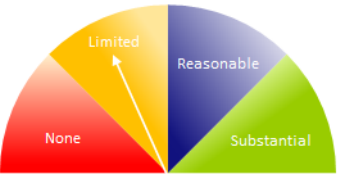


Assurance Opinion		Number of Actions		Risks Reviewed	Assessment
	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.	Priority	Number	Reputational damage and financial commitment due to the lack of contract management and commissioning	Medium
		Priority 1	0		
		Priority 2	8		
		Priority 3	2		
		Total	10		

**Background and Scope**

During a recent Audit Committee meeting, a concern was raised about the way the Red Dragon project operated and the impact it had on subcontractors, the contract specified the need for a project bank account to be in place which did not happen, which contributed to issues with subcontractor payments towards the end of the project. There were also questions raised about how the contract was managed and whether officers in the service complied with the contract arrangements in place. The committee therefore requested a piece of internal audit work to be commissioned.

**Summary**

This report provides an overview of the performance and effectiveness of contract management processes for the Red Dragon Project. It highlights areas of improvement and identifies key issues that need to be addressed to enhance efficiency and ensure compliance with contractual obligations.

The report identifies challenges faced in contract management, guidance, skills, communication gaps between departments, and delays in setting up the Project Bank Account (PBA). It emphasises the importance of clear communication, streamlined processes, practical contract structures, and proactive risk management strategies.

Recommendations include implementing formal documentation of contingency plans, obtaining the relevant skills and experience, using a central storage system, and enhancing communication channels to foster collaboration across departments. Overall, the report highlights the need for continuous improvement in contract management practices to achieve successful project outcomes and mitigate risks effectively.

The Welsh government have now made it compulsory for any project using Welsh Government funding to have a PBA for projects over £2 million and for longer than 6 months. It is therefore essential that controls are in place to confirm that the project payment requirements happen, to mitigate the risk of issues with the project bank accounts.

Although the findings and agreed actions within this audit are in relation to the Red Dragon Audit, they are transferable to all contracts and projects throughout the council, not simply the Housing service. Improvement is needed to ensure the projects are managed responsibly and decision makers are aware of any issues. The agreed action plan for the findings can be found in Appendix 1.

## Section 1

## Key Conclusions

## Key Conclusions

**The Contract and Contract Management**

The internal contract distribution process lacked clarity, hindering the understanding of responsibilities. There was limited accessibility of the final signed contract and any related contract addendums, with no central electronic copy, which prevented visibility to all relevant parties. This contributed to poor contract management by the Council with regards to the PBA.

The contract references a separate PBA Agreement that was to be signed by the main contractor within seven days of finalising the contract. From discussions held during the closeout meeting, it was evident that nobody could confirm whether the document had been provided to the contractor for signing, nor were they aware if a signed copy had been received in return. This uncertainty raised concerns about whether all parties involved knew their responsibilities with the contract process. This raises concerns that other sub-contracts or referenced documents within the contract remained unsigned.

Although the creation of the contract is overseen by the Council's external solicitors, the Council should review these to ensure contracts are practical and well-structured to guide project progress, avoiding unattainable clauses. Formal documentation of contingency plans, particularly for time-sensitive tasks like PBA setup, is necessary.

In 2020, the Deputy Head of Finance advised that evidence of the contractor's payment to subcontractors should be obtained if payments were made through the Efinancials system. The purpose of this action was to gain assurance that sub-contractors were being paid. However, this requirement is not stated in the contract and therefore became less enforceable, but this should not have stopped the council requesting the information as assurance in lieu of the PBA being operational.

In January 2023, new contract clauses were created to ensure payments to subcontractors were undertaken within a reasonable timescale and for suppliers to provide proof of payment to sub-contractors

**Guidance, Training and Skills**

The absence of clear guidance at the time of the project may have hindered contract management and consistency within the Council. Defined processes would safeguard contracts and ensure task completion.

Establishing the project bank account and conveying its advantages to subcontractors was a lengthy process, spanning several months. The absence of readily accessible standard information and guidance on project bank accounts hindered the efficiency of the process. The Commercial Services Team have stated that the required documents were available in the tender documents, however, it's possible that this information was overlooked or not communicated to subcontractors, as queries arose. A new standard document has since been developed by the Commercial Services, which could be incorporated into tendering documents.

At the time of the project, officers lacked comprehensive training, whilst contracts were allocated as and when they occurred. A new corporate training approach for contract management was first implemented in June 2022. By September 2023, this approach became mandatory for all contract managers handling contracts where suppliers have council spending exceeding £1 million annually.

Progress toward improving processes through the implementation of a new Contract Management Framework (CMF) is underway but not yet implemented. Adjustments are necessary to ensure that all officers engaged in contract management understand their responsibilities and collaborate across services to ensure task completion. While it's recognised that changes are underway, the new processes need to be implemented promptly to ensure adequate and consistent contract management is established.

#### **Payments and the Project Bank Account (PBA)**

The Council consistently made payments to RL Davies as per the contract.

Concerns were raised internally in March 2022, and shared with the Commercial and Housing services, when it was identified by the Deputy Head of Finance that RL Davies submitted their 2020 accounts to Companies House late, it is unclear what further actions were undertaken by all parties concerned in response to the concern raised because of the late submission. The Council was slow to respond to the potential risk displayed within the accounts and there was a lack of co-ordinated approach from the services. In November 2022, a new process was introduced by the Commercial Services Team which resulted in the receipt of the Dun and Bradstreet report. Subsequently, the Council met to discuss the mitigations for the increased risks of failure of the contract.

Responsibility for PBA creation was placed on RL Davies, with evidence of attempts but no fruition. Arrangements were in place to ensure the project's completion to the agreed standard, but there were no provisions for subcontractor payments in case of issues.

Responsibility for ensuring subcontractors were paid fell on RL Davies. Advice from the finance team a year prior suggested contractors provide evidence of payments. The advice was not included within the contract and therefore became less enforceable. The Council failed to implement sufficient controls to verify payments to subcontractors throughout the contract.

#### **Oversight, Systems and Data Management**

There was insufficient oversight of risks and warning signs throughout the project, with the Council primarily focused on asset delivery and house completion, neglecting the broader picture, and resulting in fragmented project ownership. Improved communication between service areas is necessary to ensure unified project ownership. Decisions regarding subcontractor payments and Project Bank Account (PBA) setup lacked documentation highlighting the need for clear responsibilities and processes.

There is no centralised data management system across service areas with services retaining information independently. The lack of a centralised documentation repository would have hindered transparency, direction, and awareness of project issues for decision-makers. It is acknowledged that introducing a new system would improve contract and project management, however the input of officers through escalation process is also necessary. The Council should ensure officers are aware of what needs to be reported and to whom.

**Risk Management**

Project risks were not integrated into service risk registers, reducing visibility for decision-makers. Despite the relatively small scale of the £3.5 million project, it's uncertain if initial risks were appropriately documented for ongoing monitoring. The Council should ensure individual project risks are identified and documented for decision-makers' awareness.

Insufficient consideration was given to potential failures or the non-creation of the project bank account, with slow responsiveness to continuity arrangements.

There was a lack of comprehensive risk assessment across project areas and inadequate visibility into risk mitigation efforts.

**Culture**

Communication gaps between service departments led to an informal approach to addressing issues and delays, with a siloed focus on individual tasks and a lack of overall risk and outcome communication. The siloed approach of services resulted in missed opportunities for earlier action. Improved communication could have facilitated the implementation of potential mitigations more effectively.

Section 2

Detailed Findings

**1.0 The Contract and Contract Management**

1.1 An agreed contract is in place which states what must be undertaken, which is feasible and monitored to ensure both parties adhere to it



**The Contract**

The contract of amendments was signed on the 19<sup>th</sup> March 2021. The contract was not clear and easy to read, as sections were separated in different documents. It was stated by the Commercial Services Team that this separation was defined by the JCT type contract. The council struggled to provide audit with a complete copy of the final contract.

The final contract was written by the external solicitors and employers' agent, once written it is forwarded to the Councils Legal Team to sign and approve. It was commented by the Housing Development Officer that "Legal do not send HDO's final signed copies of contracts, we rely on electronic copies of unsigned final drafts".

**The contract was not distributed to all parties involved, and stored in an easily accessible location to ensure that everyone included is clear on what their responsibilities are.**



**Project Bank Account (PBA)**

It was stated by the Housing Development Officer that the Project Bank Account (PBA) was not a statutory requirement for the scheme and that Powys decided to include it into the contract.

Clause 2.42.1 of the JCT Contract stated "The Parties shall enter into a JCT Project Bank Agreement (PBA) (template contained in the Employer's Requirements) within 7 days of entering into this Contract. The template contained within the tender pack needed to be signed within 7 days. The agreement is a separate contract which stipulates the how the bank agreement should work. Point 9.6 in the agreement states "No Party shall be liable for any delay or failure in performing its obligations under

this Agreement as a result of reasons beyond its reasonable control.” Audit did not receive a copy of this signed agreement; it is therefore unclear if it was signed within the required timeframe or received by the Council.

The PBA was to include all contractors over 1% of contract value unless they choose not to, whilst contractors below 1% could join the PBA if they wanted to. Audit were unable to identify how many contractors were over the 1% of the contract value and therefore automatically included. This may have been within the signed agreement. In Section 2.42.5 it was stated that, “Upon receipt of cleared funds in accordance with clause 2.42.3, the contractor shall pay any subcontractor and/or supplier (not signed to PBA) for which the contractor has requested and received payment from the employer within 14 days.” It was stated by the Commercial Services Team that “This clause is included for those who decline the PBA or contractors below 1%”.

Evidence was provided showing that in July 2020 the Services were made aware of issues with the PBA’s being set up stating that on “several occasions payments have had to be made outside of a PBA where works have started on site but where the PBA has not been finalised.” A decision was made that in this instance, the council would ask “contractors to agree to make payment to sub-contractors immediately once they receive cleared funds from the council (as would happen automatically through a PBA), and to provide evidence of the payments to our contract managers.”

In January 2023, new contract clauses have been identified and introduced to ensure that there are measures in place in the case where a project bank account may fail to come to fruition. These clauses can be seen in Appendix 3.

**It was communicated by email that the contractor should provide evidence of payments that they have made, however this was not included within the contract. In January 2023, the council has introduced new contingency clauses within new contracts.**

**The required timeline surrounding the creation of the bank account is unclear. It is unclear whether the JCT Bank Agreement stated within the contract was signed and if this was undertaken within the required timeframe. The Council needs to ensure that the contracts in place are realistic and are developed to guide the process of the project. It is also important to ensure all sub-contracts and agreements mentioned within the contract are completed and recorded alongside all relevant documents.**



### Contract Management

There were multiple different services included within different stages of the contract:

- Commercial Services - Lead the initial stages, creating and award of the contract. The contract is then handed over to the service department to get the contract signed and performance managed, with Commercial Services providing support as requested.
- Legal Services - Involved in organising the signing and updating of the contract (also external legal services)
- Financial Services – Involved in making the payments and providing guidance on the PBA set up.
- Housing Services - Responsible for Contract management and overseeing the performance of the contract.

Each service area was focused on their own role, there was a lack of overall ownership of the contract monitoring with each area working in silos to complete their tasks rather than work as a team.

**The Council needs to ensure that there is a senior responsible officer to take control of the whole project overseeing all stages, communicate with the different service and ensuring that all areas of the project are on track and the original aims of the project are met.**

## 2.0 Guidance, Training and Skills

2.1 A process is in position to ensure staff are aware of their responsibilities and guidance is in place to provide direction and help to officers to allow them to fulfil their duties



### The Process and Guidance

Auditors requested a copy of the contract management frameworks that were in place at the time of the project, however these were not received. It was stated by the Commercial Services Team that there were no established frameworks in place. However, a checklist of tasks existed, though there was ambiguity on the document's distribution, if any. The checklist was not seen by the audit team. It is therefore unclear that at the time of this project if there was a clearly defined process for staff to follow which stipulated when and what tasks need to be undertaken.

**This lack of guidance would not have helped guide the process used by services to manage the contract, nor ensures that a there is consistent approach to the management of other contracts within the Council. A defined processes to follow would help to safeguard the project from failure, and ensure all tasks are completed consistently and to a manor required by the Council.**



### The New Process

In December 2023 a new Contract Management Framework (CMF) was finalised. This framework sets out what needs to be done and when, however this framework has not yet been implemented. Details of the proposed CMF can be found in Appendix 4.

**Improvement toward the contract management processes is starting, however these have yet to be put in place. Changes are needed to ensure all officers involved with contract management are aware of their responsibilities and are working together across the services to guarantee the tasks are completed. Although it is acknowledged that changes are starting to take place, the new processes need to be implemented sooner to guarantee there is appropriate contract management in place.**

2.2 Staff have sufficient training, skills, and experience to undertake their roles and responsibilities.



### Training and Skills

It was stated by the Housing Officer that the Council has started to introduce specific training for Contract Management using a national GCF Contract Management Foundation level training, released in June 2022. It was also stated that "This proposed contract management module was further promoted from June 2023, through the new Commercial Performance and Risk Board, making it mandatory that all contract managers responsible for contracts with suppliers with council spend above £1m pa to complete the contract management by Sept 23."

**At the time of this project there was a lack of contract management experience and skills. Without direction and skills, it is unclear whether officers understood the key tasks that needed to be focused on. The council needs to gain assurance the officers managing the contracts have the skills and experience to do so. There was a lack of progressive management to ensure that there were both skills at the time of the project and going forward. Although initial training has been arranged the council needs to ensure that there is continuous development and support for officers to undertake their roles.**

### 3.0 Payments and the Project Bank Account (PBA)

#### 3.1 Payments were made in accordance with the contract, and the Council was aware of the financial position of the Contractor



##### Payments

The Council paid a total of 3,684,141.30 in regular monthly payments to RL Davies between 22<sup>nd</sup> June 2021 and 6<sup>th</sup> February 2023.

In July 2021, as part of the Council's on-going management of contractor's details of RL Davies the latest figures for 31st December 2020 were requested and received. On the 6<sup>th</sup> March 2022, the Deputy Head of Finance contacted a Business Advisory company raising "concerns around the late accounts" and sought assurance around the audit report and going concern of the business. The auditors were unable to answer the concerns stating that they were unable to provide "commentary on any aspect of any audit to a 3rd party even with express permissions from clients".

During this period, it was questioned by the Deputy Head of Finance whether the payments were to stop until the Council received assurances from the auditors, however payments were continued due to "legal requirements in the Construction act to pay invoices in line with the terms of the contract."

**The Council made regular payments to RL Davies in agreement with the contract.**



##### Financial Position

On the 23<sup>rd</sup> March 2022, RL Davies's audited accounts for the year ending on the 31<sup>st</sup> December 2020 were released on Company's House. The accounts revealed that they did not identify any issues that would affect the "ongoing concern for at least twelve months".

During the audit, it was commented by the Financial Reporting and Policy Accountant that the "accounts showed a deterioration in profit and a higher risk of failure (above the level of risk we would accept when awarding a contract) than was recorded the previous year." However, "the ratios (taken from CIPFA training on assessing finances) we thought were positive."

In November 2022 a new process was introduced by the Commercial Services Team which resulted in the receipt of the Dun and Bradstreet report. Following this, the Commercial and Housing Services teams met to discuss the mitigations for the increased risks of failure of the contract.

**The Council was aware that there were delays to the audited accounts for 2020. Evidence displayed that concerns were picked up by the Finance team in March 2022 due to the late submission of accounts and communicated to the Housing Team. It is unclear if any further discussion or actions were undertaken following this.**

**Following the introduction of a new process, the Commercial and Housing services met to discuss the increased risk of the project. The council did not respond quickly enough from when the first issues were noticed. If the new process was not introduced, it is unclear when this potential risk would have been identified.**

**This incidence displays the silo approach used by the Council. The Finance Team reviewed the financial status of the supplier; however, no actions were undertaken until several months later when the Commercial Services team sourced the Dun and Bradstreet report and met with the Housing Services team to discuss the risks. The Services within the Council needed a more co-ordinated approach with better communications between services.**



### The Performance Bond

An Aviva Insurance performance bond was signed by both Powys and RL Davies on the 18<sup>th</sup> June 2021 for 350,676.31. This performance bond was for additional costs to complete the project over and above what was expected through the contract with RL Davies. The performance bond cannot be used to pay the subcontractors as Powys is not responsible for paying them or for their performance. It was stated by the Housing Development office that the Council are currently taking advice from Hugh James Solicitors on making a claim against the Performance Bond.

**There were arrangements in place in for the Council to ensure that the work is completed and to a standard, however there were no arrangements seen to ensure that the subcontractors were paid in the case that something went wrong.**

### 3.2 The Project Bank account was created in accordance with the contract



#### Project Bank Account (PBA) – Inclusion

It was stated during a meeting with the Capital & Financial Planning Accountant that PBAs are very difficult to set up and that on average it would normally take a year to arrange. It was stated by the Housing Development Officer that that Councils within Wales are setting up a group to discuss the issues surrounding PBA's and that it was not just Powys County Council that was having issues. A PBA is a funding requirement for 21<sup>st</sup> Century Schools however, it was optional for housing projects. It was stated by the commercial services team in an email from July 2020 that "PBA's have been included in the housing contracts due to the obvious benefits and reduced risk to sub-contractors and the council".

**Although there were benefits to creating a PBA, the feasibility of creating the account within the contracted time and before the end of the project needed to be considered in greater detail. It was a known issue from previous contracts within 21<sup>st</sup> Century Schools projects.**



#### Project Bank Account (PBA) – Creation

Evidence from meeting minutes that Powys had with RL Davies displayed that they tried to set up the PBA throughout the project however there were issues and delays caused by the bank. The timeline of updates provided by RL Davies can be found in Appendix 2. It was commented by the Housing Officer that although regular verbal updates were received no physical evidence of the attempts was.

During a meeting between the Council and RL Davies on the 12<sup>th</sup> May 2021, it was noted within the minutes that many of the sub-contractors were "confused as to the benefits of the PBA" and that Powys was "to discuss internally to see whether a briefing note can be issued outlining the benefits that can be circulated." An email train was provided to the Audit team from August 2021 which displayed that RL Davies was still "struggling with sub-contractors signing up to the PBA", it was also suggested that Powys produce a standard letter regarding the benefits and how it worked.

It was commented by the commercial services team that information about the PBA would have been included within the tender documents. Details about the creation and how the PBA should work were detailed within the JCT Project Bank Agreement (PBA) that was mentioned in clause 2.42.1 of the contract. However, it is unclear if this document was signed and returned to the Council.

**The Council placed the reliance to create the PBA on RL Davies. Internal Audit were provided with evidence that displays that throughout the project, multiple attempts were made to set the account up and that RL Davies provided regular verbal updates to the council. There was insufficient physical evidence sought from the contractor to confirm actions had been undertaken.**



Although there is evidence to suggest that attempts were made to create the PBA, greater ownership was needed to certify that the contract clauses were fulfilled, and necessary documents had been signed. The slow response raises questions of whether the team was fully committed to creating the PBA or was simply going through the process. This displays a lack of forward thinking in the management process and an acceptance that the bank account might never be set up.

#### 4.0 Oversight, Systems and Data management

##### 4.1 Decision Maker and Responsible Officer oversee the project, and are aware of the issues



###### Oversight and Governance

Regular monthly meetings took place between the Contract Manager, Employers Agent and RL Davies, where the situation on site and progress of the project were discussed. However, there were no minutes of the main decisions to start and continue the project when issues surrounding the bank account occurred.

It was stated that the decision to start the project was decided at the project board, however the minutes did not contain any specific agreement to start the project without the bank account in place. The project bank account entries mentioned in the project board minutes didn't specifically relate to the Red Dragon Project and seemed to be related to the PBAs issues of all projects. Progress reports, sales programmes, issues and finances were briefly documented in the project board minutes. However, there was a lack of detail to ascertain that there was sufficient management of the contract.

There was a project board meeting in January 2023, where updates on the expected completion date were reported. There was no mention of the Dun and Bradstreet report which had been released since the last meeting or the risk mitigations that they were trying to implement. In March 2023 it was reported to the project board that RL Davies went into administration in February 2023. Commenting that they were working with solicitors to resolve the matter to allow possession of the site to transfer to the Council. Frustration from the sub-contractors around not receiving the payments were also recorded.

**There was a lack of oversight of the risks to the council and the warning signs that had occurred. It can be seen from the minutes and risk mitigations that towards the end of the project, the main concern for the Council was gaining control of the assets and completing the development. The full picture was not considered, and the Council failed to consider what may happen in the event that something would go wrong.**



###### Oversight – Payment to Subcontractors

The advice on how to proceed when a PBA had not yet been set up was provided via an email. Although the email highlighted that there were issues, it did not provide sufficient instructions on whether PBAs should still be used. There was no clear decision made on the best way forward. This lack of direction would not have helped to ensure steps were taken to arrange the PBA, as an unofficial back up plan had already been created. No evidence was seen to show the subcontractors were being paid. There was a lack of oversight over the importance of the bank account and the payment to the subcontracts.

**Although advice had been given to officers that where a PBA could not be set up the payments would be processed normally, the decision to do this and the steps to confirm that the sub-contractors are paid needed to be discussed and documented to ensure all officers are aware of their responsibilities. The Council should ensure that all important decisions are documented.**

## 4.2 Appropriate system are in place to ensure decisions and evidence are documented, and stored in accessible places

**Systems and Data management**

The Council does not have a central system that stores the information related to the project, each area keeps their own records. These are not shared and there is no clear understanding of what tasks have been undertaken and by whom. It is unclear what the role and responsibilities are for each of the service and who is primarily responsible for all outcomes.

In the proposed contract management framework, it mentioned a consistent performance dashboard (covering quality, service, cost, risk and Net Zero) would be created, which would help to improve the visibility of where the project was at.

**Although improvements have been identified within the new contract management framework to enhance strategic oversight of key areas, at the time of the project no processes were in place to manage the information.**

**There are insufficient controls in place to manage the data and the sharing of information between all service areas. Each project should have one location in which all documents are recorded and accessible by all relevant parties.**

**5.0 Risk Management and Business Continuity**

## 5.1 Decision makers are aware of the risks of the project, and there are sufficient controls in case something went wrong.

**Risk Management**

In November 2022 the Dun and Bradstreet report rated RL Davies as Risk 3 - Higher than Average Risk of Business Failure. It was stated by the Housing Development Officer that when the report was released the project was nearing completion with only snagging left to be completed.

A meeting was held between Commercial Services and the Housing team in December 2022 to discuss the risks associated with RL Davies. During this meeting a risk mitigations document was created stating the risks to the Council and mitigation that in place. The mitigation actions were reliant on the responses received from RL Davies. The contract manager was responsible for ensuring the mitigations were in place, however there were no records of whether the actions were undertaken. The mitigations identified we focused primarily on finishing the project and gaining access to the assets. One of the mitigations was to seek proof of payment from the contractors, this should have been happening throughout the contract process.

The issues identified in the PowerPoint document was stored by the service and used to monitor the project, however these risks were not included within the services risk register.

On the 24<sup>th</sup> February 2023 RL Davies appointed an administrator.

**Although this was recorded locally, it was not included within the service risk registers, which would allow for greater visibility by decision makers. While £3.5 million is a smaller project undertaken by the council these risks may occur numerous times, it is queried whether the risks at the beginning of the project were recorded**

appropriately to ensure that they were monitored throughout the process. High level service risks are recorded on the service risk registers; however smaller everyday risks are not included. The Council should ensure that individual risks to projects are highlighted and recorded for decision makers to see.

Appendix 1

Action Plan

1.0 Contract and Contract Management

The Contract – Actions to address distributing the contract and other important documents

2

Issues	Actions	By Whom - Named Lead	When
<p>The internal contract distribution process lacked clarity, hindering the understanding of responsibilities.</p> <p>There was limited accessibility of the final signed contract and any related contract addendums, with no central electronic copy, which prevented visibility to all relevant parties.</p>	<p>1. Signed contracts under seal and supporting documentation to be electronically scanned and distributed by PCC Legal to:</p> <ul style="list-style-type: none"> <li>• Service Area Contract Manager (e.g. New Development Lead Development Officer</li> <li>• Commercial Services</li> <li>• Finance</li> </ul> <p>with, final hard copy to be saved by Legal in a safe and accessible location.</p> <p>Process to be developed by Legal to outline the process for signing, sealing, scanning and distribution of contract to key parties.</p>	<p>Legal – HH (1<sup>st</sup> draft of process prepared and sent to Head of Legal)</p>	<p>Draft Process circulated to the Audit Group Week Commencing 01.04.24.</p>
	<p>2. Options paper to be developed for a Centralised electronic contract management system for all contracts and any related contract addendums, ensuring central storage and access for all relevant parties. Options paper to be developed with available functionality and estimated costs and submitted to SLT for consideration/approval.</p>	<p>Commercial Services - WW</p>	<p>Draft options paper circulated to the Audit Group Week Commencing 15.04.24 prior to SLT.</p>
<p>Although the creation of the contract is overseen by the Councils external solicitors, the Council should review these to ensure contracts are practical and well-structured to guide project progress.</p>	<p>3. Where external solicitors are used for drafting of contract documents, final sign off will be provided by the Council Legal team and reflected in the commercial lifecycle process flowchart.</p>	<p>WW/HH to confirm the process</p>	<p>Draft Process circulated to the Audit Group Week Commencing 01.04.24.</p>
<p>In 2020, the Deputy Head of Finance advised that evidence of the contractor’s payment to subcontractors should be obtained if payments were made through the financial system. The purpose of this action was to gain assurance that sub-</p>	<p>4. Additional contract clauses in section 2.42 of the contract have now been introduced which covers arrangements relating to Project Bank Accounts, and ensuring payments to subcontractors are evidenced by Principal Contractors until the PBA is in place. <b>Linked to Objective 1/Action: 2.</b></p>	<p>Commercial Services/Housing/Legal.</p>	<p>Completed</p>



Training – Agreed action to ensure that all officers have the skills and support they need to fulfil their role.

3

Issues	Actions	By Whom - Named Lead	When
<p>At the time of the project, officers lacked comprehensive training, whilst projects were allocated as and when they occurred.</p>	<p>4. Implement Contract Management training programme: Part 1 - All contract managers responsible for contracts with a council spend of more than £1m per annum to complete the Cabinet Office’s GCF contract management foundation training.</p>	<p>Commercial Services/Housing</p>	<p>Complete</p>
	<p>Part 2 - All contract managers responsible for contracts with council spend of less than £1m to complete the councils’ New ‘Introduction to Contract Management’ training.</p>	<p>Commercial Services/Housing</p>	<p>Training to be launched by Sept24.</p>
	<p>5. All contract managers responsible for contracts should be suitably skilled, experienced, and trained in the forms of contract that they are expected to deliver. Commercial Services to develop options paper for service areas to access specific JCT contract training where applicable.</p>	<p>Commercial Services – WW</p>	<p>September 2024</p>
	<p>6. Strategic Contract Management Officer to provide contract management support, advice, challenge, and expertise. Being advertised in Q1 2024-2025. Responsibilities will include developing and implementing training modules. Consistency of the dedicated officer to secure high quality training and dovetail this with the advice and support (and subsequent training and development).</p>	<p>Commercial Services – WW</p>	<p>Quarter One 2024-2025</p>
<p>Contract Manager’s skills and experience requirements need to be reflected in service area nominated officer’s (contract manager) JDPS.</p>	<p>7. Heads of Service need to ensure that their officers responsible for managing contracts, hold the necessary skills and experiences. This can be achieved through:</p> <ul style="list-style-type: none"> <li>• Ensuring skills and experience requirements are included in applicable officer’s JDPS.</li> <li>• Ensure that applicable training needs forms part of the officer’s individual performance reviews and appraisals.</li> <li>• Ensure Heads of Service’s representatives on the Commercial Performance and Risk Board flow down requirements, including training requirements, to their teams.</li> </ul> <p>Professional Lead for Commercial to work with HR to confirm mandatory training and skills for contract managers across the Council.</p>	<p>Commercial Services – WW / HR</p> <p>WW to prepare a paper to SLT which outlines a set of recommendations to ensure officers hold the relevant experience and qualifications for contract management. Paper to be shared with audit group prior to being taken to SLT. Aim is May SLT for implementation by September 2024</p>	<p>September 2024</p>
<p>Progress toward improving contract management processes is underway but not yet implemented. The new processes need to be implemented promptly to</p>	<p>8. Implement Contract Management Framework (CMF) which applies a risk-based approach (with standard processes and appropriate key performance indicators) to contract management:</p> <ul style="list-style-type: none"> <li>• Phase 1 prioritising Top Fifty contracts: Apply CMF for Platinum and Gold contracts (higher value/higher risk),</li> </ul>	<p>Commercial Services – WW</p>	<p>Phase 1 - Implementation December 2024</p>

<p>ensure adequate contract management is established. Adjustments are necessary to ensure that all officers engaged in contract management understand their responsibilities and collaborate across services to ensure task completion.</p>	<ul style="list-style-type: none"> <li>Phase 2 remaining contracts (circa 900 contracts): Apply CMF for Silver and Bronze contracts (lower value/lower risk),</li> </ul>		<p>Phase 2- Implementation December 2025</p>
	<p>9. Implementation plan to embed CMF to be produced.</p>	<p>Commercial Services – WW</p>	<p>29.04.24</p>

**3.0 Payments and the Project Bank Account (PBA)**

**Early Identification - Actions to ensure that warnings of financials pressure on the main contractor are acted upon on a timely basis** 2

Issues	Actions	By Whom - Named Lead	When
<p>The Council was slow to respond to the potential risk identified within the accounts. The council’s actions were delayed until November 2022 when due a new risk mitigation scheme was launched.</p>	<p>1. A Supplier Financial Risk Mitigation approach was introduced in December 2022 by Commercial Services whereby Dunn &amp; Bradstreet Financial Risk Reports are secured, and where a supplier has a Risk Level 3 (greater than average risk) or Risk 4 (significant risk) then Commercial Services, Finance and Services Area Contract Manager to meet and agree plan to mitigate risks.</p>	<p>Commercial Services – WW</p>	<p>Complete</p>
	<p>2. New Development Team to utilise the periodic progress meetings as mechanism for raising financial aspects of the project including payments and valuations. Establish a standardised Agenda item for periodic contractor progress meetings.</p>	<p>Housing - KC</p>	<p>Complete</p>

**Evidence – Action to ensure evidence is gained from contractor on their responsibilities** 3

Issues	Actions	By Whom - Named Lead	When
<p>Clear process to be established and implemented for the arrangements relating to Project Bank Accounts which reflects the newly introduced contractual clauses in section 2.42 to ensure due process and that subcontractors are paid and in a timely manner until such time as the PBA is created.</p>	<p>3. Standardised process to be established for the New Development Team in applying the newly introduced contractual clauses in section 2.42 to ensure that subcontractors are paid if the project bank account is not created.</p>	<p>Housing – KC in collaboration with commercial services.</p>	<p>29.03.24</p>

4.0 Oversight and Data Management

**Oversight** - Action to ensure appropriate oversight takes place with important decisions being documented.

2

Issues	Actions	By Whom - Named Lead	When
Ensure appropriate oversight takes place with important decisions being documented.	1. Where project issues for senior decision making have been identified, these are to be taken to the New Development Project Board via a Project Board Report for Decision and decisions are to be clearly signed off within the particular report by the proposer and seconder and clearly recorded within the minutes. Report format to be updated to include formal sign off.	Housing – KC	Complete
	2. Any financial issues impacting upon capital funding need to be reported up to HoS and Director, through to the Capital Oversight Board, via the process which is already in place. There is a standard Items on the Agenda at the Board about concerns on projects, so any issues also need to be report there too. The existing process needs to be ‘rebooted’ and its use embedded across the Council. Corporate comms will be issued to reinforce this point.	Head of Service / Finance (for comms).	September 2024

**Data** – Action to ensure all documents related to a contract are stored in one central database and are available to all relevant officers and decision makers.

2

Issues	Actions	By Whom - Named Lead	When
No centralised data management system across service areas with services retaining information independently. The lack of a centralised documentation repository hindered transparency and awareness of project issues for decision-makers.	3. Centralised corporate electronic contract management system (in conjunction with a centralised Hard Copy document management system) required which supports accessibility across key departments for the storage of key documents including the signed contract, addendums. The system needs to include an electronic communication recording facility which the ability to included dated flags and tasking to be assigned to individual officers. This needs to be supported by a centralised electronic operating system/database where funding will need to be identified. <b>Links to Objective 1 Action 2.</b>	Commercial Services – WW	Links to Objective 1 Action 2.

5.0 Risk Management

Risk Management – Action to ensure that all parties are aware of possible risk to the company and compose a risk mitigation plan as soon as possible.

2

Issues	Actions	By Whom - Named Lead	When
<p>There was insufficient oversight of risks and warning signs throughout the project.</p>	<p>1. The Service Area Contract Manager and the Financial Reporting and Policy Accountant to register to monitor Companies filing updates on Companies House. Contract Managers should be aware of supplier’s structure changes such as changes to Directors, CCJS raised etc as all can be indication of issues within the specific business. Where an update has been made with new annual accounts filings then a new Dun &amp; Bradstreet reports to be secured for comparison with the previous year, highlighting potential financial indicators where obtainable, these will include declining revenue, margin declines and/or losses, high debt to equity ratios, covenant breaches, high borrowing cost, not paying creditors on time, audit opinion and going concern notices. Where falling ratings from either Powys or D&amp;B scoring identify higher than average risk, this is communicated, and future actions are agreed with the commercial services and the service.</p> <p>Where small company exemption accounts are filed, and the contract is large we should be asking the Contractor to provide profit and loss and borrowing information for the filed accounts.</p>	<p>Service Area Contract Manager / Finance</p>	<p>Complete. Development Manager emailed the Housing Development Officers on 13.03.24 to sign up to Companies House alerts for all companies taking part in projects in which the Council is in contract.</p>
	<p>2. Introduction of Risk Registers for all projects which collaborate across key departments. To be led by New Development with the input of Legal, Finance, Commercial services who will be asked to contribute to the process. To be reviewed as part of project progress meetings with the contractor. To be stored and accessible on a centralised data management system/database where any updates can be flagged for all to be aware, and any additional reviews scheduled.</p> <p><b>In Progress</b> - Work on Risk Registers has already commenced within the New Development Team. Project Riak registers are in progress by the development officers as the contract managers. Initial review of the documents will take place week of 1<sup>st</sup> April with full sign off by 30.04.24.</p>	<p>Housing - KC</p>	<p>New Development Team risk register Complete and emailed to HOS 08.03.24.</p> <p>30.04.24</p>



6.0 Culture

Culture – Action to address silo approach used by the Council

2

Issues	Actions	By Whom - Named Lead	When
<p>Improved communication across key departments.</p>	<p>1. Centralised contract management system/database required which supports accessibility across key departments for the storage of key documents including the signed contract, addendums. The system needs to include an electronic communication recording facility which will include dated flags and tasking to be assigned to individual officers. This needs to be supported by a centralised electronic operating system/database where funding will need to be identified. <b>Links to Section 1 Action 2 and Section 4 Action 1.</b></p>	<p>Commercial Services – WW</p>	<p>Draft options paper circulated to the Audit Group Week Commencing 15.04.24.  Formal paper to SLT by end May 24.</p>
	<p>2. A Commercial Performance and Risk Board has been created with SLT representatives which drives oversight and challenge across the commercial lifecycle.</p>	<p>Commercial Services – WW</p>	<p>Complete</p>
	<p>3. Commercial Services to launch a council wide quarterly operational level Commercial Collaboration Community to share knowledge and experiences and inform commercial improvement. Group will include multiple services including the New Development Team.</p>	<p>All</p>	<p>To commence in line with new quarters for 24/25.</p>
	<p>4. Quarterly Newsletter including detailing experiences (positive and negative), learning gained and to be sought, updates on policy and process to be produced and distributed by Commercial Services, linked to the work of the Commercial Collaboration Community.</p>	<p>Commercial Services – WW</p>	<p>To commence in line with new quarters for 24/25.</p>

## Appendix 2

## Project Bank Account Timeline - narrative from meetings between Powys County Council and RL Davies

Date	Comments made in meeting minutes
10/06/21	NatWest are to be used for the PBA.
08/07/21	Bank still to be setup. Powys asked RL Davies for an update regarding this.
12/05/21	RL Davies updated that he has been in regular contact with the relevant individuals at Powys Finance regarding resolving this. Confirmed that he needed to fill out and submit a form to Powys. To be done within the week.  Confirmed that Lowfield and JJP have expressed interest. RL Davies did note that many of the sub-contractors were confused as to the benefits of the RLD PCC 2 PBA. Powys to discuss internally to see whether a briefing note can be issued outlining the benefits that can be circulated
15/09/21	RL Davies updated all that RLD had returned all information to NatWest and were awaiting completion.
14/10/21	RL Davies updated all that the PBA is signed by PCC and with RLD's bank (NatWest). To be completed by next meeting.
11/11/21	RL Davies updated all that the PBA is with Brecon and should be sent back to RLD soon. RLD need a few more signatures on the PBA until it can be formally issued and put in place.
9/12/21	Confirmed that RLD has received the PBA from PCC. The bank has a few minor queries and therefore the PBA is not in place yet. Will hopefully be in place by the time of the next valuation.
13/01/22	Confirmed that RLD has received the PBA from PCC. The bank has a few minor queries and therefore the PBA is not in place yet. Next valuation to be processed via Powys.
10/02/22	Confirmed that the PBA is not yet in place. It was hoped that the PBA was now likely to be put in place within the next month with most (if not all) of the relevant requirements required from the Bank now in place.
13/03/22	Now setup but no card reader as of yet. This is needed before the account can be accessed. Powys commented that if PBAs are not in place, then RLD should provide confirmation from subcontractors that they have been paid? We will need to review the PBA and CSA to understand amounts due to them.
22/04/22	Now setup but no card reader as of yet.
12/05/22	The card reader has been sent to Powys and RL Davies has the activation code to set up the PBA so it should be in place by the week commencing the 23rd May 2022
22/06/22	RL Davies updated that while the PBA was now setup, he couldn't log on to request a code to access the account. RLD has tried to contact NatWest directly but to no avail at present. Agreed that the valuation would again be processed in the normal manner
7/07/22	RL Davies updated that while the PBA was now setup, he couldn't log on to request a code to access the account. RLD has tried to contact NatWest directly but to no avail at present. - Ongoing Agreed that the valuation would again be processed in the normal manner.
17/08/22	PBA is still not setup and due to the nearing completion of the scheme it is unlikely that this will now be put in place.
16/09/22	Closed. For the purposes of records, it was noted that the PBA was unsuccessful in being setup throughout the project and now won't be pursued as we approach the end of the project.

**Project Bank Account Arrangements Clauses****Arrangements relating to Project Bank Accounts**

- 2.42.1 In the event that the Contract Sum is greater than £2,000,000 (two million pounds) the Parties shall enter into a JCT Project Bank Agreement (PBA) (template contained in the Employer's Requirements) within 7 days of entering into this Contract. The PBA will include those Sub-Contractors who agree to enter into the PBA and whose subcontract value is greater than 1% of the Contract Sum.
- 2.42.2 In relation to any payment, the Contractor shall submit to the Employer (5) an application as referred to in the Contract, setting out the amount respectively due to himself and to each Sub-Contractor who is a party to the PBA, so that payments can be made through the Project Bank Account.
- 2.42.3 The Employer shall make each payment becoming due under Section 4 (6) of the Building Contract into the PBA in such time so as to provide cleared funds not later than the final date for payment. The Contractor acknowledges that payment into the PBA shall discharge the Employer's obligation to make payment under the Building Contract to the extent of that payment.
- 2.42.4 If the Employer notifies a payment to the Contractor of an amount less than that set out in the Contractor's application for payment, he shall state the total payment to be made and the amount due to the Contractor and, with the agreement of the Contractor, to each Sub-Contractor who is party to the PBA, together with a breakdown of any amount that has been reduced, so that payments can be made on time through the PBA.
- 2.42.5 In the event, that the PBA is not entered into in accordance with clause 2.42.6, the provisions at clause 2.42.6 to clause 2.42.9 apply until such time as clause 2.42.1 is satisfied by the Contractor.
- 2.42.6 The Contractor shall provide to the Employer the names, postal and email addresses and telephone numbers of all applicable Sub-Contractors engaged, or likely to be engaged, by the Contractor on the project prior to payment of the applicable sub-contractor works on site. The Contractor agrees that the Employer shall be entitled to contact all applicable Sub-Contractors for the purposes of administering this clause 2.42.6.
- 2.42.7 The Contractor agrees that it will pay all applicable Sub-Contractors any sums due in line with the terms of the agreed Sub-contract.
- 2.42.8 The Contractor shall include in each and every Payment Application detail of all and any sums included in the Payment Application that are to be paid to the applicable Sub-Contractors (in line with the agreed Contract Sum Analysis). In addition, the Contractor is to provide the Employer's Agent with confirmation from each relevant Sub-Contractors that previous sums invoiced have been paid in full (those sums due at the time of Application). This confirmation is required from a representative of the applicable Sub-Contractors, email confirmation is deemed acceptable. Should the Contractor / Sub-Contractor fail to provide this confirmation at the time of Application the Employer's Agent reserves the right to omit the costs claimed for the relevant Sub-Contractors works from the Contractor's Application for Payment. Such deductions shall continue until a time the Employer's Agent is in possession of evidence that the relevant Sub-Contractor has been paid in full.
- 2.42.9 The Employer and his Employer's Agent reserves the right to contact all applicable Sub-Contractors on or after the final date for payment of any Interim Payment to ascertain whether the Contractor has paid all applicable Sub-Contractors payments to the applicable Sub-Contractors.

**Contract Monitoring Framework**

The Commercial Services team have created a new contract framework which is currently under review and has not yet been approved or implemented. Within the new framework, it itemises the tasks that need to be completed for each project based on the perceived contract level. The higher the level the more rigour is required. The table below displays how the contracts will be broken down (subject to approval).

Level	Characteristics	Contract Value
<b>Platinum</b>	Strategic contracts or relationships that are considered <b>High Value</b> and of <b>High Risk</b> . These are often statutory services. Risks associated are high impact on resident / public, with market visibility or critical effect. An example of this type of contract might be Key Social Care contracts such as Domiciliary Support, Nursing Residential Care, Passenger Transport Services, Construction Contracts, etc.	Above £1m per annum
<b>Gold</b>	Key contracts that are considered <b>High Value</b> but of <b>Lower Risk</b> than a platinum contract. Examples of these type of contracts might include Temporary Agency Staff, ICT Hardware and Mobile phone services, Supply of Building Materials, etc.	Above £1m per annum
<b>Silver</b>	<b>High Risk</b> contracts in terms of potential impact of contract failure, and complexity of contract delivery but annual spend is of <b>Low Value</b> . Examples of these type of contracts might include some specialist Social Care services, community equipment servicing etc	Below £1m per annum
<b>Bronze</b>	<b>Low Value</b> and <b>Low Risk</b> contracts. Usually transactional in nature, with loss of service easily restored or replaced with minimal impact. Examples of these type of contract might include ongoing purchasing of basic goods such as stationery, tyres, hire of plant, provision of washroom services etc.	Below £1m per annum

The proposed framework also suggests that different training levels are required for the different contract levels. Below is a table that displays the proposed training needed for each level.

Type of Training Required	Contract Level
Complete the Councils’ new ‘Introduction to Contract Management’ training provided by Commercial Services as a mandatory requirement.	Bronze & Silver
Complete the Councils’ new ‘Introduction to Contract Management’ training provided by Commercial Services as a mandatory requirement. Complete the Contract Management Foundation training and test, provided by the Government Commercial College	Gold & Platinum
All members of the CST team must complete the Contract Management Foundation training and test, provided by the Government Commercial College	Commercial Services

A more detailed approach will allow for greater continuity and reduce the chances of error and risk arising.