

# Llanferres Community Council – Procurement arrangements

Audit year: 2020-21 and 2021-22

Date issued: July 2023

Document reference: 3694A2023

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Acting under delegated arrangements and on behalf of the Auditor General for Wales, I have issued this report under section 22 of the Public Audit (Wales) Act 2004, to draw the public's attention to significant deficiencies in the procurement of contracts by Llanferres Community Council.

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# Summary report

## Introduction

- 1 Section 22 of the Public Audit (Wales) Act 2004 (the 2004 Act), requires the Auditor General for Wales (the Auditor General) to consider whether, in the public interest, he should make a report on any matter which comes to my notice in the course of my audit in order for it to be considered by Llanferres Community Council or brought to the attention of the public.
- 2 In light of significant deficiencies in the Council's arrangements, in my opinion, the Council does not have proper arrangements in place to secure economy, efficiency and effectiveness in its use of resources and has acted unlawfully when letting contracts. In response to these deficiencies, I have decided to issue this report in the public interest.
- 3 In making this decision, I have taken into account the Council's response to a document setting out my provisional findings and conclusions.
- 4 I believe it is important that the public has a full and proper awareness of the events concerning the Council. Furthermore, while my audit findings are specific to this Council, there are important lessons to be learnt not just by the Council, but by all community councils in Wales.

## Llanferres Community Council

- 5 Llanferres Community Council (the Council) serves the villages of Llanferres, Maeshafn, Tafarn-y-Gelyn, Cadole and Pant Du in Denbighshire. The Council is made up of nine councillors. It provides local services including running and maintenance of a number of facilities including playing and recreational fields.
- 6 The Council funds these services and facilities primarily by means of a precept raised from Denbighshire County Council. In 2021-22, the Council raised a precept of £15,150 (2020-21 £15,165). It also received additional monies totalling £5,976 from VAT refunds and grants. In 2020-21 the Council received additional monies totalling £20,329 including £18,476 grant received for redevelopment of the Maeshafn playing field and orchard.
- 7 In 2021-22 the Council spent £13,212 as reported in its Annual Return. In 2020-21, the Council spent £42,982 including £25,893 (inclusive of VAT) on the redevelopment of Maeshafn redevelopment project.
- 8 The Council's accumulated reserves are increasing year on year from £11,231 at 31 March 2018 to £14,360 at 31 March 2022. The Council has explained that its £14,360 reserves total includes £2,500 accumulated during previous years for election costs and £2,350 for Councillor allowances.
- 9 The County Council collects the precept through additional council tax charged to the Council's residents. The Council derives its funding from the public purse and its members are elected by local residents. The Council is, therefore, accountable to the local electorate and is required to ensure that it has established proper

arrangements to secure value for money in its use of the funds it has been entrusted with.

- 10 Community councils such as Llanferres, by their very small local nature, normally rely on one key officer, the Clerk, to manage their administrative affairs. More often than not, the Clerk is also appointed in the capacity of Responsible Financial Officer (RFO). The RFO is responsible for administering the financial affairs of the Council on a day-to-day basis. In particular, this involves receiving and recording income, preparing cheque payments for signing by members, maintaining the accounting records, preparing the annual accounting statements and administering contracts. The Clerk was employed by the Council in April 2020.
- 11 Notwithstanding the role of the Clerk/RFO, by law [the Accounts and Audit (Wales) Regulations 2014 (the 2014 Regulations)], the responsibility for the stewardship of Council funds, including ensuring that it has effective and efficient financial management, rests with the Council (that is, the members). This includes such things as establishing an appropriate system of internal control, including internal audit, approving the annual accounting statements prior to submission to the external auditor for examination and for ensuring that the Council has in place proper arrangements to secure value for money in its use of resources.

## My audit work

- 12 My audit work on town and community councils focusses on an annual return completed by the councils and submitted to auditors working on my behalf. The annual return contains the annual accounting statement that the council is required by law to prepare and an annual governance statement which sets out how the council has managed its financial affairs.
- 13 This work is designed to provide me with sufficient evidence to enable me to conclude on whether or not:
  - the Accounting Statement for the year has been properly prepared and properly presents the Council's receipts and payments;
  - the Annual Governance Statement is consistent with the governance arrangements established by the Council; and
  - the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.
- 14 Additional audit work is undertaken when matters come to my attention during the audit.
- 15 In August 2021, I received correspondence raising concerns over financial irregularities at the Council and non-compliance with the Council's own standing orders as they relate to procurement arrangements for the redevelopment of the Maeshafn Play area. The information also raised concerns over the suitability of the equipment purchased for disabled users, specifically a ball catcher.

- 16 Therefore, I extended my audit to review the effectiveness of the Council's procurement arrangements. I have not considered the suitability of specific items of equipment purchased or whether or not the equipment purchased achieved the Council's objective of making "the park safer for all and more accessible for the less able bodied."

## Key findings

- 17 My audit identified poor procurement practices and that the Council failed to comply with its own Standing Orders and Financial Regulations. As a consequence of these failings, I consider that the Council acted unlawfully and has failed to ensure that it has in place proper arrangements to secure value for money.
- 18 My audit findings are summarised below and set out in more detail in the remainder of this document.
- 19 During 2020-21, the Council incurred expenditure totalling £25,035 on redevelopment of the Maeshafn Play Area. The redevelopment included both ground works (£5,145) and the acquisition of new playground equipment (£19,890).
- 20 The Council has adopted Standing Orders and Financial Regulations that govern how it procures goods, services and works. These standing orders and financial regulations are based on a national model and appear to be comprehensive. Given the value of the Maeshafn project, the Council should have applied its Standing Orders and Financial Regulations.
- 21 However, the Council failed to comply with its Standing Orders and Financial Regulations for the redevelopment of the Maeshafn Playing Field and Orchard.
- 22 There are significant deficiencies in the way in which the Council procured the Maeshafn playground works In relation to this project. My audit identified that:
- the Council failed to advertise the contract for tender and instead approached individual companies to provide quotations;
  - following receipt of quotations for the original scheme the Council approached a fifth potential contractor to provide a quote for only part of the scheme; and
  - the Council misled the three companies that had initially provided quotations when it asked for amended quotations to exclude ground works.
- 23 Although the Council determined which companies to award contracts to on the basis of a comparison of quotations provided at its 14 January 2021 meeting, the supplier chosen for the groundworks cannot be clearly identified as providing best value and the most cost-effective solution for the works.
- 24 The Council's arrangements for the Meashafn project mean that it cannot demonstrate proper stewardship of public funds and in my opinion, it acted unlawfully in the award of a separate contract for groundworks.

- 25 As a consequence of the serious deficiencies identified in relation to the Maeshafn project, I extended my review to consider other procurement exercises undertaken by the Council. My audit identified that the Council's overall approach to procurement is poor and the failures identified are systemic.
- 26 In fact, there are deficiencies in the award of all four contracts identified in 2020-21 where the cost exceeded the threshold set out in the Council's own financial regulations. Of particular concern is that the Council does not record in its minutes any rationale for the acceptance of quotes which are not the lowest received
- 27 As a consequence of the failings I have identified, I conclude that:
- the Council has acted unlawfully in its appointment of contractors and incurred expenditure that is, in my view, contrary to law; and
  - the Council does not, in my view, have in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources.
- 28 These findings are considered in more detail in the remainder of this document.
- 29 In its response to my provisional findings, the Council commented that it believes that "it exercised due diligence, was 'transparent' and did not 'mislead' anyone."

## Recommendations and next steps

### Recommendations

30 I am making 3 recommendations to the Council as set out in **Exhibit 1** below:

#### Exhibit 1: recommendation

I am making 3 recommendations to assist the Council to improve its procurement practices

#### Recommendations

- R1 The Council should review its arrangements for procurement of works, goods and services to ensure it complies with its own standing orders and financial regulations.
- R2 The Council should ensure that Council approvals are obtained for any departures from Standing Orders and Financial Regulations. The Minutes of the meeting should record the rationale for such departures and clear approval of the recommendation to do so.

## Recommendations

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- R3 The Council should ensure that the rationale for the selection of suppliers following a procurement process are clearly recorded in the minutes. This should include the value of the tender/quotation accepted at the meeting and the reason for its selection.

## Next steps

### Next steps

- 31 In accordance with sections 25 to 27 of the Public Audit (Wales) Act 2004 the Council must now consider this report at a full meeting of the Council within one month of the date of this report.
- 32 At least seven days before the meeting, the Council must publish a notice in a newspaper circulating in the community stating:
- the time and place of the meeting;
  - that the meeting is being held to consider a report in the public interest; and
  - a description of the subject matter of the report.
- 33 At the meeting, the Council will need to decide:
- whether the report requires it to take any action;
  - whether the recommendations in the report are to be accepted; and
  - what action (if any) to take in response to the report and recommendations.
- 34 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response in a newspaper circulating in the community.

Ann-Marie Harkin

Executive Director – Audit Services

For and on behalf of the Auditor General for Wales



# Detailed report

## The Council's Standing Orders and Financial Regulations are comprehensive and clearly set out the Council's own rules for the procurement of goods and services

### The Council adopted Standing Orders in 2019 and Financial Regulations in October 2020

- 35 Standing orders are the written rules of a local council and regulate the proceedings of council meetings and how it conducts its business. The Council has adopted and amended as appropriate, a set of Model Standing Orders published by One Voice Wales and the National Association of Local Councils (NALC). The Council publishes its Standing Orders on its website at <https://www.llanferrescommunitycouncil.org/governance/>. The published Standing Orders note that the Council updated them in 2019 and reaffirmed them in May 2022.
- 36 The Standing Orders are supplemented by Financial Regulations. The Financial Regulations govern the conduct of financial management by the Council. The Council has adopted model Financial Regulations published by One Voice Wales. Financial Regulations must be observed in conjunction with the Council's standing orders. The Financial Regulations are not published on the Council's website.
- 37 The Council is responsible in law for ensuring that its financial management is adequate and effective and that the Council has a sound system of internal control which facilitates the effective exercise of the Council's functions. The Financial Regulations demonstrate how the Council meets these responsibilities and requirements.
- 38 The model documents adopted by the Council are comprehensive and provide a clear framework within which the Council must act.

### The Council's Standing Orders and Financial Regulations specify how the Council is to procure goods and services

- 39 Standing Order 18 sets out the overall controls related to procurement. It sets out the requirement for the Council to consider and approve financial regulations which incorporate detailed arrangements for procurement of contracts.
- 40 Standing Order 18(a) allows for the financial regulations to exempt smaller value contracts i.e. those with a value of less than £25,000 to be exempt from a tendering process.
- 41 For those contracts not subject to an exemption under the Financial Regulations, Standing Order 18(c) details a series of steps for the tender process for contracts for the supply of goods, materials, services and the execution of works. These include:

- The preparation of a specification for the goods, materials services or works
  - The drawing up and advertisement of an invitation to tender
  - Arrangements for the receipt, opening and consideration of tenders.
- 42 Financial Regulation 11 sets out procedures for procurement and require the following:
- All contracts must comply with the Financial Regulations except in limited circumstances set out in the regulation.
  - If the financial regulations are to be waived to enable a contract to be negotiated without competition, the reason must be set out in a recommendation to the Council.
  - The Council is not obliged to accept the lowest or any tender, quote or estimate.
  - Members and senior staff should not be involved in the award of orders and/or contracts with organisations or individuals in respect of which a personal interest exists, whether declared or not
- 43 Alternative arrangements are made for different value contracts. These are:
- Contracts with a value of more than £10,000 must be subject to a formal tendering process;
  - Contracts with an estimated value between £800 and £9,999 require three quotations; and
  - For contracts valued at less than £800, an officer issuing an official order 'shall ensure as far as reasonable and practicable that the best available terms are obtained in respect of each transaction, usually by obtaining three or more quotations or estimates from appropriate suppliers, subject to any de minimis provisions in Regulation 11.1 below.' However, regulation 11.1 does not specify a de minimis threshold.
- 44 I note that there is a lack of consistency between the Council's Standing Orders and Financial Regulations. The Standing Orders (18) allows for the Financial Regulations to exempt smaller value contracts below £25,000 from the Council's normal procurement requirements. However, the Financial Regulations require all procurement of contracts above £10,000 to be subject to a formal tender process.

## The Council failed to comply with its Standing Orders and Financial Regulations for the redevelopment of the Maeshafn Playing Field and Orchard

### The procurement process for the Maeshafn redevelopment project ran from March 2020 to January 2021

- 45 In September 2020, the Clerk along with the then Chair, Cllr A Morgans and Cllr A Curtis compiled a development plan for Maeshafn Playing Field and Orchard. This Plan was created following the receipt of an annual inspection report on the existing play area in March 2020. The inspection report was provided by a third-party inspector, The Play Inspection Company Ltd based in Dorset.
- 46 The Inspection Report designated the area as Low Risk but did record that there were only some accessible features. The area presented 'difficulties to the majority of people with disabilities but in favourable circumstances and certainly in partnership the park could be accessed.'
- 47 The Clerk confirmed to my audit team that this Report was the catalyst for the development of the park along with the COVID Lockdown restrictions which meant that more families should be able to access an enjoyable outdoor space in their village. The park was run down and not being used very much.
- 48 Exhibit 2 outlines the timeline for key activities in this project and is supported by further detail in **Appendix 1**.

#### Exhibit 2: maeshafn redevelopment timeline

Date	Key Activities
Sept 2020	Maeshafn Playing Field and Orchard Development Plan was compiled by the Clerk, Cllr Morgans and Cllr Curtis with an estimated cost of £26,700 with a potential secondary phase of £36,000
16 Oct 2020	4 companies contacted to join representatives of the Council Playground to provide their initial thoughts on the playground equipment and provide a quote for undertaking the work
21 -23 Oct 2020	Quotations received from Play and Leisure Ltd (£21,255) and Play Quest Adventure Play Ltd (£19,691)

Date	Key Activities
27 Oct 2020	Celtic Stone was contacted in respect of a quotation for the creation of a pathway, hard standing base and concrete plinths for the benches/picnic tables.
8 Nov 2020	Quotation received from Celtic Stone in the total sum of £5,145
9 Nov 2020	Creative Play quotation received in the sum of £15,619.
12 Nov 2020	Design discussed at the Council Meeting.
14 Nov 2020	All 3 play equipment companies who responded were asked to review their quote for the removal of groundworks
10 -21 Dec 2020	Grant application submitted and success in seeking funding confirmed
7 – 14 Jan 2021	Comparison of quotes provided to the Members and subsequently discussed at Council where it was agreed to award the groundworks contract to Celtic Stone and the play equipment contract to Playquest as this combination afforded 'best value'.

Exhibit source: Audit Wales analysis

## **There are significant deficiencies in the way in which the Council procured the Maeshafn playground works and the council failed to follow its own standing orders and financial regulations**

- 49 Following the Council's completion of the Development plan for Maeshafn playground the Council had sufficient information to demonstrate that the likely value of the contract would exceed £10,000. This means that under its own financial regulations, the Council was required to follow a formal tendering process. This process would include the development of a detailed specification, advertisement of the contract in the press, an invitation to tender and a sealed bid process, followed by reporting to Council.

## **The Council failed to advertise the contract for tender and instead approached individual companies to provide quotations**

- 50 In seeking suppliers to undertake the work the Council identified and contacted 4 suppliers on 16 October 2020 with a request to join representatives of the Council at the playground to provide their initial thoughts on the playground equipment and provide a quote for undertaking the works.
- 51 The Council did not place an advertisement of the tendering process in a local newspaper as required by its own financial regulations. The Clerk explained that the cost of approximately £500 was deemed to be expensive and an unnecessary use of the Council's funds.
- 52 The correspondence to suppliers did not indicate that this was to be a sealed tender procurement and did not provide any response arrangements indicative of such an arrangement i.e. return address, date and time, that sealed tenders were to be submitted etc. It is clear that the Council only sought quotes for the work and did not approach this work as a sealed tender bid in line with the Council's Financial Regulations and Standing Orders.
- 53 While the Standing Orders and Financial Regulations make provision for these to be waived by the Council for individual projects, there is no evidence that this was ever considered or decided by the Council.
- 54 The Standing Orders and Financial Regulations require that tenders are submitted in writing in a sealed marked envelope addressed to the Proper Officer and that the Proper Officer opens the tenders in the presence of at least One Councillor after the deadline for the submission of tenders has passed.
- 55 The Clerk explained that the COVID restrictions then in force would have prevented this and that she understood the exemption set out in the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (the 2020 Regulations) would have rendered this unnecessary.
- 56 I do not consider that the 2020 Regulations provided any such exemption.
- 57 In a response to my provisional findings, the Council states:  
'Standing Order 18 a. v. states 'contracts with an estimated value below [£25,000] or due to 'special circumstances' are exempt from a tendering process or procurement exercise'.  
The Council follows standard accounting practice when reviewing quotes by comparing net prices because VAT can be reclaimed from HMRC. In this case the total value of the contract was £22,442... and therefore below the £25,000 threshold for going out to formal tender. The prescribed procedure for contracts below this value is to obtain three quotes which the Council did.'
- 58 In making this response, the Council has disregarded the fact that its Maeshafn Playing Field and Orchard Development Plan of September 2020 identified the likely cost to exceed £26,000. Given the expected cost identified in this document, therefore, the Council had no reason to exempt this procurement from its established rules on the grounds of estimated value.
- 59 The Council further responded that:

“Had the value been above £25,000 ‘special circumstances’ would have applied due to the Covid pandemic and the Council would probably have still gone down the route of obtaining three quotes. Welsh government validated councils were facing unprecedented circumstances when it introduced the *Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020* and when Julie James AM issue an explanatory memo which stated: ‘If a provision in standing orders or other local rules is incompatible with any provision in the Regulations, that provision will have no effect whilst the provisions in the Regulations have effect’. “

- 60 It is clear from the Council’s response that it did not consider that any special circumstances applied to this procurement. The Council’s minutes make no reference to any such circumstances and it is inappropriate to claim that such circumstances applied after the event.

**Following receipt of quotations for the original scheme the Council approached a fifth potential contractor to provide a quote for only part of the scheme**

- 61 Two quotations were received from Play and Leisure Ltd (Play and Leisure) and Play Quest Adventure Play Ltd (Play Quest) on 21 and 23 October 2020. Creative Play Ltd (Creative Play) provided a quotation on 9 November 2020. The remaining supplier approached did not contact the Council to arrange a meeting to quote for the work. These quotations were based on a discussion with representatives of each company.

- 62 The initial quotations provided to the Council were as follows:

	Initial quotation (excluding VAT) £
Play and Leisure	£37,332
Play Quest	£40,392
Creative Play	£32,042

- 63 In its response to my provisional findings, the Council explained why amended quotes were obtained:

“The Chair and the Clerk had ‘delegated powers’ and when they studied the three quotes received, they found all were double the Council’s £25,000 budget. They compared costs of individual items and realised they only had two quotes for the groundworks because Creative Play had declined to quote. This was when Celtic Stone was asked to quote to provide a third price for the groundworks.

The play equipment contractors were contacted and their respective quotes discussed at length. During these meetings it was explained to each of them that the Council might have to separate out the groundwork due to budget restrictions... They were invited to revise their quotes based on residents’ priorities for play equipment and what the Council considered would bring the cost down to within budget.”

- 64 On 27 October 2020, the Chair met on site with representatives of Celtic Stone to discuss works related to the project. The Clerk then wrote to Celtic Stone later that day asking the company to provide a quotation for specific groundworks.

- 65 Celtic Stone provided a quotation on 8 November 2020 in the sum of £5,145 for 3 elements of ground works including a new learning centre base, disabled access pathway and plinths for a seating area.
- 66 The Council's response to my provisional findings set out in paragraph 63 is inconsistent with the actual events. The Council refers to the Chair and Clerk reviewing the three initial quotations before approaching Celtic Stone. However, Creative Play did not supply its quote until 9 November.
- 67 It is highly unusual for a council to request additional quotes for only part of the works required for a specific project once it has issued a specification. The Clerk explained that when the Council realised Play Quest intended to sub-contract the groundworks, Cllr Morgans rang Celtic Stone and asked if Celtic Stone would like to quote for the works.
- 68 This significant change to the scope of the procurement being undertaken means that a separate quotation process for the Groundworks should have been carried out in line with Financial Regulations for works under £10,000.
- 69 At this point, the Council had sufficient information to determine that the likely cost of the groundworks would exceed £800, this being the threshold for the Council to obtain three quotes for the work. However, the Council did not seek any further quotes.
- 70 The Council has not provided any evidence to demonstrate that it authorised a further quotation being obtained for the groundworks. As such, in my opinion, the Chair acted without lawful authority.

### **The Council misled the three companies that had initially provided quotations when it asked for amended quotations to exclude ground works**

- 71 On the 14th November 2020, the Clerk contacted Play and Leisure, Play Quest and Creative Play asking them to review their quotes based on confirmed items excluding the groundworks. The Clerk explained that the specification had changed due to a local resident who is a qualified ground worker, volunteering to create the pathway from the gate to the swings to make access easier for wheelchair, pushchair and mobility scooter users.
- 72 Quotations were sought for a specified list of equipment with no formal instructions other than to provide replies. The Clerk has stated that she understood the provision of a revised price request to meet the requirement of a formal invitation to tender.
- 73 In response to my provisional findings, the Council stated "It did not 'mislead' anyone in its communications..." It further states "The owner was asked to quote for the groundworks but there was never any suggestion that this was 'voluntary' work and therefore free of charge. The Council believes there has been a misinterpretation somewhere in the correspondence sent to the auditor."

- 74 I do not consider this statement to be credible. The Council itself provided a copy of the letter to the three companies that provided the original quotes. This letter clearly states the groundworks were being done on a voluntary basis.
- 75 In my opinion, there was no legitimate reason to make the claim that a local resident had volunteered to undertake the groundworks. The local resident referred to was the owner of Celtic Stone. The works were to be completed on a commercial and not a voluntary basis and in fact, the Council had already received a quotation from Celtic Stone.

**The Council's arrangements for the Meashafn project mean that it cannot demonstrate proper stewardship of public funds and in my opinion, it acted unlawfully in the award of a separate contract for groundworks**

**The Council determined which companies to award contracts to on the basis of a comparison of quotations provided at its 14 January 2021 meeting**

- 76 Following receipt of the final quotations, the Clerk and the Chair compiled the quotations into a comparison table for consideration at the 14 January 2021 Council meeting.
- 77 The minutes for the meeting record:  
"The Clerk went through the quotes received from the 4 contractors who had been asked to tender for the work and after due discussion the Chair proposed appointing Play Quest to provide the play equipment and Celtic Stone to do the groundworks."
- 78 The minutes record the cost of the equipment to be supplied by Play Quest as £19,979.70. However, the minutes do not record the cost of the groundworks.
- 79 A comparison of the quotations was provided to Councillors on the 7 January 2021 in readiness for the Council meeting on the 14 January 2021 as shown in **Exhibit 3** below:



### Exhibit 3: comparison of quotes for Maeshafn Playing Field Development

Playing Field Development - Comparison of Quotes

Scope of Work	Play & Leisure	PlayQuest	Creative Play	Celtic Stone	Brian Davies	Total Cost
	Actual	Actual	Actual	Actual	Not responded	Best Option
Remove existing equipment	500	950	948			
1 x basket swing	2049.00	3270	2730			
2 x flat seat swings	1130	2370	1415			
1 x activity centre	6766	4900	6487			
1 x springer rocker	468	865	721			
1 x ball catcher	1192	550	1598			
Grass mats	3936	inc	1200			
Leveling of grass mats	inc	500	inc			
4m shelter	8576.25	5275	5987			
Timber protection	772.84	inc	1100			
Installation	3500	inc	498			
Discount	-2095.41	-1530	0			
<b>Total</b>	<b>26794.68</b>	<b>17150</b>	<b>22684</b>	<b>0</b>	<b>0</b>	17150
<b>Groundworks</b>						
Paths	2290	6400	n/a	3050		
Plinths	n/a	n/a	n/a	600		
Floor for shelter	1000	1120	1000	1495		
<b>Total</b>	<b>3290</b>	<b>7520</b>	<b>1000</b>	<b>5145</b>	<b>0</b>	5145
<b>Additional Items</b>						
Picnic tables						400
Bulbs						200
Refurbish shed						200
<b>Total Project</b>						<b>23095</b>
				Llanferres	20%	4619
				Clocaenog	80%	18476
						<b>23095</b>

Exhibit Source: Llanferres Community Council

- 80 The figures included in the table for groundworks were sourced as follows:
- Play and Leisure figure of £2,290 from the original quotation supplied on the 21 October 2020. £1,000 for the Shelter floor was calculated from using an online comparison of a Shelter with and without a floor and calculating the cost of the floor as being the difference.
  - PlayQuest figure of £6,400 was obtained from a further quotation on the 17 November 2020.
  - Creative Play's quote supplied on the 9 November 2020 specified that the customer would undertake specific works including installation of tarmac pads and removal.
  - Celtic Stone figures totalling £5,145 were obtained from a quotation received on the 8 November 2020.
- 81 In its response to my provisional findings, the Council stated:
- 'The comparison of quotes was presented to the Council with the recommendation to combine PlayQuest's quote for play equipment with Celtic Stone's price for groundworks as the only viable way to deliver the project within budget... the comparison of quotes presented to the meeting on 14 January 2021...demonstrates how this was the most cost-effective solution.
- The Council believes in doing this, it exercised due diligence, was 'transparent' and did not 'mislead' anyone.'

## The supplier chosen for the groundworks cannot be clearly identified as providing best value and the most cost-effective solution for the works

- 82 The minutes from the meeting of the 14 January 2021 confirm only that the Clerk went through the quotes and subsequently the Clerk was formally able to appoint Celtic Stone to do the Groundworks. The table compiled by the Clerk does not demonstrate Celtic Stone as being the most cost-effective option.
- 83 The Clerk explained to my audit team that Celtic Stone were chosen as the surface material provided by them has a life expectancy of 20 years whereas the material from the Play Equipment providers in the original quotations offered a 5-year life expectancy. Play Quest were able to quote for a more resilient surface as per the quotation on the 17 November 2020. Play & Leisure Ltd were approached for a revised quote but the Clerk advised they were unable to provide the more resilient surface required.
- 84 There was no specification provided in the initial request to the Playground equipment suppliers other than to *'create a hard-standing path from the road to the swings suitable for wheelchair access'*.
- 85 The specification in the written request for a price to Celtic Stone outlined the following:
1. Create a pathway from the gate to the swings suitable for used by people using wheelchairs, pushchairs and mobility scooters as was marked out in sand and indicated on the attached drawing.
  2. Create hard standing base for the outdoor education shelter approximately 7m x 7m with level access at the entrance to facilitate wheelchair access.
  3. Create concrete plinths to site 2 benches/picnic tables approximately 2m x 3m.
- 86 Play and Leisure, Play Quest and Creative Play were not approached to provide a cost for the plinths included on the groundworks specification for Celtic Stone. **Appendix 1** summarises the specification provided to Play and Leisure, Play Quest and Celtic Stone.
- 87 In light of the Clerk's response, the specification is very general and does not specify the measurements of the area for the pathway or the expected finish / lifetime of any surface to be used.
- 88 Details of the information provided with the quotations are included in **Appendix 2**. They are summarised here:
- the quotation from Play and Leisure is for a 33m<sup>2</sup> pathway with tarmac top over the sub-base at a price of £2,290;
  - the quotation from Celtic Stone is for an unspecified size pathway with a limestone fine (dust) top at a price of £3,050; and
  - the quotation from Playquest is for a 80m<sup>2</sup> pathway with concrete top over the sub base at a price of £6,400

- 89 The quotation from Celtic Stone is for a path which does not have a concrete or a tarmac top.
- 90 The Play Quest quotation includes a base for the tractor shed and is for an area over two and a half times larger than the Play and Leisure pathway and likely to be similarly larger than the Celtic Stone pathway assuming the Council discussed the same path through the Park with all suppliers.
- 91 It is unclear how the Council compared the costs and benefits of the various quotations received as the specifications provided to each party were different.
- 92 The Council's failure to properly specify its requirements in relation to the groundworks means that the quotations are not in any way comparable and there is insufficient information on which to form a reasonable decision about which quotation provides the most cost-effective groundworks for the park.
- 93 The Council believes it "exercised due diligence in its choice of materials and contractor for the groundworks". It explained that it "does not have a qualified quantity surveyor or materials expert. It relies on its own research, suggestions from suppliers, commercial experience, its own judgement and what it can afford. Every contractor who quoted for this development was shown the area for the groundworks which had been marked out in sand. It was clear that the base of the tractor shed was not included because it already has a solid base... Contractors were asked to take their own measurements to avoid disputes (experience shows that some contractors use differences between clients measure and their own to justify 'add-ons' at the end of a contract).
- 94 In my opinion, the Council had pre-determined to appoint Celtic Stone regardless of the quality or cost of their proposal. As such I consider the Council acted unlawfully in appointing Celtic Stone.

## The Council's overall approach to procurement is poor and the failures identified are systemic

### There are deficiencies in the award of all four contracts identified in 2020-21 where the cost exceeded the threshold set out in the Council's own financial regulations

- 95 My audit identified four contracts/payments by the Council in 2020-21 that exceeded the £800 threshold set in the financial regulations.
- 96 Three of the four procurements examined were not subject to evidence that the Council had clearly recorded the authorisation of the sums involved. The fourth procurement had not been subject to competition and no exemption from financial regulations had been sought.

#### Website Development

- 97 The minutes of the Council meeting held on 11 June 2020 record the award of a contract for website development to Aubergine from Milton Keynes. The minutes

record disagreement between the councillors but do not identify the value of the quotations received from the suppliers nor confirm the value of the contract to be entered into for the website development. Further detail is included in a document entitled 'Website Update and Recommendation to Council on 11th June 2020'. The minutes refer to a "proposal circulated to Councillors prior to the meeting" of 11 June. The Council provided a copy of the recommendation paper to me in its response to my provisional findings. The minutes record that the 'Clerk and Cllr Curtis [are] to progress the website to the next stage and report back at next meeting'. At the next meeting on 9th July 2020, under agenda item 77 the minutes confirmed that Aubergine had now created the skeleton of the website.

- 98 I am satisfied that the Council complied with its Standing Orders and Financial Regulations in this instance.

#### Fencing at Maeshafn Orchard

- 99 On 9 July 2020, the Council approved payment of £1,392 to a contractor for works on fencing at Maeshafn Orchard.
- 100 The Clerk confirmed that this work was a second phase 2 of previous works carried out by the same contractor. The Clerk is unable to find the supporting paperwork, other than a quote comparison, as this was prior to her engagement at the Council. She is aware that the Council were having difficulties finding contractors who installed the stock fencing required in the area. Two contractors quoted for phase 1 of the project in July 2019. The winning contractor submitted the lowest priced quote and was paid £2,145.72.
- 101 Councillors subsequently decided to retain the contractor for phase 2 completed in July 2020. The minutes of the 14 May 2020 meeting record:  
*Cllr Morgans (Chair) stated that the Council need to go out to tender for the fencing in Maeshafn Orchard given the cost was over the Council's £800 limit. Mrs Dillon pointed out that as it was to be funded by a commuted grant we had to use the Contractor who originally quoted. A proposal to go ahead and arrange the fencing was put forward and there was no need to vote.*  
*Action :Cllr Morgans to arrange for the fencing to be erected ASAP'*
- 102 The Clerk explained to my audit team that the Council believed a further procurement process was not required because the additional fencing needed to match the original and was linked to grant funding. The Council also believed that the contractor would still be cheaper than the other contractor.
- 103 In this case the Council breached its financial regulations by:
- not seeking 3 quotations for the second phase of the fencing
  - not seeking authority to approve expenditure prior to awarding the works to Gwilym Lloyd in the sum of £1,392
  - not seeking approval to waive financial regulations relating to contracts to enable a price to be negotiated without competition.

- 104 The statement that the phase 2 contract had to be awarded to the contractor for Phase 1 because 'it was to be funded by a commuted grant' is not credible.
- 105 In its response to my provisional findings, the Council stated that it 'took what was said by the previous Clerk at face value out of respect for her 25 years' experience but now accepts that in doing so breached its Financial Regulations.'

### Maes Ysgawen Park

- 106 Examination of the award of work to White Oak Property for the work in Maes Ysgawen Park on the 1st October 2020 confirmed that on this occasion the value of the contract work of £990 was clearly recorded as accepted in the minutes.

### Loggerheads Noticeboard

- 107 Examination of the award of work to Signs Workshops for the replacement of a notice board at Loggerheads in the sum of £1,236 identified that there is no authorisation by way of a minute of the Council authorising the expenditure.
- 108 The meeting on the 8 July 2021 confirmed the cost of the board and that '*Cllr Cordiner proposed the Chair be given delegated powers to progress this and try to secure a reasonable contribution towards the cost from Countryside Services*'
- 109 The subsequent meeting on the 9 September 2021 records in the minutes that '*Countryside Services have agreed to pay £200 towards the cost of the new noticeboard at Loggerheads and install it FOC. It should arrive around 27th September Action: Cllr Morgans to co-ordinate delivery and installation*'.
- 110 In line with Financial Regulations 4.1 and 4.2 there is no evidence of the authority to authorise the expenditure of £1,236 with Signs Workshops to replace the Noticeboard.
- 111 The Council partly accepts my audit findings. It notes that three quotes were provided for the noticeboard and has supplied copies of these quotes. The Council explains that the quotes were discussed during the 10 December 2020 meeting when the Council considered its 2021-22 precept. It contends that the inclusion of Sign Workshops' price in its precept calculations demonstrates that the Council chose the lowest price quoted but accepts that 'this expenditure was not formally authorised or recorded in the minutes.'

## **The Council does not record in its minutes its rationale for the acceptance of quotes which are not the lowest received**

- 112 During the review of the procurement for the playground equipment and groundworks it was noted that the rationale for the award of the groundworks to Celtic Stone, who was not the cheapest provider, was not specified in the Council Minutes.
- 113 My examination of the four further payments exceeding £800 in 2020-21 identified that the decision to award a website development contract to Aubergine in June

2020 notwithstanding that Aubergine was not the lowest bidder is not supported by an explanation why Aubergine was appointed in preference to four other bidders.

- 114 9 suppliers were invited to tender of which 5 provided quotations. A review of the table of comparison of quotations identified in Appendix 4 illustrates that Aubergine were not the cheapest supplier.
- 115 The Clerk has confirmed that 5 quotes were received of which 3 were identified as worth considering – Web Studio, Aubergine and JD Keen. The supplier selected, Aubergine, was not the lowest priced. JD Keen were the lowest priced but could only support the website for 2 years. They were eliminated because the Council did not want to go through the process again so soon afterwards with the associated unknown costs. Of the other 2, Aubergine was chosen because they were lower priced than Web Studio and had been ‘extremely helpful during the process.’
- 116 Financial Regulation 10.3 places a duty on members and officers are responsible for obtaining value for money at all times. An officer issuing an official order shall ensure as far as reasonable and practicable that the best available terms are obtained in respect of each transaction, usually by obtaining three or more quotations or estimates from appropriate suppliers. Whilst the requirement for more than three quotations have been obtained in this purchase there is no confirmation of the reasons that the Council have selected this supplier and how it demonstrates value for money and that the best available terms have been achieved.

# Appendix 1

## Comparison of groundworks specification for Maeshafn Playing Field

Supplier	Description of the Groundworks	Quote
Play and Leisure Quotation dated 21 <sup>st</sup> October 2020	Excavate new pathway with spur to RB base to the required depths and lay PCC edges in concrete and haunch around perimeter. Lay and compact MOT type 1 sub base to a depth of 10mm. Surface path with 50mm depth wearing course of self binding gravel (Approx 33m <sup>2</sup> )	£1,155
	Supply and Lay 33m <sup>2</sup> tarmac surfacing to create new pathway. 20mm wearing course at 40mm depth / 6mm surface course @ 20mm depth	<u>£1,135</u> <b>£2,290</b>
Celtic Stone Quotation dated 8 <sup>th</sup> November 2020	Quote to dig out a new learning centre base as discussed with Mr Morgans, consisting of crush and run limestone and being topped off with limestone fines for easier access.	£1,495
	Quote to dig out a new Disabled Access Pathway as discussed with Mr Morgans, consisting of crush and run limestone and being topped off with limestone fines for easier access.	£3,050
	Quote for 2 plinths for seating area as discussed with Morgans	<u>£600</u> <b>£5,145</b>
Playquest Quotation revised 17 <sup>th</sup> November	<p>Circa 80sqm of concrete pathway leading from the gate entrance to the sets of swings. Includes excavation of grass to approximately 150mm depth, installing timber edging throughout, installing and compacting 75mm depth of MOT stone, and then installing and levelling/smoothing 75mm depth of concrete for the pathway.</p> <p>The quotation provides for the provision of a Tree Seat at £1,000 – Total quotation of £9,000 discounted by £1,600.</p> <p><b>In calculating the price for the groundworks the Council have incorrectly removed the cost of the tree seat and retained the whole amount of the discount offered. The revised price should have been confirmed with the Supplier to ensure the discount remained available. The revised figure if the discount did remain would have been £6,578.</b></p>	<p>£8,000 Discounted to <b>£6,400</b></p>

Appendix Source : Audit Wales analysis









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We welcome correspondence and telephone calls in Welsh and English.  
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg a Saesneg.