



## EXECUTIVE BOARD

---

Meeting to be held in Civic Hall, Leeds on  
Wednesday, 13th June, 2007 at 1.00 pm

---

### Councillors

M Harris (Chair)  
A Carter  
R Brett  
J L Carter  
R Finnigan  
R Harker  
P Harrand  
J Procter  
S Smith

### MEMBERSHIP

K Wakefield  
J Blake

R Finnigan

\*non voting advisory member

## **CONFIDENTIAL AND EXEMPT ITEMS**

The reason for confidentiality or exemption is stated on the agenda and on each of the reports in terms of Access to Information Procedure Rules 9.2 or 10.4(1) to (7). The number or numbers stated in the agenda and reports correspond to the reasons for exemption / confidentiality below:

### **9.0 Confidential information – requirement to exclude public access**

9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

### **9.2 Confidential information means**

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information the disclosure of which to the public is prohibited by or under another Act or by Court Order. Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

### **10.0 Exempt information – discretion to exclude public access**

10.1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and
- (b) that resolution states by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below) the description of the exempt information giving rise to the exclusion of the public.
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Exempt information means information falling within the following categories (subject to any condition):

- 1 Information relating to any individual
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes –
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

# A G E N D A

<b>Item No K=Key Decision</b>	<b>Ward</b>	<b>Item Not Open</b>		<b>Page No</b>
7	Otley and Yeadon		<b>RIVER SAFETY MANAGEMENT AT WHARFEMEADOWS PARK, MANOR PARK AND TITTYBOTTLE PARK, OTLEY</b>  To consider the attached reports and a further report to be circulated following agenda despatch.	1 - 14

This page is intentionally left blank



Originator: Denise Preston

Tel: 247 8395

---

**Report of the Chief Recreation Officer**

**Executive Board**

**Date: 13<sup>th</sup> June 2007**

**Subject: River Safety Management at Wharfemeadows Park, Manor Park and Tittybottle Park, Otley**

---

**Electoral Wards Affected:**

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In  
(Details contained in the report)

---

**EXECUTIVE SUMMARY**

1. This report contains additional information to the report deferred at the Executive Board meeting on the 16<sup>th</sup> May 2007, and should be read in conjunction with that report which is also on this agenda. This report outlines the results of an exercise to obtain residents' views, consideration of a proposal to lease the parks (or part of them) to Otley Town Council and discusses some of the issues raised at the public meeting on the 10<sup>th</sup> May 2007 and a public display of proposals on 8<sup>th</sup> June 2007.

## 1.0 PURPOSE OF THIS REPORT

1.1 A report on River Safety Management at Wharfemeadows, Manor Park and Tittybottle Park was on the Executive Board agenda for 16<sup>th</sup> May 2007. At the meeting it was resolved:

‘That consideration of proposals to improve water safety at Wharfemeadows Park, Manor Park and Tittybottle Park, Otley be deferred to the June meeting of the Board excepting that the Chief Recreation Officer be requested to progress fencing proposals by the river in the vicinities of the weir and the children’s play area’.

1.2 This report informs the Executive Board of the response to the revised proposals to improve water safety at Wharfemeadows, Manor Park and Tittybottle Park in Otley, contained in the 16<sup>th</sup> May 2007 report.

1.3 On the 10<sup>th</sup> May, RoSPA advised Council officers of a tragic accident in a park in Slough, Berkshire on 7<sup>th</sup> May. The following is an extract of the BBC Online News Report:

**Two year old found in stream dies – a toddler has died after being found in a stream after he wandered off while playing with other children in a park.**

The two year old was playing near Upton Court Park in Slough, Berkshire, on Monday, when he vanished. Family members and local officers began a desperate search of the area and at about 1915 BST the child was found in a stream within the park. He was taken to Wexham Park Hospital where he was pronounced dead shortly before midnight. Police said the death was not being treated as suspicious. A post mortem examination is due to take place on Wednesday

## 2.0 BACKGROUND INFORMATION

2.1 In respect of the 16<sup>th</sup> May decision regarding progression of fencing proposals in the vicinity of the weir and play area, it has not been possible to progress this as the issue of style and height of fencing was an issue raised at the public meeting on the 10<sup>th</sup> May. The Executive Member for Leisure indicated that the height and style issues would be considered further at this meeting, therefore partial fencing could not be ordered.

2.2 A public meeting was held at Otley Civic Centre on 10<sup>th</sup> May 2007. The meeting was chaired by the Executive Member for Leisure and was attended by the Chief Recreation Officer, the HR Manager (Safety, Well-being and Attendance), the Head of Community Services and Litigation and the Principal Parks Area Manager. The revised proposals as outlined in the May report were described, and large information boards and maps were available showing the proposals.

Questionnaires were also made available for people to take away from the meeting, and a pdf file of the questionnaire was sent to the Wharfemeadows Action Group, at their request, so that it could be distributed by them to people who could not attend the meeting.

2.3 At the time of writing this report 142 questionnaires have been returned. Attached at Appendix 1 is a copy of the questionnaire and map of the proposals.

The analysis of the responses shows that:

- There is support for signage in all three parks (125 Yes; 13 No)
- There is very little support for fencing between points A and B on the map (6 Yes; 130 No)
- There is support for the proposal to repair, sign, and keep the steps area open (128 Yes; 7 No)
- There is a mixed response to the fencing proposal from C to D approaching the Weir area (39 Yes; 91 No)
- There is a mixed response to the fencing from D to E in the Weir area and past the playground (58 Yes; 77 No)
- There is a mixed response to the bankside vegetation density from E to F (53 Yes; 81 No)
- There is very little support for the short stretch of fencing between F and G in the area of the River Wharfe footbridge (13 Yes; 117 No)
- There is a mixed response to the density of bankside vegetation from the Lodge to the west end of Manor Park G to H on the map (46 Yes; 85 No)
- There is little support for the fence from the Otley Bridge to the east end of Tittybottle Park at H to I on the map (15 Yes; 121 No)

2.4 The comments on the proposals are varied, as are the responses to Questions 1 to 9, however the comments are mainly concerned with:

- Spoiling the view of the river
- Affecting business in Otley as the River is a tourist attraction
- Parents and guardians should take responsibility for their children rather than erecting fencing to deal with the safety issues
- The style and height of the fencing is too intrusive

2.5 The responses to the questionnaire show little or no support for fencing, signage and dense vegetation in certain areas. However, Council officers are firmly of the view that to do nothing is not an option that can be considered. Officers have undertaken a site Risk Assessment and the recommendations to introduce fencing, signing and vegetation as shown on the map are the measures which must be put in place to ameliorate the risk to safety. During the Risk Assessment process officers did consider the public views on fencing the steps area, fencing at Points E to F, and the height and style of fence.

2.6 These concerns have been addressed by the revised proposals as follows:

- the steps to be repaired and appropriately signed rather than fenced
- dense vegetation margin to replace fencing at Points E to F
- the fence, including the wall, will be a maximum height of 1 metre, and alternative designs for the style of fencing were displayed at the Otley Civic Centre from 8<sup>th</sup> June to 10<sup>th</sup> June, with forms available for the public to state their views

2.7 In respect of the objections to the remainder of the fencing and signing measures, officers have considered these, but are of the firm view that anything less than the proposals arising from the Risk Assessment carried out on site would not reduce the risks and hazards and should therefore be implemented to address the health and safety risks evident in the Parks.

2.8 In respect of the views outlined at 2.4, the fourth bullet point regarding height and style of fencing has been addressed as outlined in paragraph 2.6. In respect of the

first two points on spoiling the views of the river and affecting businesses in Otley as the Park is a tourist attraction, these are not issues which could be addressed by the Risk Assessment process which has to consider measures to reduce the risk to health and safety.

- 2.9 One of the issues raised at the public meeting, and by the Action Group concerned a suggestion that had been put forward by RoSPA **before** Council officers undertook the site Risk Assessment on 30<sup>th</sup> March 2007. The suggestion made was that if the whole of the perimeter of the Parks were to be fenced and signed it may not then be necessary to erect fencing on the low walls.

This suggestion was discussed in detail at the Site Risk Assessment meeting on 30<sup>th</sup> March, and was discounted as it would not address the tripping hazards along the length of the River. In terms of the Risk Assessment if the action proposed does not reduce the risk then there is little point in undertaking that action as it does not reduce the risk or ameliorate the hazard.

- 2.10 The local M.P. Greg Mulholland has raised in his letter of 4<sup>th</sup> June to Councillor Harris, a prior proposal of RoSPA which was put to Council Officers during March 2007 as follows:

- To erect a fence along the path by the houses (on the side nearest the river) with lockable gates at access points/paths leading into the park
- To ensure all entrances to the park have lockable gates
- To have appropriate signage at each entry point bringing people's attention to the safety concerns/need to keep children under control
- To look at the possibility of fencing the entire children's play area
- To erect appropriate fencing by the drop by the weir (where and type of fence to be consulted on)
- All gates to the park would be locked at times of flood warning or spate (the police station is just across the road so this would not be difficult) This is when the park presents a real safety hazard, not at times of normal flow

The letter goes on to state that the Council has not considered this alternative proposal. In fact, as outlined in paragraph 2.9 Council officers did consider and assess this proposal when carrying out the on site Risk Assessment on 30<sup>th</sup> March, at which RoSPA were present and this proposal was discussed.

All present at the meeting agreed that fencing of the whole park could not possibly reduce the trip hazard along the wall's edge or the hazard adjacent to the Weir area and that these areas would continue therefore to be a hazard to young children and those unaware of the dangers.

- 2.11 From 8<sup>th</sup> to 10<sup>th</sup> June the proposals to address Water Safety issues have been on display in Otley Civic Centre. Further questionnaires were available for completion with an additional question and option list on fencing style.

The results of any completed forms and fencing options preferred will be made available to Members of the Executive Board at the meeting.

### **3.0 LEASING OF THE PARKS TO OTLEY TOWN COUNCIL**

- 3.1 Officers were asked to consider the issue of possible lease to Otley Town Council of either the land adjacent to the River on both sides, or the entirety of the Parks.



Leading Counsel's opinion has been sought on this matter and is outlined in the Legal part of this report at paragraph 4 below.

- 3.2 The Parks and Countryside service has to deal with many difficult issues across its management of 4000 hectares of parks and greenspace across the City. Sometimes the actions that need to be taken for professional or conservation reasons do not find favour with local residents or users of the facilities. From a Recreation perspective it would be a retrograde step to lease a park to a local Town Council for these reasons. The Leeds Parks service is nationally renowned for its development of services in recent years which is achieved through a whole workforce working together to achieve the Council's vision and aspirations for Leeds parks as a whole.

#### **4.0 LEGAL IMPLICATIONS**

- 4.1 There are significant legal implications for the Council arising from the suggestion that the Parks be leased to (or the management of it shared in some other way) with Otley Town Council. It is not possible to fully comment on the legal implications, however, as it is not entirely clear on what basis the park is suggested to be leased to or managed by Otley Town Council. However, in general terms the suggestion nevertheless poses real problems:

- The first question is "why is it being proposed?". What is the proposed action intended to achieve that cannot be achieved by current/proposed arrangements? This may well give rise to a legal challenge on the basis that it is not genuinely intended to give greater autonomy to local people who can then better control and safely enjoy their own leisure environment but is a device to avoid the Council having to take the required safety measures.
- The second question is: Would the proposed transfer be legal and effective, in the sense that it would not be the subject of a legal challenge on the grounds that such a disposal was ultra vires (ie outside the powers of the Council) or that it is otherwise liable to "administrative review" by the Courts.
- The third question is whether the proposed action would actually achieve the desired result.

Leading Counsel advises overall that the proposal would be likely to lead to real problems in the future and will not solve any problems now. There are specific legal difficulties from both a property law point of view and a health and safety law perspective as set out in Appendix 2.

#### **5.0 CONCLUSIONS**

- 5.1 Since the original report to Executive Board on 9<sup>th</sup> February 2007 a full Site Risk Assessment has been undertaken, and the weight of public opinion in respect of the fencing has been considered and taken into account. This resulted in the revised proposals in the 16<sup>th</sup> May report to leave the area of steps unfenced, but appropriately signed. The area of fencing proposed from points E to F has also been amended to a vegetation margin.

It is Council officers' professional view, after having carried out a risk assessment that the remainder of the proposals outlined in paragraph 5.1 of the 16<sup>th</sup> May report and set out below should be implemented as soon as it reasonably practicable.

- The installation and maintenance of an ornamental bow top fence along the low wall top from A to B and C to D
- The installation and maintenance of an ornamental bow top fence along the bank from the playground to the top of the access path from D to E
- The installation and maintenance of an ornamental bow top fence at the base of the white bridge from F to G
- The installation and maintenance of drop gates to prevent unauthorized access into “Holbeck”
- Install and maintain warning signs on steps. Highlight the step edge and undertake repairs to steps at points B and C
- Along remaining unprotected waters edge create a 2m strip of unstrimmed vegetation to define river bank edge from E to F and G to H
- Install and maintain multi safety and information signage at main park entrances and installation of nag signs at regular intervals.
- Erect an ornamental bow top fence on top of the bank wall that runs from the Otley Bridge to the east end of Tittybottle Park at H to I

## **6.0 RECOMMENDATIONS**

- 6.1 It is recommended that the scheme to erect signage and to fence parts of the Parks adjacent to the River Wharfe as set out in paragraph 5.1 above and detailed graphically in Appendix Four of the 16<sup>th</sup> May report, be implemented as soon as is practically possible.

**WHARFEMEADOWS PARK WATER SAFETY PROJECT****QUESTIONNAIRE & COMMENTS FORM**

The project includes the following sites:

**Wharfemeadows Park • Tittybottle Park • Manor Park**

Please put a tick in the appropriate **yes** or **no** box regarding your thoughts on the following proposals for water safety measures:-

	Question	Yes	No
1	The installation of appropriate signage in all three parks informing visitors about the dangers associated with the moving water of the River Wharfe.	125	13
2	Erect an ornamental bow top fence on top of the bank wall that runs from Otley Bridge to the steps in Wharfemeadows Park (A – B on the map)	6	130
3	Keep the step area open for public access, undertake essential step repair and install appropriate warning signage for these steps. In Wharfemeadows Park (B – C on the map).	128	7
4	Erect an ornamental bow top fence on top of the bank wall that runs from the steps to the footbridge that spans the stream called Holbeck in Wharfemeadows Park (C – D on the map)	39	91
5	Extend the existing bow top fence by the playground to a point in line with where the access path from Farnley Lane meets with riverside path in Wharfemeadows Park (D - E on the map)	58	77
6	Increase the density of the bankside vegetation in Wharfemeadows Park and ensure its width is at least 2m in thickness. Plantings to be done in a manner that retains existing views of the river (E – F on the map)	53	81
7	Erect a short length of bow top fencing between the bankside vegetation and the River Wharfe footbridge in Wharfemeadows Park. This fence will also extend along the west side of the footbridge (F –G on the map)	13	117
8	Increase the density of the bankside vegetation that runs from the Lodge garden wall to the west end of Manor Park (G – H on the map) and ensure its width is at least 2m in thickness. Planting to be done in a manner that retains existing views of the river.	46	85
9	Erect an ornamental bow top fence on top of the bank wall that runs from the Otley Bridge to the east end of Tittybottle Park (H – I on the map)	15	121

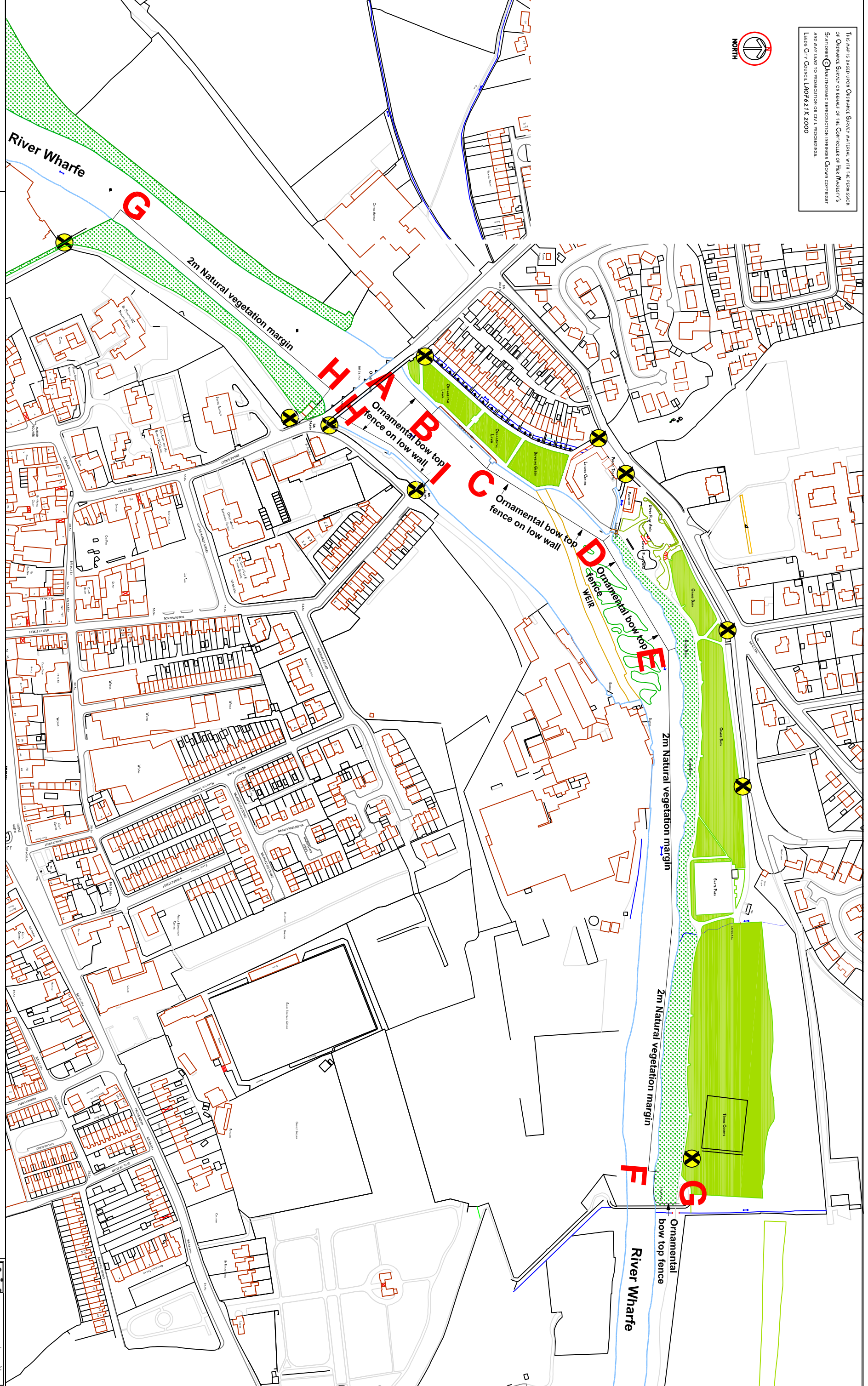
Your comments on the above proposals:-

Please can you return the completed questionnaire and comments form to:-

Parks & Countryside, Farnley Hall, Farnley Park, Hall Lane, Leeds LS12 5HA

This page is intentionally left blank

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. UNAUTHORISED REPRODUCTION INFRINGES Crown Copyright and may lead to prosecution or civil proceedings.  
 Leeds City Council LA07621X 2000



**PARKS & COUNTRYSIDE**  
*improving the environment for recreation*

**Wharfemeadows Park**

**KEY**



Signage

A--H Refers to written risk assessments

		Landscape & Countryside Park Team 110 Museum Street Leeds LS2 9DT
Project:	Wharfemeadows Park	
Task:	Water Safety Measures	
Drawn:	CAJ	Scale: NTS
Checked:	NTS	Date: 5/10/07
Reviewed:	DRS	Version: 2
Drawn:	LD/15105	

This page is intentionally left blank

## 1. Implications from a Property Law perspective

- 1.1 However, even if by granting a lease the Council could absolve itself of its duties as an occupier, this would not mean necessarily that a decision to do so would be within the Council's powers. Under sec 123(1) of the Local Government Act 1972, a local authority has the power to dispose of land held by them 'in any manner they wish'. Under sec 123(2A) this is qualified by the requirement to advertise their intention to dispose of land consisting or forming part of an open space, and to 'consider any objections to the proposed disposal which may be made to them'. Decisions to dispose of land may not always be treated as the exercise of a public law function. However, in R (on the application of Isle Lodge Amenity Committee) v Kettering BC [2002] the court held it was sufficient to make the matter a public matter that land had been given to the authority for use as a public open space. Therefore, the claimants had a legitimate expectation that the authority would reach its decision rationally and fairly. Given that significant parts of the Park were conveyed to the Council for open space uses, or in trust for those uses, and that any lease to the Otley Town Council would not be a disposal of surplus property which could then be put to other (private) purposes, but would be to another public body on terms requiring the continued use of the premises for recreational purposes, it seems certain that this would make any disposal a public matter, and so subject to the usual public law requirements.
- 1.2 Where there is to be a continuing public use of property, it is clear that the implications of a disposal for those affected by it, will be a relevant factor in determining whether a decision to dispose is ultra vires. In R v Tameside BC ex parte Governors of Audenshaw High School [1990], a sale and leaseback scheme was held to be ultra vires on the ground, inter alia, that the Council had failed to consider the educational implications of the scheme for the pupils..
- 1.3 If the Council, having considered a proper risk assessment taking everything into account, and having decided what actions were appropriate to discharge its legal duty in this matter, then purported to dispose on terms which did not secure that the Town Council, (as an occupier under the same legal duty), itself carried out those actions, that would seem to be irrational and so ultra vires.
- 1.4 Even if that conclusion is incorrect, it is necessary to consider whether such a disposal would in fact absolve the Council of legal liability. As mentioned above, if the Council continued to retain some degree of control over the leased premises, for example if the Council controlled access to the premises or continued to have repair obligations, it may still have a sufficient degree of control to retain the duties of an occupier. Furthermore, whilst a landlord owes no general duty of care to the tenant or to third parties, the Council has full knowledge of the potential risks arising from the public use of these premises. Therefore, if the Council did not dispose on terms which required these works to be carried out, or did so, but then failed to enforce those terms against the

Town Council, it would seem inconceivable that a duty of care to Park users would not arise.

- 1.5 [This may be particularly be the case, given the Council built the Park. It may well be that a common law duty of care would arise in relation to those persons reasonably expected to be affected by the structure of the Park – Adams & Anor v Rhymney Valley DC [1999], where the court accepted there was a common law duty of care, as well as a statutory duty under the Defective Premises Act 1972].
- 1.6 In the event of an accident, it seems that the actions taken by the Council could also be challenged as a breach of Convention rights. It has been held that the right to life under Article 2 (comprised in schedule 1, Human Rights Act 1998) extends to a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction, and this is to be construed in the context of any activity, whether public or not, in which the right to life may be at stake. In Oneryildiz v Turkey [2004], where the ECHR found the Turkish authorities knew or ought to have known that there was a real and immediate risk to persons living near a municipal rubbish tip, ‘they consequently had a positive obligation under Article 2 of the Convention to take such preventive operational measures as were necessary and sufficient to protect those individuals...especially as they themselves had set up the site, and authorised its operation, which gave rise to the risk in question’. Consequently, in the knowledge of the immediate risks to Park users, to dispose on terms which did not require the necessary works to be carried out, or to do so, but then not to enforce those terms would seem to be a breach of the positive obligation imposed by Article 2, (and sec 6 Human Rights Act 1998).
- 1.7 In respect of those parts of the Park held under the Open Spaces Act 1906, it may also be the case that irrespective of the grant of a lease, the Council will be under a continuing duty under sec 10 of that Act to maintain and keep the open space... in a good and decent state’.
- 1.8 If the Council sought to enter into a management agreement with the Town Council, the Council would have to consider whether the terms of such an agreement were consistent with its duties under sec 10 of the 1906 Act, and with the power to manage land in sec 120(1)(b) of the Local Government Act 1972 for ‘the benefit, improvement or development of their area’ – R v Sefton MBC, ex p. British Association of Shooting and Conservation Ltd [1998], and R v Somerset County Council, ex p. Fewings [1995]. It has been held that decisions of this nature have to be based on an objective judgment about what would be conducive to the better management of the estate. Again it would seem in relation to either function that a decision the effect of which was that the immediate risks to public enjoyment of the Park were addressed less effectively than if the Council had undertaken the necessary works itself, without any counterbalancing benefit to the management of the Park, would be difficult to reconcile with these duties.



## 2. Implications from a Health and Safety Law Perspective

- 2.1 The remarks above are compounded when the matter is looked at from this perspective.
- 2.2 Leading Counsel advises in terms of the health and safety implications the proposed transfer would solve nothing. Leeds City Council will almost certainly still remain liable to discharge the primary statutory duties which would arise out of the continued operation and use of the site.
- 2.3 Upon the understanding that Leeds City Council staff continue to operate the site, the primary duties of care which are owed by all employers not only to employees but also to other persons affected by their operation under the Health and Safety at Work, etc Act 1974 would remain and they would be “non-delegable”. In other words the City Council would have handed over the site but still have the legal burden of ensuring the safety of staff and visitors alike (*Wilson and Clyde Coal Company Limited v English* (1938) AC 57 and *Kondis v State Transport Authority* (1987) AC 906).
- 2.4 In addition to its duties as an “employer” the City Council would probably also owe duties as a “occupier” too depending on what land it is proposed should be transferred to the Town Council and on what terms. Whilst such duties as an occupier may be transferred, Otley Town Council would probably not want to take on those areas which created the most hazards. As has already been established in the view of officers there are already significant hazards on site (with which Counsel concurs from a legal perspective) and Otley Town Council would make itself liable for those too if it became a joint occupier with the City Council. The legal position in this regard arises from the Occupiers Liability Acts 1957 and 1984 under which the Council’s legal responsibility is well analysed in the previous report to the Executive Board.
- 2.5 Whilst exemption clauses and warning signs can be affected in negating the duties of an occupier in certain circumstances, the Board’s attention is drawn to the analysis of the decision of the House of Lords in the previous report to the Executive Board regarding *Tomlinson v Congleton Borough Council* (2004) AC 46 and the duties which arise in respect of dangers “due to the state of the premises” under the 1984 Act. Here there are clearly identified dangers which arise out of the “state of the premises” and they must be addressed before any transfer could be properly considered (See *Keown v Coventry NHS Trust* (2006) 1WLR 953).
- 2.6 The reality is that a proposal re.lease/management agreement is unlikely to lead to a solution of the problem which currently faces the City Council as advised by Counsel with regard to its legal responsibilities and which would certainly face both members and officers of the City Council in the event of a fatality or prosecution in the future (and Counsel points out that the HSE may be minded to observe what action is being taken by the City Council having regard to the history of the other cases involving the Council in relation to stretches of open water eg the *Stainforth Beck/Royds School* fatality in the Yorkshire Dales).

This page is intentionally left blank