

**Agenda Item No:** 9

**Report To:** The Cabinet

**Date:** 13<sup>th</sup> October 2016

**Report Title:** Ashford College Campus: Use of Chief Executive's Delegated Authority

**Report Author:** Tracey Kerly, Chief Executive

**Portfolio Holder:** Cllr Gerry Clarkson, Leader of the Council



**Summary:**

Following the approval by Cabinet and Full Council in July 2016 for the Loan/Grant to West Kent and Ashford College to deliver Phase 1 and 1a of the new Ashford College Campus on Elwick Road, this report informs members of the use of the Chief Executive's delegated authority on the grounds of urgency to vary the approved Heads of Terms in order to finalise the funding agreements.

**Key Decision:** NO

**Affected Wards:** All Wards

**Recommendations:** **The Cabinet be asked to:- Note that the Chief Executive exercised delegated authority on the grounds of urgency (Page 203 of the Constitution, section 4.9) to vary the approved Heads of Terms in order to finalise the funding agreement with West Kent and Ashford College and the intercreditor agreement with West Kent and Ashford College and its primary lender.**

**Policy Overview:** The proposed funding will secure the release of other external funding streams, and will enable delivery of Phase 1 and 1a of the Ashford International College Campus on Elwick Road. The College is one of the Council's "Big 8" projects and is strategically important in delivering better further education provision, the regeneration of Ashford Town Centre and growth within the Borough.

This project is identified within the Council's Corporate Plan 2015-20, under Priority 1, Enterprising Ashford: Economic Investment and Growth as a key priority project.

**Financial Implications:**

The changes to the Heads of Terms for the loan and grant agreement with West Kent and Ashford College, extend by 6 months the period that the College will be paying interest on the loan before this is converted to grant if conditions are met.

The other implication is the change to the security provided for the loan/grant. The Heads of Terms specified charges on both the Tonbridge site and Elwick site and the final

agreement is for a charge just on the Elwick site, proposed on the basis of a valuation provided for the College which demonstrates that there is sufficient value in the completed Elwick site to provide sufficient security for the Council.

**Risk Assessment** YES – see report

**Equalities Impact Assessment** NO

**Exemption Clauses:** No

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## **Report Title: Ashford College Campus: Use of Chief Executive's Delegated Authority**

### **Purpose of the Report**

1. To report to Cabinet the use of urgent delegated authority by the Chief Executive as required by the constitution.

### **Issue to be Decided**

2. To note the changes to the Heads of Terms to facilitate the signing of the funding agreement and intercreditor agreement with West Kent and Ashford College and its primary lender.

### **Background**

3. At the Cabinet meeting of the 14<sup>th</sup> July 2016 and the Full Council meeting of the 21<sup>st</sup> July 2016, the Council approved bridging loans of up to £3 million to support the delivery of the new Phase 1 and Phase 1a Ashford College Campus developments on Elwick Road, with the conversion of these loans into a grant dependent on completion of the developments and successful operation of the College Campus for one term.
4. The Council approved this loan/grant conditionally as set out in the Heads of Terms agreed with West Kent and Ashford College, and reported as an exempt appendix to the July Cabinet report.
5. Three areas of the Heads of Terms (HoTs) agreed by members have had to be varied to enable a funding agreement between the Council and West and Ashford Kent College, and an intercreditor agreement between the Council, West Kent and Ashford College and their primary lender, to be completed.
6. In light of the requirement for the variations to be agreed to enable the agreements to be completed before the next Cabinet meeting, as Chief Executive, I have exercised my delegated authority on the grounds of urgency (page 203 of the Constitution, section 4.9) to authorise these changes to the Heads of Terms.

### **Amendments to the finalised Funding Agreement and Intercreditor Agreement.**

7. The Council were requested to make three amendments to the Heads of Terms reported to members as an exempt appendix to the 14<sup>th</sup> July Cabinet report to gain agreement from West Kent and Ashford College and their lenders to finalise the funding and intercreditor agreements. These are:
  - a. A six month extension to the Repayment Date(s), from December 2017 to June 2018. This means that the conversion to grant would happen if conditions are met in June 2018 rather than December 2017, to take into account a delay to Phase 1a.

- b. A second ranking charge only over the Elwick Road site (with a £2m cap on the primary lender's charge). The HoTs envisaged a second charge over the Tonbridge and Elwick sites for the loan, and both of these as well as a floating charge over College assets for security on the grant, should the college cease operating at the site within the next 25 years. The College's primary lender (who has a primary charge over both sites) will only accept a second charge on the Elwick site, but has agreed to a £2m cap on their primary charge. Valuations for the Elwick Road site provided for the College show sufficient value in a completed Elwick Road site following the completion of Phase 1 and 1a, to provide security for the Council. The Head of Finance advises that the risk of this change to the Council is very small.
- c. The "Grant Conversion Conditions" now require 80% occupation. The HoTs stated the condition of "full" occupation of the new campus. The variance to these conditions provides some flexibility for the college operations and transition to the site, but still condition the substantial opening and occupation of the new campus before conversion to grant.

## **Other Options Considered**

8. The other option considered was to delay the signing of the agreements until the changes could be reported to Cabinet for approval. This option would have further delayed the programme of delivery for the new Ashford College Campus development, and therefore the reported approach was taken on urgency grounds.

## **Handling**

9. As Chief Executive in exercising my delegated authority, I have consulted with the Leader of the Council, Deputy Chief Executive, Director of Law and Governance and Head of Finance, as required within the constitution.

## **Portfolio Holder's Views**

10. "I support the changes to the Heads of Terms as set out in this report."
11. Cllr Gerry Clarkson, Leader of the Council

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