

Update to Cabinet, 25 November 2021

Agenda Item 14

Kent Music – Supporting relocation to Ashford

1. **The Recommendation to Cabinet** in the published report (which should not have been marked “Draft”) is now clarified and updated to read as follows:-

The Cabinet is recommended to recommend to the Full Council to:-

- I. Approve in principle loan funding for Kent Music to purchase the new facility in Javelin Way, Ashford, up to a value of £1.4m, subject to the conditions outlined in the report and the heads of terms for a loan agreement set out in Appendix A to the report, and subject to the satisfactory completion of due diligence as outlined below;
- II. Authorise the Deputy Chief Executive, in consultation with the Chief Executive, the Solicitor to The Council and the Portfolio-Holder for Finance & IT, to negotiate measures and take any other steps he considers prudent in the Council’s interests in order to enable the transaction to proceed as a sound investment, and to approve final due diligence reports and a final risk analysis schedule which are satisfactory in his view. (In the event that these matters are not satisfactory, the proposal be reported back for decision by Members);
- III. Delegate authority to finalise the terms of the loan and security to the Deputy Chief Executive in consultation with the Chief Executive, the Solicitor to The Council and the Portfolio-Holder for Finance & IT;
- IV. Authorise the Solicitor to The Council, in consultation with the Deputy Chief Executive, to negotiate and complete all necessary legal documentation including a loan agreement and a legal charge over the facility, to put the above decision into effect.

2. **With regard to Legal Implications**, the last sentence of para. 27.f. of the report is deleted. This matter is now covered by the following text, which is added to the section entitled “**Legal Implications**”, following specialist external legal advice:-

The external legal advice is that, following the UK’s departure from the EU, and the end of the Transition Period on 31 December 2020, the EU State aid rules largely no longer apply to subsidies granted in the UK. The UK is however still bound by its international commitments on subsidy control. The UK is a party to the World Trade Organisation’s Agreement on Subsidies and Countervailing Measures (the “WTO ASCM”), however these measures only apply to goods and not services. We consider that the WTO ASCM is unlikely to apply to the Loan. The UK is also a party to the Trade and Co-operation Agreement (“TCA”) made between the UK and EU. Article 366 of the TCA sets out additional subsidy control measures (the “TCA

Subsidy Control Measures”) that must be followed. Whilst the loan should be provided on a commercial basis, it is unclear whether there is an active market for these transactions against which to assess the loan.). Therefore the terms of the loan will be thoroughly checked as part of the due diligence work to which the recommendation is subject.