



*cutting through complexity™*

# Contracting and Procurement

Conwy County Borough Council

July 2012

**The contacts at KPMG  
in connection with this  
report are:**

**Ian Pennington**

*Director*

Tel: 029 2046 8087

[ian.pennington@kpmg.co.uk](mailto:ian.pennington@kpmg.co.uk)

**David Locke**

*Manager*

Tel: 0118 964 2235

[david.locke@kpmg.co.uk](mailto:david.locke@kpmg.co.uk)

This report is addressed to the Council and has been prepared for the sole use of the Council. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. The Wales Audit Office has issued a document entitled "Statement of the Responsibilities of the auditors appointed by the Auditor General for Wales and of the bodies that they audit (2010)". This summarises where the responsibilities of auditors begin and end and what is expected from the audited body. We draw your attention to this document.

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Ian Pennington, who is the engagement director to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact Virginia Stevens on 029 2046 8009, email [virginia.stevens@kpmg.co.uk](mailto:virginia.stevens@kpmg.co.uk), who is the national contact partner for all of KPMG's work with the Wales Audit Office. After this, if you are still dissatisfied with how your complaint has been handled you can contact the Complaint Investigation Manager at the Wales Audit Office, telephone 02920 320500 or e-mail [complaints@wao.gov.uk](mailto:complaints@wao.gov.uk). The complaints investigation manager may also be contacted in writing at 24 Cathedral Road, Cardiff CF11 9LJ.

**The Council performs inconsistently in the procurement and contracting of external suppliers. Many aspects of the process require improvement in some of the Council's services. The Council is not always able to demonstrate that it has delivered value for money.**

**We have made a number of high priority recommendations.**

## Introduction

The Council incurs a large proportion of its expenditure through external suppliers, ranging from the one-off purchase of small items to major capital building projects. The Council has a range of procedures and controls, including tendering, contract management, monitoring and financial transaction controls. These procedures and controls are designed to safeguard the Council's money, ensure the right goods and services are bought, deliver value for money and properly account for the costs.

As a result of over-spends on some large capital projects, such as the significant over-spend on the replacement of the Maesdu Road Railway Bridge, and a number of issues arising on other contracts, we agreed with the Council to carry out a review of its contracting procedures. We have drawn heavily on work carried out by the Council's internal audit department, and refer to internal audit reports where relevant.

## Scope of this report

This report summarises the key findings arising from:

- our review of contracting and procurement processes at the Council under the Local Government Measure and under our Use of Resources responsibilities.
- our work in response to queries raised by a local elector on the Maesdu Road Bridge and other large capital projects.

## Acknowledgements

We would like to take this opportunity to thank officers and Members for their continuing help and co-operation throughout our audit work, and in particular the assistance given to us by the Internal Audit section.

## Summary

The Council performs inconsistently. Some contracts are applied correctly and some examples of good practice exist (such as the

recent Eirias Park project). However, many aspects of the contracting process need improving, including the way procedures are applied in many of the Council's services. They include:

- Better compliance with the Council's tendering procedures and legal requirements
- Improved management of major contracts

We have made a number of high priority recommendations within this report.

The Council itself has already taken steps to improve some of these processes, including establishing a new project and programme forum for managers, rolling out management training that focuses on realising benefits from external procurement, a hardened tone from the top about compliance, and a series of internal audits in risk areas. The Council still has significant work to do, however, before it can be confident that all third party expenditure is being procured, managed and monitored in the most economic, efficient and effective way.

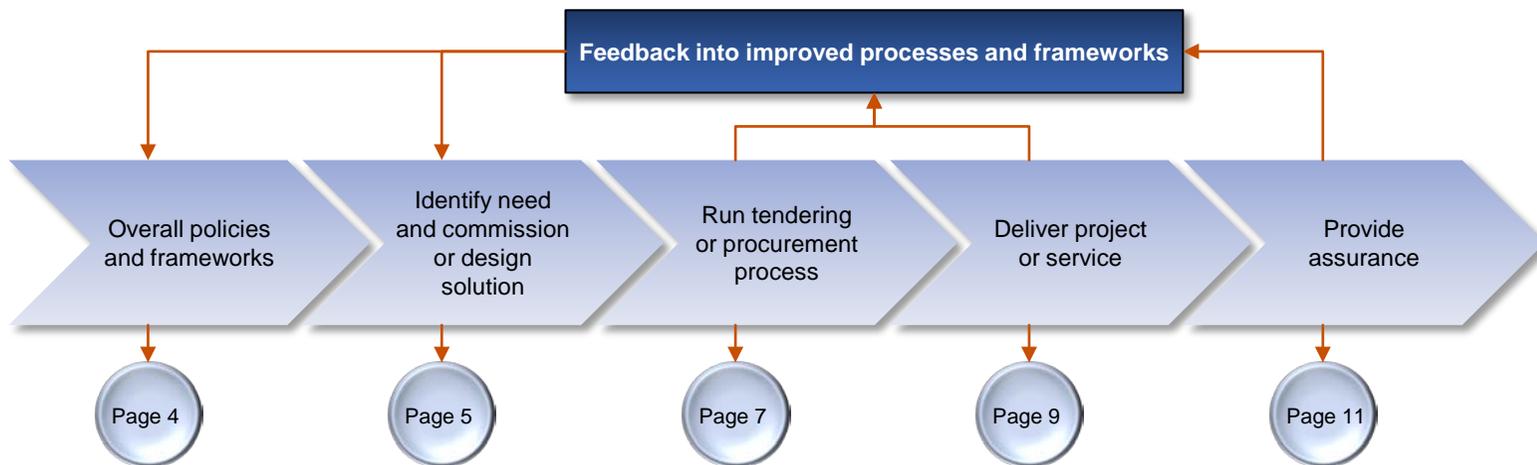
## Specific conclusions on objections

A local elector has exercised his right to make objections to the external auditors under the Public Audit (Wales) Act requesting us to issue a Public Interest Report under Section 22 of the Act. We have carefully considered this option due to the number, scale and value of the issues identified during this review. We have declined to issue a public interest report on the grounds that:

- this report will be publicly available and presented to the council's Audit Committee;
- that the Council has commissioned significant work from internal audit, which has identified a large number of recommendations; and
- that the Council is putting in place actions intended to improve matters.

## Summary of contracting processes

The Council needs to assess why clear central policies and procedures, and corporate demands for compliance, are only inconsistently followed in some services. It then needs to insist upon compliance.



Designing, sourcing and delivering work or goods from third party suppliers involves a number of stages. The details within these stages and the amount of work that the council needs to do depends upon the complexity and value of the contract involved.

In this section of the report, we summarise the findings and conclusions of how the Council performs in each of the above stages, and raise a number of recommendations. This report and the work of internal audit include a large number of recommendations, each supported by a risk, a failing or an area of non-compliance.

**Recommendation R1 – The Council needs to assess why the clear central policies and procedures and corporate demands for compliance in relation to contracting and procurement are not being followed by many individual officers in their services. The Council needs to assess whether this is an issue of induction, training, leadership, management or enforcement – or all of them – and take appropriate steps to improve the management in this area.**

**The Council's Contract Standing Orders and Code of Practice offer a good framework, but need to be refreshed.**

### Policies and Standing Orders

The Council has a suite of formal policies and procedures designed to guide staff through the procurement and contracting process. The main policies are:

- The Council's Constitution, Financial Regulations and Scheme of Delegation, which set out which individuals and committees may make decisions depending upon the nature and scale of the decision;
- Contract Standing Orders (issue date June 2007) which sets out a methodology for procuring goods and services. Its aims are efficiency, transparency and accountability and require the highest standards of probity from all officers and members. Contract Standing Orders govern the levels of anticipated expenditure at which it is necessary to obtain written tenders/quotes for work, how many quotes are required, as well as the procedure for dealing with these tenders. Clear, written procedures are important to ensure suppliers compete on a level playing field, and minimise the risk of collusion or fraud.
- Contracts Code of Practice (issue date June 2007) which supports the Contract Standing Orders.

In general, we consider that the Contract Standing Orders and Code of Practice offer a good framework for the Council to manage its contracts with third parties.

Since the Contract Standing Orders and Code of Practice were issued, there have been changes in the environment in which the Council operates such as the greater pressure from the Welsh Government for councils to collaborate with each other and with other public bodies.

One of the key features of a strong control environment is compliance with policies and procedures. If the Council becomes aware of areas of non-compliance, it needs to insist upon compliance or to review the policy. As an example, we identified during our grants certification work in 2009 that some social care contracts were not being re-tendered with the frequency demanded by the Contract Standing

Orders. These contracts were for providing care to vulnerable people and it was the reasonable judgement of officers that the right service would be provided using continuity of the care provider. We recommended at the time that the Council review the Contract Standing Orders so that they covered this circumstance – on the basis that if a policy is inappropriate or impractical then it should be amended rather than permit non-compliance. This change has not been made, but the Council is assessing each deviation from the Contract Standing Orders on a case-by-case basis.

It is best practice to review these periodically, to make sure that the various limits remain appropriate and to reflect any changes in structures and roles.

### **Recommendation R2 – The Council should regularly review its Contract Standing Orders and Code of Practice to ensure:**

- **it is up to date with the current environment,**
- **to correct any known anomalies in the operation and**
- **to respond to any learning points raised in this report and in the detailed Internal Audit Reports issued in the last two years.**

### **The Procurement team**

A central procurement team is available to help services. Most Services now seek their advice though it is not a requirement.

### **Recommendation R3 - Senior officers should consider mandating the use of these specialist procurement officers for all major buying decisions.**

The Council has experienced unforeseen impacts from its commissioning and designing of contracts

## Background

Commissioning and designing a service forms the foundation for what the Council can expect to get from its contracts. It is important to consider all the alternatives and to specify clearly what the Council wants to achieve. In some situations it can be beneficial to conduct market soundings in advance of a formal procurement, so that officers and members can understand what the market has to offer, and to give suppliers every opportunity to find innovative and cost-effective solutions to the Council's needs. The importance of robust commissioning is illustrated in the following Council case studies:

### Maesdu Road Railway Bridge

The Council recognised the need for a replacement bridge because of the poor maintenance and safety standard of the existing bridge and diversions required by local bus services. As a result it assessed the bridge as a high priority in the capital programme.

The Council also had access to Transport Grant funding from the Welsh Government that may not have been available had the work been deferred. This was an important part of the Council's decision to proceed. (See chart.)

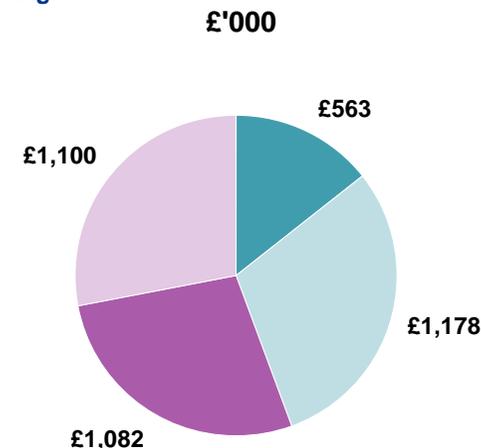
### Need for specialist assistance

It was clear to the Council that bridge design required specialist engineers, and so the Council employed a reputable national firm to produce the designs. These were appropriate steps in the contract process.

However, the outline plans for the contract did not include some foreseeable costs (such as the replacement bus service) and further operational problems occurred during the contract build stage. This suggests insufficient review and monitoring of budgets and plans through the development of the project. The Council let the contract for the design advice based on the time incurred by the engineers, rather than a fixed price for the contract. In hindsight, this made the cost difficult for the Council to control and Internal Audit has identified this as a contributory factor to the project over-spend.

**Recommendation R4** –Before deciding upon a course of action, the Council should assess an overall business case including all peripheral costs outside those of the main contract. Suitably senior staff, probably from a number of disciplines across the Council, should be involved in the due diligence review of the business case.

## Sources of funding



- Reserves
- Transport grant
- Supported borrowing - bridges - additional allocations
- Supported borrowing - bridges - originally planned allocation

The Council has experienced unforeseen impacts from its commissioning and designing of contracts

### Using Agency staff as refuse collectors

Council officers recognised in 2008 that its ongoing job evaluation programme created certain risks for the council if it were to employ new refuse collectors on the existing terms and conditions. In order to minimise the risk, the council decided to fill vacancies on a temporary basis, and in order to minimise the administration costs, to hire all staff from a single agency.

We can understand why this was an attractive and reasonable approach to take from a contract design perspective and showed an innovative approach to value for money. There were good reasons for using agency staff rather than permanent staff, as this was looking at the medium and longer term impact of hiring people when the pay framework was still being resolved. However, subsequent issues arose with how the Council implemented the plan (see 8.), and risks that crystallised such as the unforeseen time it took for the job evaluation programme to be completed.

### Elections system joint procurement

The Council ran a joint procurement process with Wrexham and Flintshire councils for a new elections IT system. When the bids were opened, the procurement scores suggested that the contract should be awarded to a bid that was substantially cheaper than the competitors, despite the fact that it failed to deliver certain critical aspects of the system such as Welsh language.

The Council properly stopped the bidding process and carried out an alternative sourcing after formal approval by Cabinet. Each of the three councils now have their own system, and the process did not necessarily achieve the economies of scale of a collaborative tender.

Stopping the procurement was the right thing to do in the circumstances, but the Council acknowledges that in hindsight this tender should have included clear minimum quality thresholds.

**Recommendation R5**– In designing contracts and tender documentation, the Council should assess whether there are minimum quality thresholds or service standards, failure against which will mean that a bid will be declined.

In most cases the Council places large contracts out to tender in line with its own contract standing orders and legislation, but examples exist where this has not happened and where the Council is unable to demonstrate compliance or value for money.

### Compliance with Contract Standing Orders

In common with all public sector bodies, the Council is subject to legislative requirements to advertise the largest of its contracts through a European tendering process (often known as OJEU – the Official Journal of the European Union). The Council must also demonstrate that it has achieved best value for money (not necessarily through the cheapest price) in both the award of these large projects and also in each contract that it lets.

The steps to obtain value for money differ depending on the value of the contract – for the smallest it makes sense to use either an approved supplier or to look informally at two or three suppliers on-line or in catalogues, or through asking for a verbal quote. To do more would represent an inefficient investment of time and cost in administration for the Council and potential suppliers. The underlying principle is that a competition should encourage suppliers to increase the quality of their offering and reduce the price of their bid.

Conwy, like other public sector bodies, therefore has a set of Contracting Standing Orders (see XXX) that set out different tender arrangements according to contract price. We tested thirty tenders received by the Council during 2010/11 to check if contract standing orders had been followed. This process does not, in itself, assess value for money, but more that the Council is operating in accordance with its processes, which should help to promote value for money.

Within the tenders that we tested, we found two areas where correct processes were not being followed. Firstly, when tenders are received they should be sent in sealed envelopes and opened only after the closing date in the presence of two officers. In two cases there was no evidence that two officers were present when tenders were opened. The Council's procedures also require a member to be present when the anticipated tender value exceeds £100k. This did not occur in one case in the sample of tenders. In this case the estimated tender value was £3m.

We have previously reported these two recommendations to the Audit Committee as part of our 2010/11 annual audit .

### Approved supplier lists

Organisations use lists of approved suppliers to purchase some services, where it is appropriate. The objective is to have a range of suppliers available at short notice, who have agreed to the Council's terms and conditions, have passed quality, security, diversity, and experience thresholds and have agreed price-cards.

Following a question to us from a member of the public about the number of building and maintenance contractors that the Council used, the Internal Audit department carried out a review into the work of the Building Maintenance Department. In this department, assignments are allocated to a range of businesses on an approved supplier list. The review identified a significant number of weaknesses and concluded the control environment was unsatisfactory. Weaknesses included quality of work being delivered, lack of cost control, poor management of supplier lists, selection from supplier lists, and failures to comply with Contract Standing Orders.

The Council has begun to act on the recommendations. For example, Internal Audit is currently working with the Property Maintenance and Facilities Manager to determine the best method of packaging the work, with a view to embarking on a competitive exercise by September 2012. However other recommendations remain outstanding, and we have not been supplied with a timescale for completion of these actions.

**Recommendation R6 – The Council should implement the actions set out in Internal Audit's reports relating to tendering and procurement processes. Senior officers should assess whether each department's programme for change is on track and whether the timetable is ambitious enough. Senior officers should routinely be asked to justify their responses to audit recommendations to members at Audit Committee.**

In most cases the Council places large contracts out to tender in line with its own contract standing orders and legislation, but examples exist where this has not happened and where the Council is unable to demonstrate compliance or value for money.

**Recommendation R7 - The Council should undertake a review of ad hoc maintenance spending in order to ensure better value for money. This review should consider all possible alternative methods for undertaking small ‘odd jobs’ – from the existing approved supplier lists, the employment of a small maintenance team and to full outsourcing of the work under a contract, giving due regard to value for money and a desire for the Council to spend funds within its own county boundaries.**

### Compliance with European law

As described in page 6, the Council decided to fill vacancies for refuse collectors with agency staff and to source from a single Agency while it was concluding its job evaluation project. The value of agency workers to be procured was uncertain at this point, as the Council did not know how long the job evaluation project would last. ‘Agency services’ are classified as Part B services under current legislation and are therefore not subject to the full EU procurement rules of EU-wide competitive tendering.

The Council considered using an Agency that had been procured on a framework arrangement by the Welsh Local Government Association. This framework had been carried out under the OJEU procurement rules and was available to any Welsh council to adopt. Officers had concerns about that framework arrangement, including that the service did not deliver precisely what the Council needed and that it would not therefore prove value for money. Officers negotiated with another Agency, who were able to offer the “right” service at a lower price than the framework.

The total sum paid to the successful Agency between 2006/07 and 2010/11 was over £11m, with further spend in 2011/12. (Some of this applies to the cost of temporary grounds maintenance staff.)

The Council is unable to demonstrate it achieved value for money from this expenditure. The Council rightly concludes that it bought the service it needed for less money than it would have paid under an EU-compliant framework. However, without a price competition between

agencies for a specific level of service, the Council cannot have assurance that it achieved the best value for money.

We understand that the Council has been considering developing an “internal agency” for the recruitment of temporary staff since 2009, but to date no firm decision has been made whether to progress this. The Council wishes to conclude on the feasibility of this approach before running a full tender exercise, as that may prove to be a more cost-effective solution.

**Recommendation R8 - The Council should review all major contracts and purchasing arrangements to assure itself that they deliver value for money.**

We understand that the Council intends to review all options for delivering the refuse collection service, including continuing the in-house service, collaborating with other councils or outsourcing. There may also be opportunities for consolidating arrangements such as household waste collection, recycling and waste disposal. We understand that there is an outline action plan for carrying out this options analysis. The Wales Audit Office have recently published a report, available from their website, that describes how other Welsh councils are dealing with the issue.

**The Council has managed some large capital contracts poorly, but can point to better outcomes in recent projects.**

**There is a small number of opportunities to improve the efficiency of contract administration.**

### Background

When the Council starts a contractual arrangement, it needs to carry out a number of activities in order to ensure the supplier delivers what was intended for the price agreed. These include measuring, monitoring and reporting the financial and non-financial performance, and reviewing outcomes. This will help the Council apply learning on contract performance to subsequent tenders for the service.

We used the following three case studies to understand project delivery procedures:

- Maesdu Road Bridge – page 14
- Llandudno Pool – page 18
- Forest School – page 19.

We also carried out some more general work on how the Council agrees contracts and deals with administrative matters such as invoices.

The Council has made some improvements to its processes. For example, the Eirias Park project involved a multi-disciplinary team from a range of services, who were able to bring enhanced challenge as the project progressed. The current major project is the Gogarth School development, which has a budget of c£20m. Officers are reporting progress on Gogarth School to the Executive Group each fortnight, which enables close scrutiny and challenge of decisions and outcomes.

### Administration of contracts

Where the Council engages third party suppliers to carry out work, it is important that each party understands what is to be delivered, how much the Council will pay, and how performance will be measured and managed. As with tendering, the extent of Council management of the supplier will depend upon the cost and importance of the services being performed. For larger pieces of work, clear formal contracts with active performance management, agreed targets and an agreed route for price variations in both directions should be in place.

Smaller assignments or supplies of goods may be managed simply through an original quote, a signed delivery note and a purchase invoice.

We examined the Council's third party expenditure in 2010/11, sorted by supplier. We reviewed the list of the largest suppliers, discussed them with officers, and selected some of the suppliers for more detailed testing. By necessity, only a relatively small proportion of annual expenditure was reviewed. We reviewed project documentation, contracts, invoices, discussed expenditure with relevant officers and referred to some detailed work from Internal Audit.

We identified some issues which have the potential to hinder the achievement of value for money, and reported them to the Audit Committee in September 2011.

The Council should review its policies for hiring and monitoring agency workers and temporary staff.

### Agency workers

During the 2010/11 audit, in order to assess whether spend decisions appeared to represent value for money for taxpayers we examined the spend on agency staff across the Authority and the numbers of people employed as agency staff, seconded staff and on a contractor basis. The Council found difficulty in preparing a response to our request for information on agency spend as information was not collected consistently across services. The Council's HR team have now generated a draft list of agencies but responses from services have been inconsistent or non-existent.

The employment of staff on an agency/secondment basis is not covered by the contract standing orders and it is unclear what governance processes exist in employing agency/seconded staff.

Definitions about what constitutes a contractor, an agency staff member or a consultant, differ across the Council and this makes a difference to the process to be followed.

Given tight controls on headcount and recruitment in the light of budgetary pressures, it is best practice for agency or seconded staff to be subject to similar robust controls and visibility as permanent staff.

Equally, there may be opportunities for engaging the Council's significant purchasing power across its services to achieve better prices from economies of scale if agency staff employment is more tightly managed.

As employment law develops, it is important that the Council has clear policies about the terms and time-frames of agency employment as it is possible for long-standing temporary staff to earn the rights of permanent employees. In order to monitor this risk, the Council needs robust information to know who is working for them, what they are doing, and how long they have been doing it.

The Council has also explored opportunities for an "internal agency".

**Recommendation R9 - The Council should complete its assessment of agency/contractor/ consultant staff as soon as possible, and in the light of that information prepare appropriate guidance for how such staff should be procured in the future.**

Though Internal Audit work and reports are good, there are opportunities to improve the positive and timely impact of recommendations.

### Contracts final accounts reviews

The primary line for independent assurance over the Council's capital contracts is through Internal Audit's current contracts reviews, with additional assurances through final contracts reviews.

When a service completes work on a contract, it submits a schedule of the actual costs against budgeted costs to the internal audit team. Internal Audit reviews the schedule and discusses the outcomes with management. Each quarter, the service prepares a summary of the completed reviews and presents it to the Audit Committee.

This public report explains why contracts have gone over or under budget, and allows members to challenge any issues arising. Internal Audit makes recommendations if it identifies issues on any of the final accounts reviews.

The main limitation of the current system is that it relies upon the service closing the project and submitting the final account for audit. This could mean delays in the Council identifying issues or putting remedial actions into place. An example is Llandudno Swimming Pool. The service submitted the final account approximately 4 years after the pool opened resulting in a substantial delay in internal audit being able to review the project. When the review finally happened, Internal Audit were unable to get full explanations for the over-spend as many of the relevant staff had left the Council.

**Recommendation R10 – The Council should revise its approach to Internal Audit reviews, and agree a timetable in advance of the contract starting. For larger scale projects, Internal Audit should consider “in-flight” reviews while the work is underway to identify risks and issues at a time when the Council has a chance of fixing them.**

### Effectiveness of internal audit

Internal audit reports, including those referred to in this document, are of good quality and are insightful with a good grasp of details. The reports explain events and provide focused recommendations to address specific areas of weakness but could devote more attention

to strategic issues and assessing the root causes of events.

Any delays in completing and agreeing internal audit reports, means a delay in the Council's ability to learn and improve.

**Recommendation R11 – Internal Audit and management should agree reasonable time-frames for responding to audit requests. Delays should be reported to Audit Committee as part of the quarterly performance indicators.**

### Internal audit and the Audit Committee

There are opportunities for Internal Audit and the Audit Committee to work more effectively together and contribute to the positive impact of Internal Audit's work and reports. There is a small number of summary papers that we have been encouraging Internal Audit to produce, and that in our experience of other organisations will increase the impact of the good work being carried out. They include:

- Summaries of all audits completed during the latest quarter (Actioned since November 2011)
- Recommendations tracker – summary of all high priority recommendations that are overdue
- Reports resulting in an 'Unsatisfactory' rating taken to audit committee in full, with officers in attendance to answer questions and explain how matters are to be rectified.
- Clear forward work programme and reporting of matters arising

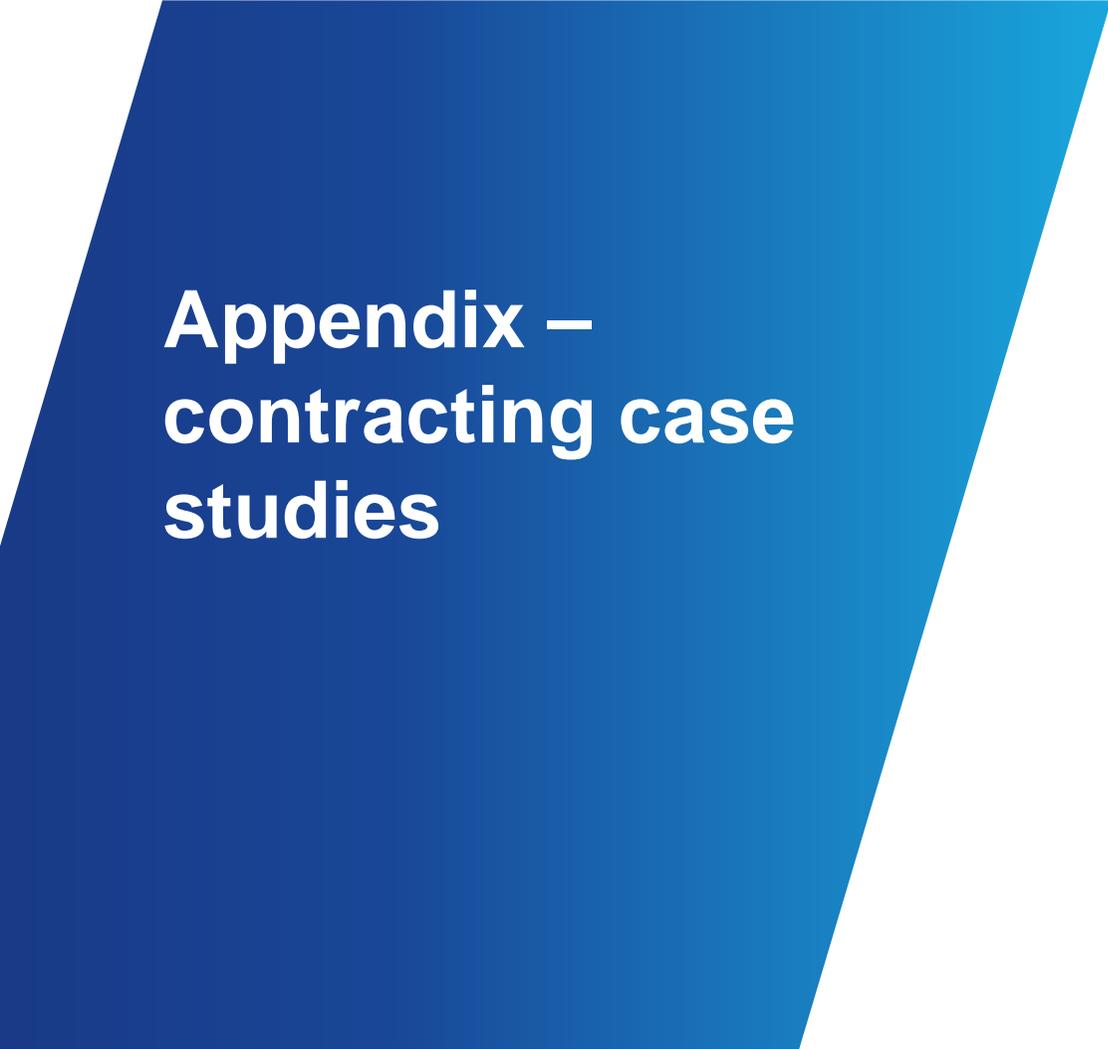
**Recommendation R12 – The Council should review and refresh the work programme and papers being submitted to Audit Committee.**

## Summary of internal audit work on contracting

Though Internal Audit work and reports are good, there are opportunities to improve the positive and timely impact of recommendations.

Internal Audit carry out many audits each year and most result in higher assurance levels than this programme on contracting. However, seven audits graded “unsatisfactory” is significantly more than we would expect to see and highlights the need for the Council to take action.

Area	Internal audit assurance	Date to Audit Committee	Time covered by report	Recommendations	KPMG observations
Building maintenance – December 2011	Unsatisfactory	February 2012	2010/11	26	The report records a large number of issues including operational, compliance, financial with weaknesses at all stages in the contract and procurement process
Pre-contract & tendering procedures. Highways & Infrastructure – January 2011	Unsatisfactory		2008 to 2011	44	Internal audit identified a very large number of weaknesses, across a sample of four contracts including the Maesdu Road Bridge.
Llandudno Swimming Pool – Final account September 2011	Unsatisfactory	February 2012	2006 to 2011	6	The report principally looked at how the council dealt with the final costs submission. The unsatisfactory opinion was based upon the serious contract management issues through the course of the project.
Forest School – Final account November 2011	Unsatisfactory	February 2012	2008 to 2011	4	Internal audit identified serious concerns with the contract management of this scheme
Maesdu Road Bridge final account – May 2010	Unsatisfactory	July 2011	2008 to 2010	13	Good analysis of what went wrong at different stages of the project, but did not get to the root cause of why it went wrong. The report was held internally within the council as claims were being negotiated with the engineering consultant and from the main contractor. This combination may have limited the council's ability to share the lessons more widely across the services.
Maesdu Road Bridge – follow up – July 2011	Satisfactory	July 2011	2010/11	6 remaining	7 of the 13 recommendations implemented
Bryn Elian – IT managed service and disposal of assets	Unsatisfactory	February 2012	July 2010 to Sept 2011	5	Failure to comply with EU procurement law and council's Contract Standing Orders
Mobile phones	Unsatisfactory	February 2012	2010/11	25	Issues mainly relate to usage and collection of income, but also include lack of detail available about contract with the supplier.
Parc Eirias Events Centre Contract review	Good	February 2012	Feb 2011 to Oct 2011	3	Minor points raised only

A blue trapezoidal graphic on the left side of the page, containing white text. The graphic is a parallelogram with a slanted right edge.

# **Appendix – contracting case studies**

The Council undertook a project to replace an unsafe bridge which overspent by c£1.3 million.

Two legal actions are ongoing that may increase or decrease this overspend.

## Background

In 2008/09 and 2009/10, business cases were submitted by the Council's Bridges and Structures section for funding to strengthen the Maesdu Bridge in Llandudno. WS Atkins were appointed as the design consultant via the North Wales Trunk Road Agency Framework Agreement for Consultancy Services. In September 2009 an open tender was concluded for the construction of the new bridge and Dawnus Construction Limited was the successful bidder.

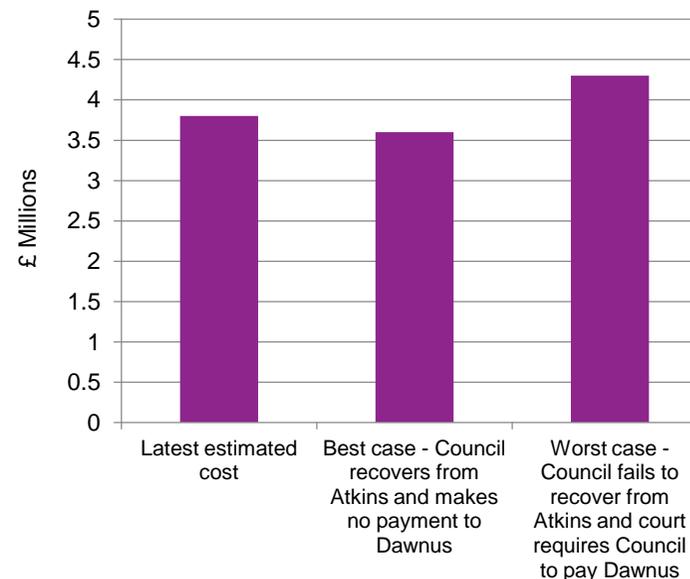
In accordance with a tight timetable, designed to both open the new bridge in full to traffic as early as possible and to meet a track access period with Network Rail, the contractor began on site on 19 October 2009, scheduled to complete on 30 June 2010. The project over ran by ten weeks but the bridge was successfully opened to traffic.

## Overspends

The original cost estimate in 2008/09 was £1.1m as supported by the initial business case. Between this business case being submitted and approved and the final completion of the bridge, the total cost had escalated to £3.9m. However, it is more accurate to describe the overspend as being the difference between the estimate of costs at the final decision point (of £2.6m) to the latest estimate of final cost of £3.9m – an overspend of some £1.3m.

The final cost figure remains provisional with ongoing negotiations and arbitration with both contractor and consultant in an attempt to reduce the Council's final liability. The arbitration process has required the Council to engage external solicitors, and their costs have not been included in the estimates.

As well as overspends on both construction and design consultancy, the original pricing missed a number of items – most notably costs associated with utility diversion, provision of a shuttle bus, fees and costs to Network Rail. A number of construction-related additional services remain in dispute – such as the removal of some spoil from the site. The impact of the main over spends is illustrated on the following page.

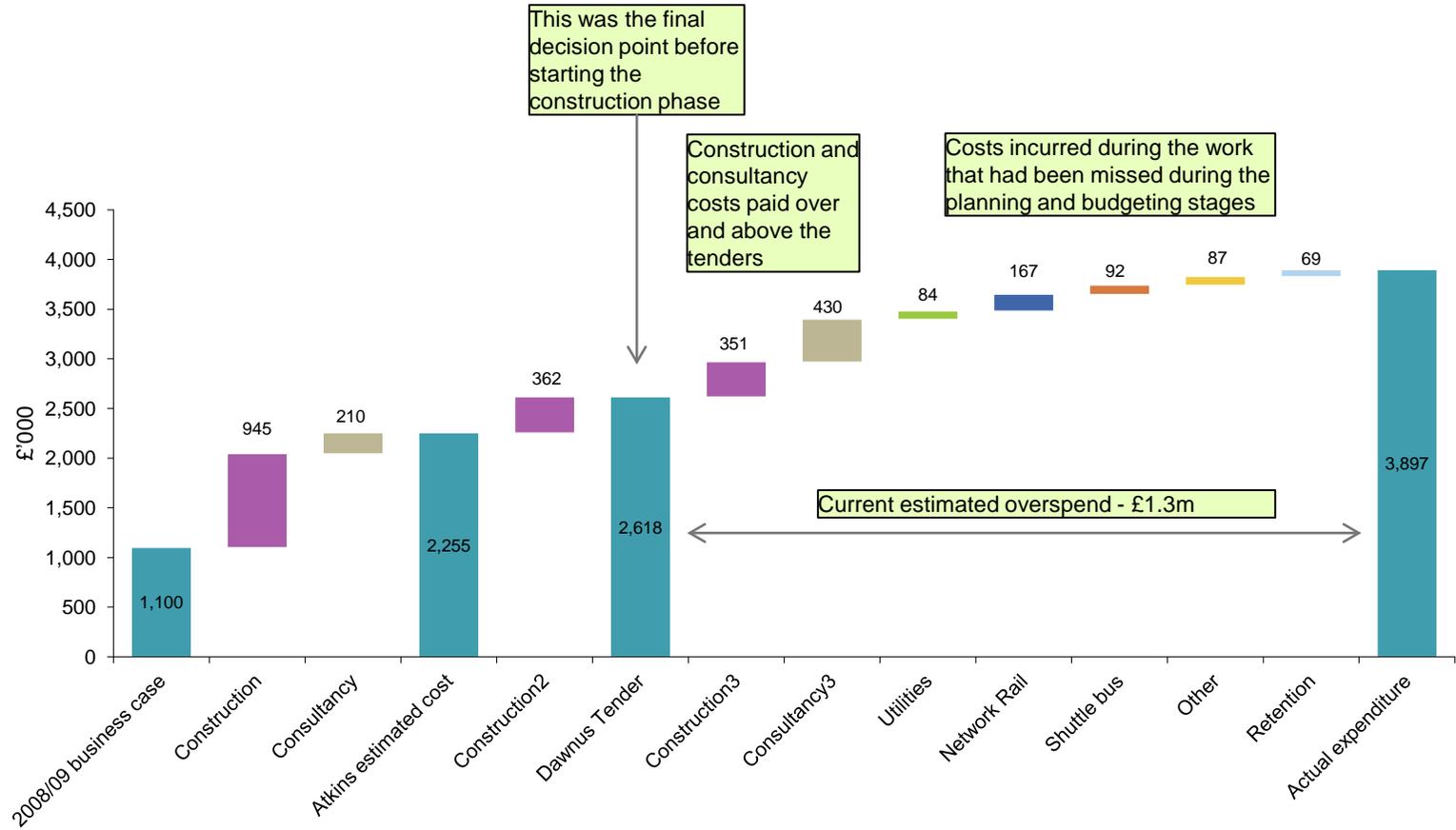


# Maesdu Road Bridge - Illustration of costs

This diagram charts the movement in cost between the original business case of £1.1m as approved by the Council and the latest estimated expenditure of £3.9m.

Claims have been lodged both by and against the Council and, depending on the outcomes, the final cost could be in the range of £3.7m to £4.2m.

(Costs exclude legal costs of defending and bringing claims)



Council officers estimated the costs for the new bridge at £1.1m and incorporated it in the capital programme.

External engineers prepared more detailed designs, plans and costings, which increased the expected cost to £2.25m

Competitive tender process increased the expected cost to £2.6m

Construction phase – a number of unexpected risks crystallised, and a number of costs arose that should have been budgeted for.  
Currently in dispute with the main contractor over some costs, and with the consultant engineers over the design costs.

The Council undertook a project to replace a failed bridge which overspent by £1.3 million.

### Budgetary Control and reporting of cost variances

The Council has monitored the escalating costs and has taken prompt action to finance the overspend by transferring budget from other sources. Reporting to members during the period focused very strongly on the financing aspect. This demonstrates that the Council is aware of its overall spending and the project was never at risk of 'running out of money'. The principal impact is that other capital projects had to be delayed or cancelled such as the street lighting refresh programme.

During the course of the project the budget was monitored by the Capital Working Group and commitments were monitored by the project team throughout. However it is clear that some of the shortcomings reported by Internal Audit were due to inadequate monitoring of activities and costs on a day to day basis.

One of the risks that concerned officers was managing the claims against and by the Council. In order to control the risk, the Council kept many details of the costs, over-runs and reasons confidential – including from members. The Internal Audit Report was issued in May 2010 to the Chief Executive (who had requested the review), Corporate Directors relevant Heads of Service, Chairs of Audit Committee and Principal Scrutiny and the portfolio member for Infrastructure in accordance with standard Audit reporting protocols, but it was not released to the Audit Committee until the follow up report was issued in July 2011. We recognise that some details may need to remain confidential to protect a negotiating position, but the Council needs to strike a balance to keep members and tax payers informed. In this example, the restrictions on information meant there was limited opportunity for members to maintain oversight of the project.

**Recommendation R13 – When faced with contentious issues, the Council needs to assess carefully the level of information it provides to members and the public, ensuring it strikes the right balance and allows members the opportunity for oversight and challenge. In projects where there are over-runs, reports to members should include analyses of the amended cost and cost**

**variances as well as outlining how any over-runs are to be financed.**

Since the bridge project was completed, many of internal audit's recommendations have been implemented – significant improvements to project management processes and cost monitoring have been proposed. Over runs in cost can now be better identified – for example a full reconciliation of the projects are undertaken when the recorded costs reach 70% of the total planned cost to ensure that negative variances are identified.

### Monitoring of contractors

In one instance contractors have submitted a claim to the Council for the costs of disposal of waste materials outside of the scope of the original contract at a cost of £100k. While this is disputed and has not yet been paid by the Council, improved ongoing monitoring and appraisal of variations to contract components could have prevented this issue arising.

**Recommendation R14 – Where contractors propose a significant variation in specification or approach, the Council should ensure that suitably senior and experienced staff review the proposal in advance and that every effort is made to challenge the cost variation by looking at alternatives and ensuring that extra work is essential and authorised.**

The Council undertook a project to replace a failed bridge which overspent by nearly £2 million.

## Value for Money

The Council use an hours-based contract for the design of the bridge. This means that the Council relied upon the consultant to deliver the work in the most efficient way, and the risks of delivery therefore stayed with the Council. It should have been possible to procure a design on a fixed cost basis, which would have transferred the risk to the consultants. The hours-based contract was part of a North Wales Procurement initiative and appears to have been a legal contract, but the scale of costs invoiced and the problems that arose during the construction phase suggest that it did not provide value for money. Internal audit's review of the project found that the Council's project manager approved additional works by the consultant, on a time incurred basis, that went outside the original agreement, suggesting weaknesses in the way the contract was managed by the Council.

While we accept that this contract was offered by the procurement framework and would have saved money during the initial tendering phase, there are important lessons in contract management for the Council

- **Recommendation R15 - jointly procured contracts may not automatically represent best value in the particular circumstances and each should be judged on its merits;**
- **Recommendation R16 – large contracts should be reviewed and actively supervised and challenged by senior officers. They should not be delegated to relatively junior or inexperienced officers.**
- **Ensure better control throughout the contract process – see Recommendation R14**

## Root cause analysis

The Internal Audit work has identified a number of individual reasons for over spends on the Bridge project – where the original cost estimate approved by members was inadequate, where specific items were not included in cost estimates and where contracts were let on the basis either of apparently unsuitable charging methods or inadequate supervision was given to contractors.

However, the reports do not explain why this was the case, nor how it will be prevented in future. The Council needs to be confident that future projects will be controlled in a way that prevents material cost escalation.

At present, large projects are monitored by project teams and officers from the department responsible but a detailed cost audit is only undertaken after the contract has closed.

Our view, which we believe is shared by management, is that the over-run arose because the Council delegated an extremely complex project to inexperienced staff, with insufficient supervision from more senior staff.

**Recommendation R18 - The Council should consider the root causes of this over run in cost in detail, both from a project management perspective and a cost monitoring perspective. The Council should then prepare a detailed plan to set out what will change to enhance the in-life monitoring and implementation of large capital projects in the future.**

**Recommendation R19 - With very large projects a suitably senior and experienced officer should be in control of the project. The Council should consider on a case by case basis if it has the necessary in-house resource to manage large and complex projects. Opportunities to share skills and resources with neighbouring councils should be considered.**

**We have looked at the internal audit work on two specific capital projects.**

**Internal audit has identified some important learning points, that need to be rolled out across all council services.**

We have discussed two specific large capital projects, Forest School and Llandudno swimming pool, with Internal Audit and obtained copies of their reports into these projects. We selected these projects highlighted to us by a local elector. We have not undertaken any work of our own here in the interests of minimising cost to the taxpayer.

The two selected projects relate to contracts from some time ago. The Council has since taken action to better train staff in project management since the internal audit reports, but there is still value in us using these reports as examples, as similar issues have arisen in more recent projects, making the learning still valid.

### **Forest School**

The project was to redevelop the former Dinosaur World building at Eirias Park, Colwyn Bay, into an educational facility. Funding was primarily provided by an Early Years Capital Grant from the WG and the project plan was formally approved by the Senior Executive Team on 14 October 2008.

There was then a substantial delay in issuing tender documentation and the invitation to tender was issued on 7 March 2009 with a deadline for receipt of 10 March 2009. This extremely short timescale would not have given contractors sufficient time to prepare their bids with sufficient detail to minimise the risk of over run. Indeed, it is likely to have excluded some contractors who opted not to bid under those conditions; or risked inflated bids from firms who wanted enough money to cover the unknown.

Internal audit have highlighted that the contract standing orders requiring senior approval of a contract of this size were not followed before work commenced on site. Internal audit work also identified a number of other significant failings, including an over payment to a contractor in excess of £20k (which will not be recovered until all related final accounts are agreed), a failure to follow due process for the over running time of the contract, a failure to properly secure materials paid for by the Council but stored remotely by the contractor and some evidence of payments being accelerated to the contractor in

advance of work done in order to meet grant payment deadlines – an urgency generated no doubt by the delay in issuing tender documents noted above.

### **Conclusions**

The weak control environment undoubtedly generated conditions in which the Council was unlikely to achieve best value for money from this work, with a tender being rushed and ongoing costs not reviewed robustly. There may be a role for internal audit in helping to monitor ongoing costs and assessing contract specification as a 'live' review rather than after the event in some situations. In addition, lax controls and a failure to follow contract standing orders or processes gave rise to the opportunity for fraud to be committed against the Council.

We have looked at the internal audit work into two specific capital projects.

Internal audit has identified some important learning points, that need to be rolled out across all council services.

### Llandudno swimming pool

This project began in 2006 and so the findings of the internal audit report (completed in 2011) are now largely historic. Nevertheless, the internal audit report grades the contract management as 'unsatisfactory' and there are some valuable lessons for the Council.

The delay in the audit being completed adds to the difficulty of making improvements in a timely manner. This must not be allowed to arise again in the future. (**See Recommendation R11**)

The original approved cost of the swimming pool was £5,014,745 but the final sum was £6,254,000, an increase in costs of £1,239,255 or 25%. However, the contractor had claimed the sum of £6,903,957 which would have been a 37% increase. Robust commercial negotiation by the Council in the closing stages of this programme did result in the overspend being mitigated – 'delay weeks' being defended, for example – but better management throughout could have further reduced the final bill.

- The Council caused (or at least admitted) delays to the contractor in the provision of information which allowed the contractor to claim for the additional costs incurred by them as a result of these delays. This amounts to approximately £150,000 of additional spend that might have been avoided.
- The Council issued a certificate of practical completion with a significant number of snagging items not resolved which, in practice, has made forcing the resolution of these snags without cost to the Council unnecessarily difficult.
- Sundry variations to the contract amounting to £424,418 were agreed by the Council without proper process being followed, allowing the final cost to inflate.
- Surplus "preprufe" material was ordered as part of the contract and not used. This had a cost of £11,772. The Council did investigate returning it to the supplier who was unable to accept the return but the Council then removed it from site 'on principle' so that the contractor could not take it and use it elsewhere. The Council then

simply stored it, with no evidence of efforts to either sell the material or use it on other projects. It subsequently passed its useful life date and has been scrapped.

### Conclusions

In much the same way as with the Forest School project above, poor ongoing management of the contract and variations and a lack of robust oversight have led to costs being incurred by the Council that could likely have been avoided with better processes and management.

### Learning from Internal audit work

It is clear that internal audit is able to identify important lessons when it reviews services or projects. What the Council does not successfully do is to pick up those lessons and share them across the range of services. For example, PMAS told Audit Committee in February 2012 that the service was in the process of drafting contract management guidelines in response to some internal audit recommendations. The service was not consulting with other council departments that might already have suitable guidelines.

The Council has introduced a Management of Projects & Programmes Forum, which meets quarterly and includes a large number of managers across all services. Topics have included Training on the Contract Standing Orders, Key risks during tendering, Lessons learned on successful projects. The forum also offers a strong presence to the Central Procurement Team and Internal Audit, so helping to drive out better practices. This initiative has the potential to have a positive impact over time on the Council's performance of managing contracts.

**Recommendation R20 – The Council should develop a route for sharing best practice across its services, promoting consistency and compliance.**

**Appendix –  
questions from the  
public**

**We have provided answers on the following pages to specific questions asked by one eligible elector**

### Introduction

The Public Audit (Wales) Act 2004, gives registered electors a number of rights to inspect and challenge the accounts of their local council. One member of the public has raised a number of queries resulting from his inspection of the books and records of the council in both the 2009/10 and 2010/11 audit years. In each case he has asked the appointed auditors to consider issuing an immediate report in the public interest.

A public interest report is a powerful tool available to auditors to draw attention to significant weaknesses at local authorities. To prepare one requires a significant amount of audit work, a meeting of full Council is called specifically to consider the auditors' recommendations and the report is advertised in the local press. The cost of such a report is generally high and falls directly on local taxpayers.

We have considered these requests carefully given the number and financial impact of the matters involved and have decided not to issue a public interest report. The reasons are:

- Most of the elector's concerns have been dealt with as a matter of public record as they have been copied to the Audit Committee of the Council.
- The questions relating to the Maesdu Bridge project and the procurement of contractors, both in relation to specific projects such as the Llandudno swimming pool and the choice of smaller contractors, have been dealt with by the Council's internal audit department. We have reviewed the work and have included any additional comments in this document.
- The Council has a large number of actions to deliver as a result of the internal audit reports, which should help make improvements. Internal Audit will also be carrying out a programme of follow up audits to monitor the implementation of actions.

We took the approach of relying upon internal audit, and combining this work with our normal work under the Local Government measure

in the interests of minimising the cost to the taxpayer. We must, however, respond to each point raised by an elector in order to close our audit for each year and so discharge this responsibility through this report.

### Conclusions

In the following pages, we summarise any questions raised that are not covered elsewhere in this report but we do draw attention to the fact that the local elector raised specific and pertinent enquiries relating to the bridge, swimming pool, Forest School and the choice of small contractors, all of which are addressed in the main body of this report.

This page sets out key recommendations arising from our work into the Maesdu bridge overspend.

### Question and resolution

#### Issue – the continued payments made to Atkins during 2010/11 and costs of legal adjudication proceedings

The elector asked about 2010/11 payments of £20k to Atkins, the design consultant for the bridge, and whether these were appropriate given the total costs incurred and the problems being faced with the design. We understand that these payments were thought to be properly due under the contract and mostly relate to post project evaluations and completion work which can be expected with a project of this scale.

We are able to confirm that the Council sought legal advice from external lawyers relating to the position with Atkins. This would appear to be a rational and normal business decision.

The elector also asked us to comment on the intentions of the Council regarding legal action and the results of same (if it occurred). We do not regard these questions as within our permitted responsibilities as they are about council policy. If the elector, or any other member of the public, wishes to engage with the Council over this matter then it is likely to be best achieved through direct contact or with their ward member.

**Recommendation – There are no further recommendations to make as a result of these questions.**

#### Issue – cost over runs on capital projects.

The elector asked the appointed auditors to issue a public interest report regarding over spends on the Llandudno swimming pool, the Forest School, Llandudno Theatre and the Harbour Jetty.

We have considered the swimming pool and school in full above.

In the case of the theatre, we understand from Internal Audit's draft report that the cost variation was a result of a change in scope to enhance the design, approved properly and in fact savings were made when the final project is evaluated.

The Harbour Jetty is, in fact, a different scenario as cost increases have been discovered before the project has begun and an increased tender price considered. As a result Members are able to evaluate the spending options, one of which is to abandon the project, before funds are committed. This is clearly very different to a situation where costs increase mid project. In all cases, we expect the Council to look carefully at cost estimates, make sure they have been robustly set and challenged and, therefore, further inflation is unlikely as projects progress.

**Recommendation R21 – The Council should instruct relevant senior officers to review the plans for the replacement jetty before work is begun. The objective would be to reduce the risk of further increases to scope or cost during the course of construction. It may be that this further stage of challenge is on all large, (say over £100k), capital projects. The Council should also appoint an appropriate senior officer for ongoing cost monitoring and challenge if the project progresses.**



*cutting through complexity™*

© 2012 KPMG LLP, a UK limited liability partnership, is a subsidiary of KPMG Europe LLP and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. All rights reserved. Printed in the United Kingdom.