been made in the 2009/10 capital programme for the additional costs expected to be associated with the completion of the refurbishment. Cost projections will be updated as available.

8. **Equal Opportunities Implications**

8.1 **Relevance Test**

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

9. **Risk Management and Health & Safety Implications**

9.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

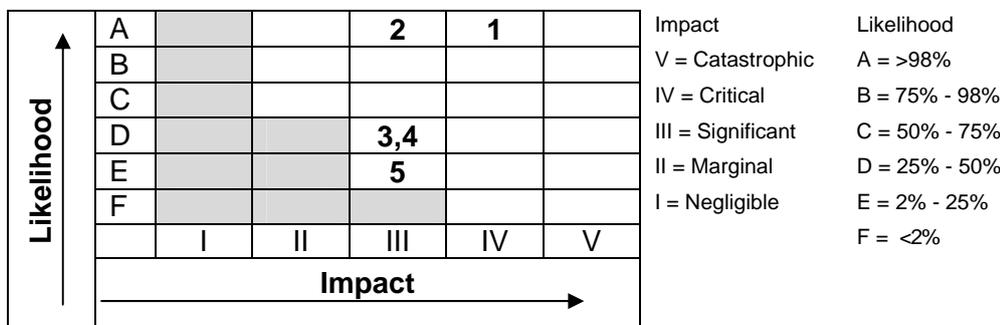
9.2 The subject of this report is covered by the Leisure service plan. Any risks resulting from this report are included in the risk register and managed within this plan.

9.3 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	A
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	Contractors fail	III	E

9.4 The above 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.



9.5 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.

10. Recommendations

10.1 That the Executive Committee delegates authority to the Chief Executive, in consultation with the Leader of the Council and the Portfolio Holder for Leisure & Community, to initiate or defend adjudication or legal action as appropriate relating to the refurbishment of William Penn Leisure Centre.

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

10.3 That public access to the report's recommendations be denied until the publication of the next Executive Committee agenda.

Report prepared by: Patrick Martin
Leisure Performance & Contracts Manager

Background Papers

None

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

APPENDICES / ATTACHMENTS

A Legal advice from Bird & Bird, 27 March 2009 (to be tabled)