

Manchester City Council Report for Information

Report to: Resources and Governance Scrutiny Committee - 11 January 2024

Subject: Commercial Activity, Investments and Governance (Part A)

Report of: Deputy Chief Executive & City Treasurer

Summary

The Council is involved in a wide range of commercial activities, including, but not limited to, provision of loans to third parties, Joint Ventures, investments into a range of initiatives and property transactions. This report provides an overview the governance and assurance activity which take place before, during and post completion of commercial transactions.

This report is accompanied by Part B report, which goes into more detail about the Council's commercial ventures.

Recommendations

The Committee is recommended to note the content of the report and comment and / or question the information presented to the Committee, as appropriate.

Wards Affected: All

Environmental Impact Assessment - the impact of the issues addressed in this report on achieving the zero-carbon target for the city	This report does not present information or propose decisions that have direct implications for the delivery of the Council's zero-carbon targets.
Equality, Diversity and Inclusion - the impact of the issues addressed in this report in meeting our Public Sector Equality Duty and broader equality commitments	Consideration of equality, diversity and inclusion issues for Manchester residents, communities and businesses have been taken into account in the development and delivery of the specific schemes covered in the accompanying Part B report.

Manchester Strategy outcomes	Summary of how this report aligns to the OMS/Contribution to the Strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Through a number of the commercial activities and / or companies that the Council wholly owns or is a party to, jobs have been created and will continue to create employment opportunities across a wide range of sectors.
A highly skilled city: world class and home grown talent sustaining the city's economic success	It is anticipated that the commercial activities outlined with the report will act as a catalyst for investment through supporting infrastructure, innovation and people, providing a significant boost to the future economic growth for the local area.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	The commercial activities which the Council is a party to, primarily through Joint Venture arrangements deliver positive socio-economic changes for communities.
A liveable and low carbon city: a destination of choice to live, visit, work	A number of the commercial activities and investments act as a catalyst for regeneration.
A connected city: world class infrastructure and connectivity to drive growth	Infrastructure improvements are an integral part of commercial activities the Council are a partner in delivering to ensure that opportunities are accessible to all.

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

There are no direct capital consequences arising specifically from this report.

Financial Consequences – Capital

There are no direct capital consequences arising specifically from this report.

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

- Resources & Governance Scrutiny Committee: Tuesday 7th September 2021 – Spend and financing of external wholly owned organisations.
- Audit Committee: Tuesday 14th June 2022 – Register of Significant Partnerships
- Resources & Governance Scrutiny Committee: Thursday 25th May 2023 - Commercial Activity, Investments and Governance
- Audit Committee: Tuesday 13th June 2023 – Register of Significant Partnerships

1. Introduction

- 1.1 This report provides an overview of commercial activity which Manchester City Council is a party to. The report details the range of commercial endeavours covering a broad spectrum of activities such as wholly owned companies and Joint Ventures, development agreements, loan arrangements and equity investments into various ventures.
- 1.2 The sections below cover a number of aspects related to commercial activities including:
- Governance, assurance and oversight structures
 - Summary of key Joint Venture arrangements
 - Activities to close companies that are no longer required
 - An overview of the Council's commercial loan, equity and shareholding portfolio
 - A summary of the work being undertaken on the commercial and development estate
 - Regulation of commercial activity
 - Reflections on the review of Public Interest and Best Value reports into other Local Authority commercial activities

2. Background

- 2.1 For a number of years, Manchester City Council has been a party to a range of commercial activities through the ownership and investment into a number of different companies, Joint Ventures and charities. Each of these entities undertake different types of activities that provide economic and social benefits to the City and support the Council's policy aims. These arrangements vary in scale and complexity, as well as level of turnover. The Council has provided loan and equity funding, as well as entering into a number of commercial arrangements linked to its land holdings. Some of these have direct connections to companies, others are bespoke, standalone arrangements.
- 2.2 To ensure that there is robust oversight of commercial and company activity and performance, in 2018 the Council established a Commercial Governance service. The objectives were to ensure corporate co-ordination and oversight of commercial activities. The service also incorporates the company secretarial function of Manchester Professional Services Limited (MPSL) to ensure robust shareholder governance in place for commercial ventures. It is to be noted that MPSL is a wholly owned council company established specifically for this purpose, which supports 36 different entities.
- 2.3 The Commercial Governance service provides a corporate co-ordination and oversight function for companies, joint ventures and charities which the Council is involved in. This is to ensure that there is independent and assured oversight of activity, information is held in one centralised place, bringing together information from both legal and finance, as well as standardising processes and embedding good practice. An example of this to refine and

standardised processes to review companies and create a 'house style' financial model for current and potential future investments.

- 2.4 Furthermore, Commercial Governance proactively reviews the Best Value and Public Interest reports into Local Authority commercial ventures, as well as regular engagement with external consultancies who have been charged with undertaking assessments / supporting Councils with their commercial portfolios, to review any lessons learnt from these experiences and any further areas of improvement which Manchester can apply. It should be noted that there have been no specific weaknesses found in the way in which the Council operates or structures its commercial activities but there is no room for complacency and this has provided an opportunity to further strengthen practices.
- 2.5 There are a number of ways in which the Council applies commercial governance and assurance, with the sections below providing an overview of the key tools which are used to provide appropriate assurance.

Commercial Board

- 2.6 The Council's Commercial Board, chaired by the Deputy Chief Executive and City Treasurer, was established in late 2018 with an initial focus on major projects and significant investments to ensure that there was alignment with corporate priorities, value for money delivered and benefits realisation achieved. Over time, the remit of the Commercial Board has expanded to cover matters such as procurement, including waivers and direct awards, income generating contracts fees and charges and spend on agency staff. Furthermore, the implementation of the Subsidy Control Act, also sits under the remit of the Commercial Board, with the working group providing an update report at each meeting. It is to be noted that the Commercial Board doesn't have any formal decision-making powers and acts in a capacity of oversight / monitoring, providing a key a check and challenge function prior to commercial proposals being progressed for decision making through agreed constitutional governance routes.

Directorship Training

- 2.7 The Council has co-produced a company Director training programme with CIPFA which all Members and Officers fulfilling a Directorship role are required to attend. At present, the Council has 62 seats on a wide range of company Boards. Three successful training cohorts have already been completed, with 24 Members and Officers attending the sessions. The Directorship training takes place once a year, post May Elections, to ensure that any Members who may have had a change in portfolio or assigned other duties attend receive the training at the start of their tenure. It is to be noted that a lack of sufficient training for those undertaking a company Director role has been highlighted as a key issue in a number of Best Value and Public Interest reports into failings in the operation of Local Authority commercial ventures.

Shareholder Panel

- 2.8 The Council's Shareholder Panel meets on a monthly basis to review the performance of various entities, provides assurance on compliance with Shareholder Agreements, has oversight of company reviews and looks to resolve any emerging issues in relation the operation of any of the companies, Joint Ventures or charities which the Council is involved with. The Shareholder Panel is chaired by the Deputy City Treasurer and involves representative from Commercial Governance, Financial Management and Legal Services. There is a clearly defined action plan which the Shareholder Panel is delivering against, which progress reported to the Commercial Board on a bi-annual basis. Focus of late has been around regulation of some company governance matters and closures of entities that are no longer required by the Council.

Entity Specific Monitoring Groups

- 2.9 Sitting alongside the Shareholder Panel are a handful of entity specific monitoring groups which have been or are in the process of being established. These groups review in a lot more detail the activities of companies or shareholding we have in place due to scale or complexity of these arrangements. The groups cover:

- Manchester Airport Group – due to the scale and complexity of shareholding arrangements.
- Manchester Energy Network – primarily focussed on the finance and structure of the SPV given lessons learnt from other councils and their energy ventures.
- This City – a group is to be established to have oversight of the activities being undertaken by the Council's wholly owned housing delivery vehicle, given the critical stage it's at in terms of looking to bring forward the next phase of development.

- 2.10 The entity monitoring groups involves a range of officers from Commercial Governance, Finance and Legal, as well as other officers who have corporate lead responsibility for the entities in attendance to present to provide an update and respond to questions to provide appropriate Shareholder assurance.

Due Diligence Framework

- 2.11 The Due Diligence Framework (DDF) was designed to provide enhanced financial and reputational assurance for the Council. The framework and supporting monitoring forms are incorporated into existing approaches and formalise the way the Council conducts due diligence in relation to certain types of arrangements with third parties. The arrangements that the framework currently covers are:

- Loan and Equity Investments – Commercial Governance
- Contracts – Integrated Commissioning and Procurement (IC&P)

- Development agreements and Land Transactions – Development Team
- 2.12 There is a multi-disciplinary working group that maintains regular oversight of the implementation of the DDF and met in May 2023 to undertake the annual review of the framework and associated forms to ensure that the documents remain fit for purpose.
- 2.13 As part of the annual review, it was identified that there was a need to increase the awareness of the framework across the Council and therefore to achieve this, the DDF and monitoring forms have been presented to the Development Management Team and Gold Contract Managers, outlining the purpose, how to complete the forms and the benefits to the services and the Council. A further presentation to the Commercial Legal team is to take place shortly to embed understanding of which DDF forms client services should have completed before instructing or entering into formal contracts / legal agreements.

Register of Significant Partnerships

- 2.14 The Register of Significant Partnerships is an annual assurance process undertaken on partnership arrangements that are considered to be of the highest significance, could result in material implications to the financial position / reputation of the Council or to the delivery of corporate and Our Manchester objectives. These arrangements include; Joint Ventures, wholly owned companies, statutory groups, Private Finance Initiatives (PFIs) as well as a variety of other types of collaborative structures. The partnerships have varied approaches to governance which are deemed appropriate to their scale, legal status and delivery objectives.
- 2.15 Through the process, the partnerships are rated based upon the information provided by the officers completing the form. The assessment ratings are: substantial, reasonable, limited and weak. The rating is generated on the assessment on areas such as finance, audit, risk and governance. At present, there are 47 partnerships on the register which is reported to Audit Committee on a bi-annual basis; one report on the assessment of all entities received in June and an update report on those rated as reasonable, limited or weak in November.

3. Commercial Activities

- 3.1 Due to the commercially sensitive and confidential nature of section 3, this is being treated as a Part B item. The areas which the Part B report covers are:
- Companies that are included in Council group accounts outlining their structures and financial arrangements which the Council has in place with these entities
 - An overview of some of the Joint Ventures which the Council is a party to and their current status
 - Details of the companies which the Council either wholly owns or is a party to that are intended to be closed over the next 12 months

- A schedule of the Council's loan, shareholding and equity portfolio
- Details on any guarantees the Council provides to third parties
- An overview of the development estate including asset performance and impacts on the development estate

4. Regulation of Commercial Activity

4.1 The commercial activities of Councils are regulated in a range of ways through a number of interdependent codes and regulations, including the Treasury Management Code, the CIPFA Prudential Code, the CIPFA Financial Management code and PWLB guidance, all designed to ensure sound financial management of long-term assets and liabilities held by the Council.

4.2 Recent revisions to CIPFA's Prudential Code, the risk management framework local authorities should follow to manage debt and investments, require authorities to include within their Capital and Treasury Management Strategies the approach that they take in relation to non-treasury management investments, including equity and loans to third parties.

4.3 The Code includes two specific categories of non-treasury investments:

- being service investments that are made to support service provision and for which the return on the investment is not the primary reason for it, and
- commercial investments where the yield on the investment is the primary reason.

4.4 The Council does not make commercial investments, as defined by the Code. The activities noted above have been undertaken to support service provision and regeneration activities within the City of Manchester, and whilst there are commercial elements of the investments they are not held solely for financial return and yield.

4.5 The commercial activities detailed above are classed as assets and form part of the Council's annual accounts and are therefore reviewed regularly. All shareholdings and equity investments are valued on an annual basis using the latest financial information available for each company, and for loans an annual assessment is made of any potential losses for bad debts.

5. Public Interest and Best Value Reports

5.1 Public Interest and Best Value reports into Council commercial ventures, issued between 2020 and 2023, have highlighted a number of material issues with regards to Local Authority oversight and monitoring of such activities. These reports have often drawn attention to Local Authorities' pursuit of an objectives with no effective scrutiny and challenge before or during the implementation of the commercial initiative. The reasons for the failure of Local Authority companies are wide-ranging but seemingly, there are two key themes running throughout:

- Ineffective governance arrangements; and

- Propositions that are fundamentally challenged from the outset.
- 5.2 This has provided some salutary lessons for councils about conducting appropriate due diligence when investing and lending to third parties. Undertaking robust due diligence, with support from an appropriately qualified external advisory team, when required, is absolutely critical.
- 5.3 These reports further underline the importance in the governance safeguards which have been put in place and outlined.

6. Risk Management

- 6.1 Robust risk management is a key tool that needs to be deployed effectively to ensure that any emerging issues are addressed in a timely way to effectively negate any impacts for the Council. As part of the assessment for any commercial activity and investments, a thorough assessment of potential risks is undertaken and outlined as part of the decision-making process. Detailed risk registers are also in place and reported at the relevant Board meetings.
- 6.2 Through the Council's Commercial Board, Shareholder Panel and Due Diligence Framework, these routes provide further risk management and oversight to ensure that the Council's interests are protected.

7. Conclusions

- 7.1 The Council has become a party to a broad range of commercial arrangements that have been facilitated through, for example, equity investments, development agreements and company structures. These arrangements all vary in size, scale and complexity, all of which have some form of potential for material implications for the Council's finances and / or reputation if not managed and monitored correctly. Through the continual improvement of the processes that have already established and further embedding of the importance of assurance and due diligence throughout the lifetime of transactions, it provides senior leadership with the confidence that Manchester won't be in a similar position to those councils where commercial activities have failed and resulted in government intervention.