

Report To:	CABINET
Date:	20 JANUARY 2025
Heading:	AUTOMATED DISTRIBUTION AND MANUFACTURING CENTRE (ADMC)
Executive Lead Member:	CLLR RACHEL MADDEN, EXECUTIVE LEAD MEMBER FOR FINANCE, REVENUES AND BENEFITS
Ward/s:	ALL
Key Decision:	YES
Subject to Call-In:	YES

Purpose of Report

To update Cabinet on the progress of the ADMC project and to approve the proposed organisational structure, as well as noting the external legal advice received in relation to the organisational structure and subsidy control issues.

Recommendation(s)

- To note the progress of the ADMC project and associated land acquisition;
- To note the external legal advice received in relation to the proposed organisational structure and subsidy control issues for the ADMC project;
- To approve the proposed organisational structure for the ADMC project;
- To approve carrying out a public procurement procedure to appoint an external management company to provide management services and run the ADMC, subject to there being a sufficient market of potential operators;
- To authorise the Executive Director Place in consultation with the Executive Director Governance, Corporate Resources Director and Executive Lead Member for Finance, Revenue and Benefits to award the contract to the successful bidder once the public procurement procedure has been concluded;
- Should there be an insufficient market of suitable operators through the public procurement process, to authorise the Executive Director Place in consultation with the Executive Director Governance, Corporate Resources Director and Executive Lead Member for Finance, Revenue and Benefits to revisit the options for the organisational structure and implement an alternative.

Reasons for Recommendation(s)

To ensure that Cabinet is kept updated on the ADMC project and to seek Cabinet's approval of the proposed organisational structure and carrying out a public procurement procedure to appoint an external management company to provide management services and run the ADMC.

Alternative Options Considered

Not to keep Cabinet updated on the ADMC project and not to ask Cabinet for approval of the proposed organisational structure and public procurement process – not recommended because the ADMC project is a major part of the Council's regeneration plans for the District.

Detailed Information

Background

Members will recall that the Council successfully submitted a £20million Towns Fund grant funding application for the establishment of an Automated Distribution and Manufacturing Centre (**ADMC**). The ADMC will be a national centre of excellence for automation, based here in Ashfield but supporting economic growth across the region and more widely. This will mark a step change in the local economy, supporting a move to higher value manufacturing and distribution sectors which will bring better paid and more stable jobs to the district.

The ADMC will work with businesses to create and implement bespoke automation strategies and solutions that improve productivity, competitiveness and resilience. The centre will work with businesses on how technology can help them, enable them to test how things could work within their own business and train their staff on how to use and maintain automated systems. By doing so, this will create and secure hundreds of high skilled jobs within local businesses.

In July the Council's Planning Committee approved plans for the construction of a new 3,000 sqm building to house the ADMC at a site off Lowmoor Road in Kirkby, just opposite Sutton Parkway railway station. Alongside this the Council has procured a construction partner to build the ADMC, starting on site from January 2025 and taking around a year. This flagship building will house a range of events, equipment demonstrations, development of new products, networking and training activities. The ADMC will generate income through research and development grants, business support funding, membership income and businesses directly buying services from the ADMC.

On 25 September 2023 the Council approved the purchase of the Lowmoor Road site for the development of the ADMC and the land is now owned by the Council. As well as housing the ADMC, the intention is that the wider site is developed for economic development. An application for outline planning permission for the wider site will be submitted in early 2025. The vision for the wider site is to create a development which will be home to a range of businesses in the automated manufacturing and distribution sectors, particularly those involved with innovation and higher value manufacturing. The Council will use ADMC as a catalyst for attracting businesses and investment to the site and more widely across the district. This will accelerate the positioning of Ashfield as an attractive destination for automation and innovation, delivering local economic growth alongside a positive national reputation in these sectors. Initial estimates suggest that at least 500 jobs could be created by the development of the wider site.

The Council is the accountable body for the ADMC project and its primary interest is regeneration driven, in helping businesses to adopt automation in a positive way and to ensure that Ashfield's population has access to skills and training facilities that in turn lead to higher and more skilled employment. The Council will own the freehold to the ADMC and wider site.

Whilst a significant amount of work has already been done in developing the ADMC over the last couple of years, both in terms of the new building and engaging with businesses who could be potential beneficiaries of ADMC services, 2025 will be a crucial year in making our vision a reality. Whilst construction of the building is progressing, further consideration has been given to operating arrangements of the ADMC. This will ensure that the ADMC will deliver the benefits outlined above.

Organisational Structure

External legal advice has been obtained in relation to the proposed organisational structure of the ADMC project. The original business case proposed that the Council would own the freehold of the land on which the new building for ADMC is to be erected and lease the land to a charity which would establish a wholly owned trading subsidiary to operate ADMC. However, external legal advice has been obtained to assist in identifying the organisation structure which best fits with our aims. This external legal advice concluded that the disadvantages of having a charitable company in the structure significantly outweighed the benefits. The advice outlined that whilst setting up a charity may provide tax and fundraising advantages, the charity would need to maintain sufficient independence from the Council and that the Council would in fact be able to retain a greater degree of control by using a non-charitable ADMC delivery vehicle. There were also significant subsidy control issues involved with any new organisations, given that the Council intends to seed fund the ADMC operations using Towns Fund, as well as investing in equipment within the building.

The external legal advice received outlines the preferred option whereby the Council procures an operator to run the ADMC. Alongside the contract for service delivery, the operator would have a lease for the ADMC building with the ability to have sub-leases/licences with other occupiers and users. A public procurement compliant advertised procedure would be carried out to appoint the external management company to provide management services and run the ADMC. The services that would be included in such an operating contract could include delivery of business advice, engagement with local businesses, management of the building, promotion of ADMC activities, coordination of ADMC partners and delivery of automation product development and prototyping.

A key feature of this structure would be that as a service contract the management company will be responsible for repair and maintenance of the ADMC. The company would provide an annual business plan, to be agreed, based on the previous year's performance and set against agreed KPI's. It would also be required to provide regular reports to the Council on performance against the agreed business plan and KPIs as well as attend meetings with the Council to discuss the report/plans. The Council would most likely be looking at a ten-year service contract, potentially with break clauses after five and eight years.

Under the proposed structure the Council has a reasonable level of control deriving from a concrete service specification and obligations on the management company. A degree of the responsibility for success or failure will be derogated to the management company. The Council would not be responsible for repair and maintenance costs, including unexpected emergency repairs. It will be necessary to undertake a competitive procurement to appoint the management company and whilst there is a risk that providers may not consider this an attractive proposition, there are many examples of local authorities appointing managing agents to run innovation centres. There is also £1million revenue funding from Towns Fund which the Council would provide to the appointed management company, as well as a similar amount spent on equipment for the building.

The alternative option of the Council owning the freehold, leasing to a management company (who has repairing responsibility) on a concession basis has also been considered. However, under a concession contract, the management company must be exposed to a real operating risk meaning that the Council would have less control over how the management company carries out the

operations – the focus is much more on outcomes and outputs. This option has therefore been discounted based on there being some loss of control compared to a services contract.

Lastly, there is also an option of the Council setting up a wholly owned subsidiary and granting it a long leasehold, the subsidiary would act as if it were the Council in the above scenarios. This would raise a number of complexities in terms of the subsidiary's employees, its financing, governance arrangements, any services provided by the Council to the subsidiary, management of conflicts of interest, and subsidy control. This option has been discounted because of the governance, administrative and practical responsibilities involved in owning and managing the subsidiary (including managing conflicts of interest) and because there would be a lesser level of control than if the Council were to lease directly to a management company.

It is therefore recommended that the Council procures a management company to deliver the functions of the ADMC and to maintain the ADMC building. If approved, a procurement process would begin in early 2025 with an operator ideally appointed by late summer. The option of the Council setting up and operating a subsidiary company will continue to be considered, so that there is an alternative option available in the event that there is not a sufficient market of potential operators through a procurement process.

Legal Advice – Subsidy Control

The assurance requirements of the Towns Fund grant include the requirement to consider State Aid Rules from the onset of any proposal to ensure that proposed measures will be compatible with EU competition rules. The EU State Aid Rules have since been replaced by the new domestic subsidy control regime brought in by the Subsidy Control Act 2022 ("the Act"), which the Council is required to comply with. The subsidy control regime is designed to prevent unfair advantages and distortion of trade, the Council therefore has the responsibility for determining whether the funding awards under the ADMC Project (and all other funding projects) are subsidy control compliant, failure to do so could result in a requirement to repay the funds.

Under the proposals for the organisational structure as set out in the original business case, the subsidy control position was complex and may have required a detailed assessment of subsidy control principles in relation to the charitable company and subsidiary company particularly where arrangements were not made at market rates. However, under the preferred organisational structure outlined above, all contractual relationships will be entered into on market terms and therefore there will be no subsidy control implications. The appointment of the managing company via a competitive tender process (including any contribution by the Council to revenue funding) will help demonstrate that this is on market terms.

It is expected that there will also be no subsidy control implications as regards other third parties using the ADMC facility as they will be paying market rates. Whilst the Council will hold the ownership of the initial land holding, building and specific items of equipment to be installed in the ADMC at set up, as assets, external legal advisors consider it is reasonable to conclude that there should be no subsidy to the Council. In any event there is a very persuasive argument based on case law that the Council cannot award a subsidy through the Towns Fund to itself, and therefore the Council cannot receive a subsidy. The external legal advice is that the risk of a subsidy being provided to the Council by the Towns Fund funding is low.

Legal Advice – Best Consideration (Section 123 of the Local Government Act 1972)

The Council must consider whether it is granting any lease for more than 7 years at the best consideration reasonably obtainable. In determining this, the only consideration that can be taken into account is that which has commercial or monetary value to the Council. External legal advisors have advised that this should be fairly straightforward where the Council is appointing a

management company following a competitive tender but may be more of an issue where there is a lease to an educational establishment or to a subsidiary company of the Council.

Implications

Corporate Plan:

The Council's Corporate Plan sets out the Council's ambition to be a centre of excellence in automated technology and distribution through major investments in key projects throughout the Ashfield over the next three years, including the Automated Distribution and Manufacturing Centre (ADMC).

Legal:

Section 120(1) of the Local Government Act 1972 provides the Council with the power to acquire land and section 1(1) of the Localism Act 2011 provides the Council with the general power to do anything that individuals generally can do. Other legal considerations are contained within the body of the report. [RLD 11/12/2024]

Finance:

The ADMC is expected to become self-funding once it is fully operational, but the Council will incur an ongoing opportunity cost to maintain oversight. The choice of operating model presents a degree of financial risk in relation to:

- Ensuring that the administrative cost of the governance arrangements between the Council and the operator remains at a reasonable level that is within the budget envelope.
- Utilising the revenue element of the grant funding to optimise the project delivery, whilst complying with the requirements of the Subsidy Control regime.
- Ability to share ongoing commercial risk and opportunity of the project with the operator.

Following the specialist advice, it is clear that the appointment of an operator through a public procurement exercise is the option that is most likely to minimise the risks, whilst maintaining appropriate control through the contract specification, terms and conditions. [PH 09/01/2024]

Budget Area	Implication
General Fund – Revenue Budget	No direct implications, but the recommended option minimises the risk of excessive direct and indirect costs arising in relation to the matters set out above.
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Risk:

Risk	Mitigation
Potential unquantified, financial implications.	External advice as set out in this report.
Lack of suitable operators in the open market	Early engagement with the market; proactive promotion of the procurement opportunity; reconsideration of the potential operating models following the market engagement

Human Resources:

There are no direct HR implications contained within the report (KH 18.12.24)

Environmental/Sustainability:

n/a

Equalities:

There are no equalities implications.

Other Implications:

n/a

Reason(s) for Urgency

n/a

Reason(s) for Exemption

n/a

Background Papers

none

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