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Audit and Investigations Division

Final Report on

The Audit of Hastings Museum Extension Contract

September 2008

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Report to Audit Committee

Background Information

In March 2004 Hastings Borough Council (the Council) secured external funding for the Hastings Museum totalling nearly £1 million for the extension of a new gallery space, archive facilities and disabled access. The original total capital approval was £1,236,216 which was subsequently increased to £1,420,406 and the Council was to contribute approximately £420,000. The Council selected by tender submission the experienced firm of Thomas Ford and Partners (TFP) to act as architect and contract administrator and Sawyer and Fisher (SF) to act as the Quantity Surveyor. A detailed specification was prepared and 6 building companies were asked to tender for the works. The 2 lowest tenders were checked in detail and asked to reduce the scope of the works in order that the price could be contained within the budget available. The most advantageous tender was submitted by R J Barwicks (Barwicks) for £949,831.44. TFP had worked with Barwicks on projects in the past and was confident that they could successfully complete the project. Barwicks started on 3rd January 2006 on the contract scheduled for 30 weeks ending on 28th July 2006.

The contract finally was granted practical completion on 5th June 2007 almost 10 months late and the final cost of the whole project is £1,599,000 an additional cost of £178,594. This additional cost will have to be met by the Council.

Comparison of Capital Budget to Actual	
Cabinet approval	£1,420,406
Final approval to pay for negotiated settlement	£ 178,594
Total cost	£1,599,000

The auditor has been asked to investigate how the £178,594 overspend has arisen and indicate how the Council can learn from the difficulties and give recommendations on changes in contract and project management that may be appropriate to mitigate such occurrences in the future.

Key Findings

General

1. The Museum re-opened to the public in July 2007. The quality and design of the extension and alterations has been the subject of much positive comment from both visitors and the funding agencies and visitor numbers have increased.
2. The cost of works (£928,491) were closely controlled by the architect and compared favourably with the contract sum (£949,831). All additional costs were due to the asbestos issue and 'Extension of Time' (EOT) payment to the contractor.
3. The auditor has examined the documentation provided by the Architect/Contractor administrator (TFP) and considered that it was extremely detailed and of high quality. TFP provided a very comprehensive service. Site meetings were held regularly and provided good information on the progress of

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the project. TFP provided prompt advice on the progress and problems relating to the project.

4. The Executive Director of Leisure and Culture did meet the Managing Director of Barwicks to attempt to resolve the dispute over extension of time but was unable to before he left the Council during February 2007.

Asbestos

5. During the early stages of the project, asbestos was discovered leading to an 8 week delay and additional asbestos removal costs which totalled £116,580 (*paragraphs 11-14 of the detailed report refer*).

Risk Management

6. In February 2007 the Executive Director of Leisure and Culture updated the Leisure and Cultural Development Performance Review Panel on the discussions held with the project architect and contractors regarding delays and subsequent progress of works. The minutes stated a possible risk was identified regarding negotiations between those two parties regarding reasonable claims. However, there is no evidence that the position the Council was exposed to was brought to these groups again or to the attention of Corporate Directors until October 2007 when the Quantity Surveyor (SF) advised the Council to negotiate a settlement of the dispute.
7. Members of the steering group either attended the meetings or received the minutes. However the risks raised at the February 2007 Performance Review Panel meeting were not followed up and although the Programme Manager (Museum Curator) endeavoured to get TFP to resolve these issues throughout 2007, she was unable to. It was not until October 2007 that SF advised the Council of Barwicks offer to settle outside the terms of the contract and also recommended the offer made be accepted. Following the Council's restructure, Museum's had just transferred across to Regeneration and Planning. The Head of Projects then took ownership of resolving the outstanding issues and swiftly moved these in a structured way to conclusion.
8. Although the serious contractual problems had been raised to the highest reporting level in November 2006 and February 2007 the issues, particularly relating to Extension of Time (EOT) costs, remained unresolved and the exposure of the risks of significant overspend continued to exist. There is no evidence that these risks reached the Corporate Management Group from February 2007 to October 2007.
9. As previously stated, the work by TFP was of a high quality and the Council Officers have reasonably relied completely on the advice given. However, whilst TFP originally advised the council that Barwicks claim for EOT was unfounded and the Council's steering group had repeatedly asked TFP and Barwicks to settle the disputed EOT figures, TFP advised the Council much later to settle on best terms. It should be noted that TFP's fee was based on a percentage of the final building costs in accordance with normal business practice.
10. It was unfortunate for the Council that TFP had advised it that Barwicks claim for EOT was unfounded but then much later changed its mind, especially since the

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steering group had further pressed TFP and Barwicks to resolve the disputed EOT figures. It is believed, however, that using a structured Risk Management methodology, all outstanding risks will be reported to senior management as they emerge and continue to be reported until they are dealt with. The Council's risk management system has functionality for documenting and monitoring a risk's status that will always be escalated to the appropriate level of management until it can be closed.

Project Management

11. The project was included in the Council's Capital Programme within the Leisure and Culture area. The Executive Director of Leisure and Culture was responsible for the successful completion of the project. The Museum Curator was the Programme Manager. Two Projects Officers reported to the Programme Manager, one from the Projects Division who was designated Projects Manager and the other, a Display Manager. This project team reported in to a Steering group of senior officers representing Legal, Finance and Marketing.
12. The Programme Manager expressed her acknowledgement for the high quality work done by TFP but that she had no experience in leading a large construction project and relied greatly on the advice of TFP and Council officers on the steering group (*paragraph 64-65 of the detailed report refers*).
13. There were significant problems identified with the contractor (Barwicks) in the Summer of 2006 such as build quality, quantities, and quality of site management and final practical completion on the contract was approximately 10 months late but this was risk assessed and a decision was made to continue the project with Barwicks.
14. The Council has adopted a project methodology and Officers involved in the delivery of capital projects have been trained but it is recommended that all officers who become involved in projects are trained as a pre-requisite. In the case of the Museum extension, we did not consistently apply the necessary escalating actions within the Project Methodology and that was a contributing factor.

Contract

15. The auditor has discussed the use of construction contract used with both TFP and the Council's Head of Projects. The contract (JCT intermediate) is a contract widely used by the construction industry and provides sufficient mechanisms to manage and control changes of specifications, variations and time costs with built in processes and remedies for the resolution of disputes. The auditor has concluded this was the appropriate contract to use for this type of work.

Recommendations

Recommendation 1

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The Council ensures its asbestos register is complete and kept up to date.

Responsible officer: Head of Resort Services & Amenities

Management response: The Council's asbestos register is now complete and it will now be kept up to date through the actions of the Head of Resorts and Amenities.

Appropriate type 3 asbestos surveys are undertaken on all demolition contracts before any works are started.

Responsible officer: Head of Projects

Management response: It is agreed that type 3 asbestos surveys should be undertaken before demolition contracts are started. This is important for both safety and cost reasons. A type 3 survey employs invasive techniques to 'seek out' asbestos in places like between floors and cellars and other more inaccessible parts of buildings.

Recommendation 2

All major non-capital projects to be included in the corporate risk register and for capital projects, project risk logs to be maintained separately by each Project Manager. Outstanding risks will be reported regularly to the steering group and any risk considered to be high reported to the appropriate level of management and continue to be reported until the risk has been resolved.

Responsible officers:

For project risk logs: Each Project Manager

Management response: The inclusion of major projects in the Project Risk Register and regular maintenance of project logs are essential. The Head of Projects will ensure that refresher training is provided and that project risk logs are completed within the capital projects service. It will be important that all individual project managers regularly report risk issues to project steering groups and risk will be expected to appear on the agenda and minutes of each project group meeting.

For the Corporate Risk Register: Chief Auditor

Management response: Agreed. Training for all managers is in progress and covers the need for inclusion of major non-capital projects within the Corporate Risk Register. It will be important that all managers (risk owners) report risk issues through the Corporate Risk Management system (GRACE) which will be monitored and escalated to the appropriate level of management in a timely

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way.

Recommendation 3

Project Managers need to be aware that they need to advise Corporate Directors and the Deputy Chief Executive & Director of Corporate Resources if there is a possibility that the costs will significantly exceed the budgeted expenditure (as required in the Financial Operating Procedures) and of any significant delays, problems or reputational risks that may occur .

Responsible officer: All appropriate Project Officers

Management response: This is absolutely accepted. A key issue with this project was the non reporting of difficulties until the project transferred to Regeneration and Planning in the summer of 2007. Although this is obviously the responsibility of Project Managers, other colleagues on future Project Steering Groups need to accept that they have a responsibility to ensure that problems are urgently identified and addressed. In this case it was clear that the problems were known and initial meetings with the contractors held to discuss these. However, the issues were clearly not resolved and not drawn to the attention of Directors once the Director of Leisure and Culture had left. It is proposed that all major projects should have a "Mentor" as well as a Project Manager and this ought to provide a mechanism for problems to be identified and supporting actions taken (Please see recommendation 4 below).

Recommendation 4

The use of a formal project management methodology to be further embedded in the Council's working practices and training given to all appropriate staff.

Responsible officer Head of Projects

Management response: Formal training in project management for Council officers has been given but it is clear that the Council needs to adopt a more formal system of management and review. Both Sea Space and the County Council have been consulted and detailed proposals based upon a closer adherence to the PRINCE2 system adapted for our particular use will be developed and brought forward. These will involve:

- a) *Major projects having both a Project Manager responsible for the running of a contract and a Project Mentor responsible for offering support and guidance at a senior level and have the power to resolve*

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conflict or under performance. A clear 'job description' for both roles will be produced.

- b) Structural methodology guiding a project through its whole lifecycle.*
- c) A system which requires review at a number of stages or gateways – particularly at the outset of work when a proper assessment of risks is crucial.*
- d) To continue to strengthen the current Project Review Board. This will involve empowering the Board to make specific recommendations to Corporate Management Group in the light of project and programme performance.*

Recommendation 5

Corporate Directors need to ensure that Project Management Steering Groups are made up of staff with the skills commensurate with the size, complexity and risks involved in project.

Responsible Officers Corporate Directors

Management response: It is the responsibility of Directors in conjunction with their own management teams to ensure that all project teams have a sufficient balance of skills and experience to deliver projects. The proposed mentoring system offers the opportunity to strengthen this with advice and support to develop the skills and confidence of less experienced teams.

Conclusion

16. There are usually unanticipated events during the life of a capital project and overall, the Council managed those risks efficiently and effectively on the Museum extension project as soon as any triggers were known. The main issue though was that Officers relied on TFP's advice and thought that the dispute over EOT with Barwicks would be resolved but TFP didn't discharge its duties in quite the way expected. Directors were not made aware that there was still this unresolved issue from February 2007 until October 2007.
17. The problems originated at the beginning of the project when it was discovered that asbestos was present as this led to an initial delay and grounds for the contractor to claim additional time related expenses. It was also unfortunate that neither the Executive Director of Leisure and Culture nor TFP were able to influence the contractor when clearly our monitoring meeting minutes consistently indicate that the contractor's claim for EOT could not be justified. It should be fully acknowledged that the project was managed through a steering group consisting of appropriate senior managers who had identified serious problems and had taken some appropriate action, for example, requesting TFP

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and Barwicks in the early stages to settle the dispute on EOT costs. It was also reasonable for the project team to rely on professional advice from TFP in relation to Barwicks claim for EOT costs but unfortunate that they were then advised to settle with Barwicks so much later. It is the case that given this situation, there wasn't a lot more that Council Officers could reasonably be expected to do but it was the case that there was a long period of inactivity between February 2007 and October 2007 despite the known problems at the working level (principally because Directors weren't aware of them) and the Programme Manager had not been trained in what was a significant project.

18. The Council recognises that the Risk Management processes will ensure that all identified risks continue to be escalated to the appropriate level of management until resolved and is strengthening those arrangements. In response to Project Management, the Council has set up an Officer Task Group to embed Best Practice. Asbestos management is ongoing.

Report on the Hastings Museum Extension Contract**Detailed Report****Acknowledgement**

1. The Audit and Investigations Division thanks the programme manager and staff and management of the Projects Division for their co-operation and assistance throughout the audit.

Introduction and Background

2. The audit of this contract was commissioned by the Corporate Director Regeneration and Planning and Deputy Chief Executive & Director of Corporate Resources as a result of the outcome of the contract with Barwicks for the extension to the Hastings Museum.
3. The Council has received £1 million of lottery funding and contributed approximately £420,000 in addition to the £178,594 negotiated settlement. The works were scheduled to be finished 2006/2007.

Audit Methodology

4. The files held within the Projects Division were studied and interviews were held with interested parties employed by HBC and contracted by HBC to supervise and manage the contract.

Programme administration structure

5. The project was included in the Council's Capital Programme within the Leisure and Culture area. The Executive Director of Leisure and Culture was responsible for the successful completion of the project. The Museum Curator was the Programme Manager. Two Projects Officers reported to the Programme Manager, one from the Projects Division who was designated Projects Manager and the other, a Display Manager. This project team reported in to a Steering group of senior officers representing Legal, Finance and Marketing.

Supervising officers

6. It was decided that the design and administration of the project would be undertaken by external agents. Thomas Ford and Partners (TFP) were commissioned to be the architects/contract administrators for the project with Sawyer and Fisher (SF) the quantity surveyors. In addition professional fees were agreed for surveyors, an exhibition designer, a planning supervisor, a structural engineer, a service engineer and soil investigator. In total the budgeted cost for external professional fees based on a building contract budgeted at £968,000 amounted to £184,000. The majority of these fees were based on a percentage of the final building costs therefore if the building costs were to rise to £1,250,000 the expected professional fees would rise to approximately £237,000.

Main contractor

7. Tenders were received from 6 companies. The construction budget was £945,140. There was a pre invitation estimate of £1,099,000 with an explanation that would be to allow for one gallery to be omitted if necessary to get within budget. The

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closing date for tenders was 28th June 2005 and the works would be completed by June 2006.

8. The 2 lowest tenders were examined in detail by the Quantity Surveyor. Following discussions to reduce the works down to get within budget the Quantity Surveyor stated he believed Barwicks should be awarded the contract for the main works with Mowlem Rattee and Kett doing the display work.
9. Barwicks were written to on the 14th October confirming a revised tender figure of £949,831.44. The letter stated that it looked forward to Barwicks arrival on site on 5th December 2005.
10. Barwicks were given access to the site on the 5th December and the formal start date was 3rd January 2006. The contract duration was scheduled for 30 weeks ending on 28th July 2006.

Record of the progress on the contract

11. On 3rd February asbestos was discovered in the floor void. Indications were that it would take 4 weeks to remove the asbestos starting 13th March and a further 2 weeks for certification. TFP seemed to appreciate the implications of these delays and the notes to the meeting held on the 22nd February stated "it was pointed out that Barwicks should use the 2 week window prior to the asbestos removal to achieve as much progress in the existing building as possible."
12. The site meeting on 22nd March stated a revised tentative programme was discussed stating asbestos removal to start on the 20th March and take 4 weeks. Barwicks had stated in a letter dated 20th March that the project was currently running approximately 6 weeks late due to the discovery of the asbestos.
13. The site meeting of 19th April indicated that Barwicks records indicated that work had stopped on 13th February and the clearance certificated was issued 10th April - a period of 8 weeks.
14. The discovery of asbestos could have been avoided if a more thorough category (type 3) survey had been carried out. For a project of this size, the additional expense would have been justified. The problem was that when it became a dispute, it became a distraction and was treated as a side issue when it should have been resolved as a matter of urgency when the steering group had requested TFP to do so.
15. In May 2006 Barwicks were advised that Mowlens had been bought out by a company called Carillion who had indicated their intention to honour the sub-contract work.
16. The site meeting on 17th May noted a letter from Barwicks dated 12th May claiming a further 2 weeks caused by poor ground conditions. In addition the delays for asbestos were still in dispute.
17. The site meeting dated 14th June reported that Barwicks were still reporting the contract was 8 to 10 weeks behind programme. Up to this date no extensions of time (EOT) had been granted.
18. At the meeting on 12th July it was noted that TFP had issued an EOT on the works of 8 weeks. Barwicks were still stating the contract was 8 to 10 weeks behind

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programme but the EOT granted indicated at this time the disputed delays time was within manageable proportions.

19. The meeting on the 16th August noted that Barwicks had reported that the contract was 10 to 12 weeks behind programme - the estimate had increased by 2 weeks during a 5 week period when there were no adverse weather conditions. TFP asked Barwicks to comment on the lack of progress. A variety of reasons were given.
20. At the site meeting on the 13th September 2006, only 4 weeks after the previous meeting TFP commented that it had calculated that using Barwicks own figures the contract appeared to be approximately 20 weeks late. Barwicks agreed this was the case. Clearly the figures reported at the August meeting had been underestimated and a major issue had arisen with progress slowing to a crawl.
21. The severity of the situation had already been appreciated and a special programme review meeting had been held immediately prior to the standard site meeting. This meeting was called to discuss and agree clear programme strategies to ensure the employer's project programme was achieved. Barwicks were charged in producing a revised programme of work.
22. A progress meeting was held on 11th October 2006. Barwicks revised programme of work proposed completion would be 12th January 2007. This suggested that a further 2 weeks had been lost since the previous site meeting held on 13th September when Barwicks agreed the contract was running 20 weeks late.
23. On the 18th October 2006 a special meeting of the Museum steering group was held chaired by the then Executive Director of Leisure and Culture with representatives from HBC and TFP but not Barwicks. The minutes clearly state that TFP had identified that the working relationship with Barwicks was poor. TFP spoke of the possibility of having to go to arbitration; getting Barwicks offsite immediately and getting in a new contractor. The Chief Accountant was to make an additional provision of £60,000 to the capital programme based on a 6-7 week delay. The project manager said it might be more as Barwicks were claiming double this figure.
24. The next formal site meeting with the contractor held on the 8th November 2006 reported further delays of 2–2.5 weeks from the revised programme of works but the contractor stated that they were still targeting completion for 12th January 2007.
25. The site meeting held on 22nd November 2006 did not include details of delays.
26. The Museum steering group met on 29th November (Barwicks not being present). The meeting was updated with the position regarding the contract. Barwicks had now put in a claim for 32 weeks extension in addition to the original 8 weeks granted which would result in a completion date of 9th March. TFP reported that they had spoken to the managing director of Barwicks and asked if this date was optimistic. The managing director had confirmed that that date was the worst possible scenario. TFP stated that "instead of making progress they were leaking time. Are Barwicks beginning to realise the situation they are in?" There was some discussion on the number of weeks that should be budgeted for. It was advised that the figure should be 14 –16 inclusive of the 8 weeks already granted.

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The difference between Barwicks and the Council's advisers was 24 –26 weeks. The Executive Director of Leisure & Culture asserted "there were 2 options" :-

- "allow them to bumble along and it may/may not be ready on time"
- "get them off site."

It was clear from the minutes of the steering group meetings that the Council officers and its consultants were considering the consequences of the contractor defaulting on the contract or sacking the contractor.

27. The Executive Director of Leisure & Culture asked TFP to arrange an urgent meeting with the Managing Director of Barwicks.
28. On the 13th December 2006 the steering committee re-convened. The major item on the agenda was an update of the meeting the Executive Director of Leisure & Culture had with the Managing Director of Barwicks on 12th December (the Programme Manager from HBC and the senior partner from TFP were also present). The main points were :-
 - a) Barwicks accepted the contract had not gone as planned
 - b) It was now 28 weeks adrift
 - c) Mid March 2007 is the new completion date
 - d) Barwicks will finish the job
 - e) Barwicks wish to have a meeting in early 2007 with TFP regarding the extra claim
 - f) They wish a reasonable settlement but don't want to go to arbitration
 - g) Tighter supervision by Barwicks was needed
 - h) Barwicks had accepted that they were at fault over co-ordination of work
 - i) There needs to be a resolution to the final account in terms of time claims and the Quantity Surveyor's variations
 - j) There will be discussions in the new year regarding the final account which *need to be rapid and reasonable*
29. There was concern about what Barwicks wanted and what TFP wanted – There is a 24 week difference. TFP want to offer 8 weeks – Barwicks are claiming 32. The minutes ask "How they (Barwicks) have done their maths? November was the deadline, then January, shortly followed by March. How have they managed to lose this time (2.5 months in 1 month)?".
30. Barwicks had recognised that they hadn't done a good job and they would welcome help from TFP.
31. The Programme Manager was asked to draft a letter to Barwicks outlining the agreements from the meeting (HBC lawyers were to check the letter for legal implications).
32. TFP also asked the Executive Director Leisure & Culture if he had read their draft report on Extension of Time no.2. He confirmed that he had read it and stated that

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it appeared fair and well balanced. The content of the report was vital to the resolution and completion of the contract. The report was a response to a letter received from Barwicks dated 17th November detailing an extension of time claim on the contract. The claim was for an additional 24 weeks 1 day over and above the previous (8 weeks) time granted. TFP comprehensive response concluded that they were prepared to award a total of 3 weeks 3 days over and above the previous (8 weeks) time granted.

33. The minutes stated that TFP would meet the contractor on a weekly basis.
34. On the 13th December 2006 a site meeting was also held with the Barwicks representative present. The delays in completing the contract were recorded. Barwicks submitted a revised programme showing a completion date of 12th January 2007. TFP reported delays in individual parts of the contract. Barwicks representative responded that they “sounded about right”. TFP stated that the delays he had reported would mean the contract would not be completed until 23rd February 2007 and the 24 weeks claimed by Barwicks would put completion back to 9th March 2007. Barwicks had said at the October and November meetings they were targeting completion on 12th January 2007– they were now anticipating a target completion of late February or early March 2007.
35. The Programme Manager gave a summary of the meeting held the previous day with the managing director of Barwicks. HBC requested that Barwicks and TFP hold weekly technical meetings to look in detail at short and long term programming matters. These meetings should focus on identifying areas in the galleries to be tackled immediately to enable the museum to achieve their own programme of opening in 6 months. TFP commented that meetings were already being held bi-weekly. It was agreed that the first weekly meeting would be held on 19th December 2006.
36. The programme manager had been designated in the minutes of the steering group to write to Barwicks, but in fact the Executive Director Leisure and Culture himself wrote the letter dated 21st December 2006 to the Managing Director of Barwicks. The letter clearly stated that “In early January Barwicks and Thomas Ford Partners meet to look at contract final accounts including time variations”.
37. The site meeting on the 23rd January reported that progress was such that the contract would not be completed until 6th April. Barwicks stated that that would be about right but Barwicks were targeting the end of February for completion of all other work.
38. The site meeting held on 7th February highlighted problems were not being resolved, few Barwicks employees were on site and problems were arising with nominated sub contractors principally Carillion who was now scheduled to come in to install display cabinet etc.
39. On the same day the Executive Director of Leisure & Culture reported to the Leisure and Cultural Development Performance Review Panel discussions held with the Project Architect and contractors, regarding delays and subsequent progress on works. A possible risk was identified regarding the negotiations between those two parties regarding reasonable claims. This was the last time the Executive Director of Leisure & Culture was directly involved in the project as he

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left the Council as a result of an organisational restructuring. From the end of March until late May the Deputy Chief Executive & Director of Corporate Resources temporarily took charge of the directorate before the Museum became the responsibility of Directorate of Planning and Regeneration in June 2007.

40. A frank meeting of the steering group was held on the 20th March 2007 (Barwicks not present). It was noted that Executive Director of Leisure & Culture would no longer be able to take part or chair. TFP gave an update on the progress on the contract. He stated there was evidence that the end was in sight. He had had a meeting with the Managing Director of Barwicks. It was amicable but the next meeting may be less so. TFP told Barwicks they had got to get out. The Managing Director of Barwicks had responded that they were trying to; however TFP commented that there were only 3 Barwicks staff on site at the time of the meeting.
41. At this meeting the Project Manager asked about the possibility of Barwicks going to arbitration and whether there might be a dispute over award of time. TFP said this would be a big commercial decision. Barwicks wouldn't want to do this, however technically they could go to arbitration but this could only happen when the award (of EOT) is made – so they have something to dispute. The Project Manager then asked whether liquidated damages could then be claimed. TFP said the client would have to claim liquidated damages but TFP and SF would give advice.
42. It was asked what was the worst possible scenario in terms of overspend. TFP stated that it would be £100,000. TFP stated that if the adjudicator awarded 8 weeks it would not be worth Barwicks while. He also stated that Barwicks were a medium sized firm and had a reputation to maintain.
43. At no time at this meeting were the actions agreed at the December meeting referred to; specifically relating to the determination of the urgent need for the resolution of the dispute over the extension of time costs.
44. The meeting clearly was aware that the Council could be exposed to a financial dispute in excess of £100,000. TFP were constantly advising the steering group that Barwicks claim was unreasonable and would not stand up to arbitration. The steering group did have a number of key members of staff but there is no evidence that the potential financial exposure was put in detail to the Deputy Chief Executive & Corporate Director of Resources or Corporate Management Group after the report to the Performance Review Panel in February 2007.
45. The final steering group meeting was held on 20th June 2007. It was stated that practical completion took place on the 1st June 2007 – 73 weeks after the start date of 5th January 2006. TFP had heard nothing further recently on the EOT claim and was to be meeting with Barwicks to discuss this.
46. The Programme Manager stressed the need to identify the costs of the delay. TFP were to write to the Programme Manager confirming the outstanding issues. As regards the budget TFP stated the final invoice should be within the next 12 weeks once the Extension of Time had been agreed. (This would have been approximately 15th September 2007).

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47. The meeting agreed that unless the Heritage Lottery Fund advise otherwise no more steering group meetings would be required – outstanding financial matters would be discussed separately.
48. Although it was left with TFP to resolve snagging issues and the dispute over the Extension of Time and come back to the Programme Manager, nothing was agreed.
49. The auditor has evidence of various correspondence made between TFP and Barwicks after June 2007. In August a letter was sent to Barwicks increasing the EOT awarded to 14 weeks (including the 8 weeks awarded for asbestos). Barwicks replied to this in September reducing their claim from 40 weeks to 28 weeks. There was still a 14 week difference between the 2 parties.
50. Finally on the 6th November 2007 Richard Barwick emailed SF stating he was frustrated by the lack of progress in settling the EOT claim. He stated the figure to settle was £1,250,000 – this being consistent with their offer of 28 weeks made in September.
51. SF asked for a meeting to be called following demands from Barwicks. This meeting was held on 5th December 2007. Barwicks offer was formally put to HBC and a letter was sent by SF to HBC on 11th December confirming their recommendation that the offer be accepted.
52. On the 17th December TFP wrote to HBC regarding the EOT claim increasing the award by a further 3 weeks to 17 and stating that in the event of the contract dispute going to arbitration there would be a high probability for an additional award of up to 4 weeks being made by the arbitrator – this would increase the EOT to 21 weeks.
53. During January and early February 2008 the Head of Projects and the Executive Manager - Financial Services undertook negotiations with Barwicks and have come to a negotiated settlement of £1,235,000 against Barwicks claim of £1,250,000.
54. TFP had continuously provided advice to the steering group and at site meetings that their evaluation of Extension of Time was correct; have been logically calculated and Barwicks claims were “naïve and ill thought out”. By October 2007 the Quantity Surveyor was advising the Council to negotiate a settlement of the dispute and recommended it accepted Barwicks offer.

Meeting with Contract Administrator/Architect (TFP)

55. A meeting was held with the Senior Partner at TFP in charge of designing and managing the contract to endeavour to discover what went wrong with the contract.
56. It was stated that TFP had very successfully worked with Barwicks on a number of contracts and were not concerned when they were awarded the main contract. They met the site manager who appeared experienced and easy to work with. The programme of work looked achievable. Asbestos was found on the site and there was 8 weeks disruption; it appeared that the contractor never recovered from this.

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There was a feeling that Barwicks were unable to get or retain subcontractors. The revised programmes of work were never achieved and satisfactory explanations were not obtained.

57. It was stated that a working relationship was maintained during the contract but serious reservations arose as to whether Barwicks could complete the project.
58. Meetings were held with Council Officers regarding the lack of progress on the contract and actions that needed to be taken. It was agreed that TFP would monitor progress and resolve outstanding disputed issues and the final account. The resolution of the issues needed to be rapid and reasonable.
59. The Senior Partner at TFP confirmed they had had meetings with Barwicks but these never came to a satisfactory conclusion. The auditor asked if the standard contract used with Barwicks was the right contract and could it have been used to resolve the disputed issues. The Senior Partner stated that in his opinion it was the correct contract to use. The contract contained the necessary mechanisms to resolve disputes of this nature.
60. The Senior Partner stated that in the case of a dispute over the length of Extension of Time award, the Contract Administrator would officially award his determination of the time he is prepared to allow. Once determined the contractor would have to accept or go to arbitration at that time. The dispute between the Contractor and Contract Administrator would then be official and unless the Contractor went to arbitration he would have to accept the determination.
61. The Senior Partner was asked why they did not take that action in early 2007; he replied that it is an action they would only take as a last resort. It was their view that the claims made by Barwicks were not credible and in the end it would have to accept TFP calculation of EOT or very close to it. TFP had "hoped" the dispute would be resolved by the end on the contract.
62. Throughout the contract TFP had provided advice to HBC staff that it was not in Barwicks interests to go to arbitration. Even as late as March 2007 PS was stating in the steering group that it was not worthwhile for Barwicks to go to arbitration, but by October 2007 the Quantity Surveyor was recommending HBC to approve Barwicks offer.
63. TFP have been praised for the resulting construction, had successfully controlled the works costs and kept good records. In Audit's opinion, it is therefore surprising that TFP did not resolve the EOT issue when they had been clearly requested by the steering group to do so and as soon as the variation was known. In advising the steering group in the way that they did on several occasions that Barwicks could not support their variation to the original claim and then to later advise the Council to settle, is what has led to the Council's exposure. Ultimately, it was the Council's responsibility to ensure that TFP dealt with the EOT issue they were first aware of it which the steering group endeavoured to do but TFP's advice given at the time was that it was not going to be an issue. Clearly it did become an issue for TFP to then advise the Council to settle and by that time, given Barwicks representations, there was no option but to negotiate a settlement.

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Meeting with Museum Curator /Programme Manager

64. The project was discussed with the Museum Curator. The Curator explained that the contract had not gone well. It was her view that there was a lack of commitment from the contractor particularly when the contract was coming to a close. Many times there were either only a few or nobody on site and the workers did not appear to be pressing ahead with the tasks. It was very frustrating.
65. The curator accepted that she relied completely on professional advice, particularly from TFP, when dealing with the building contract. She had found TFP extremely helpful and considered that the final extension and improvements completed were very good.
66. The Council had a Project Methodology in place included in its portfolio of in-house training courses attended by Officers involved in the delivery of capital projects. In Audit's view, the Museum extension was a large project and training for the programme manager would have been useful.

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Rec. No.	Recommendation	Priority	Management Response	Responsibility	Target Date
1	The Council ensures its asbestos register is complete and kept up to date.	High	The Council's asbestos register is now complete and it will now be kept up to date through the actions of the Head of Resorts and Amenities.	Head of Resort Services & Amenities	Achieved
	Appropriate type 3 asbestos surveys are undertaken on all demolition contracts before any works are started.	High	It is agreed that type 3 asbestos surveys should be undertaken before demolition contracts are started. This is important for both safety and cost reasons. A type 3 survey employs invasive techniques to 'seek out' asbestos in places like between floors and cellars and other more inaccessible parts of buildings.	Head of projects	Achieved
2	All major non-capital projects to be included in the corporate risk register and for capital projects, project risk logs to be maintained separately by each Project Manager. Outstanding risks will be reported regularly to the steering group and any risk	High	For Project Risk Logs: The inclusion of major projects in the Project Risk Register and regular maintenance of project logs are essential. The Head of Projects will ensure that refresher training is provided and that project risk logs are completed within the capital projects service. It will be important that all individual project managers regularly report risk issues to project steering groups and risk will be expected to appear on the agenda and	Each Project Manager	November 2008

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	considered to be high reported to the appropriate level of management and continue to be reported until the risk has been resolved.	High	minutes of each project group meeting. For the Corporate Risk Register: Agreed. Training for all managers is in progress and covers the need for inclusion of major non-capital projects within the Corporate Risk Register. It will be important that all managers (risk owners) report risk issues through the Corporate Risk Management system (GRACE) which will be monitored and escalated to the appropriate level of management in a timely way.	Chief Auditor	November 2008
3	Project Managers need to be aware that they need to advise Corporate Directors and the Deputy Chief Executive & Director of Corporate Resources if there is a possibility that the costs will significantly exceed the budgeted expenditure (as required in the Financial Operating Procedures) and of any significant delays, problems or reputational risks that	High	This is absolutely accepted. A key issue with this project was the non reporting of difficulties until the project transferred to Regeneration and Planning in the summer of 2007. Although this is obviously the responsibility of Project Managers, other colleagues on future Project Steering Groups need to accept that they have a responsibility to ensure that problems are urgently identified and addressed. In this case it was clear that the problems were known and initial meetings with the contractors held to discuss these. However, the issues were clearly not resolved and not drawn to the attention of Directors once the Director of Leisure and	All appropriate Project Officers	December 2008

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	may occur .		<p>Culture had left.</p> <p>It is proposed that all major projects should have a “Mentor” as well as a Project Manager and this ought to provide a mechanism for problems to be identified and supporting actions taken (Please see recommendation 4 below). FOPS guidance will be reinforced as part of training per recommendation 4 below.</p>		
4	The use of a formal project management methodology to be further embedded in the Council’s working practices and training given to all appropriate staff.	Medium	<p>Formal training in project management for Council officers has been given but it is clear that the Council needs to adopt a more formal system of management and review. Both Sea Space and the County Council have been consulted and detailed proposals based upon a closer adherence to the PRINCE2 system adapted for our particular use will be developed and brought forward. These will involve:</p> <ul style="list-style-type: none"> a) Major projects having both a Project Manager responsible for the running of a contract and a Project Mentor responsible for offering support and guidance at a senior level and have the power to resolve conflict or under performance. A clear ‘job description’ for both roles will be 	Head of projects	June 2009

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			<p>produced.</p> <ul style="list-style-type: none"> b) Structural methodology guiding a project through its whole lifecycle. c) A system which requires review at a number of stages or gateways – particularly at the outset of work when a proper assessment of risks is crucial. d) To continue to strengthen the current Project Review Board. This will involve empowering the Board to make specific recommendations to Corporate Management Group in the light of project and programme performance. 		
5	<p>Corporate Directors need to ensure that Project Management Steering Groups are made up of staff with the skills commensurate with the size, complexity and risks involved in project.</p>	Medium	<p>It is the responsibility of Directors in conjunction with their own management teams to ensure that all project teams have a sufficient balance of skills and experience to deliver projects. The proposed mentoring system offers the opportunity to strengthen this with advice and support to develop the skills and confidence of less experienced teams.</p>	Corporate Directors	December 2008