

## Wiltshire Council

### Cabinet

7 January 2020

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**Subject:** Provision of Loan facility for Wiltshire College

**Cabinet Member:** Cllr Simon Jacobs - Cabinet Member for Finance and Procurement

**Key Decision:** Key

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#### Executive Summary

This report seeks consideration of the provision of a loan facility to Wiltshire college.

#### Proposals

- 1) To agree to provide a loan facility of up to £6.312 million to Wiltshire college subject to obtaining required security for the loan and proof of cash flow to repay the loan.
- 2) Subject to agreeing to provide the loan facility agree to include a capital allocation of £6.312m in the 2020/21 capital programme
- 3) To delegate the detail of the security required and the commensurate interest to be charged on the loan to the Cabinet Member for Finance, Procurement, Transformation and Operational Assets in consultation with the Director of Finance and Procurement
- 4) To delegate to the Director of housing and commercial development the authority to secure the charge on the security offered by Wiltshire college for the loan.
- 5) To delegate to the Director of Housing and commercial development in consultation with the Cabinet Member for Finance and procurement authority to negotiate an option on Wiltshire College land in return for the loan facility.

#### Reason for Proposals

The proposals will provide a loan facility to enable Wiltshire college to refinance their current loan portfolio. In turn this will enable the Wiltshire College to offer courses to the benefit of young people in Wiltshire as well as enable the Council to generate a return on the loan commensurate with the risk that is presented. The Council will seek to negotiate an option to further its strategic

interests and enable the Chippenham Futures project in return for the loan facility.

**Alistair Cunningham OBE. Executive Director of Growth, Investment and Place**

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### Purpose of Report

1. The purpose of this report is to seek consideration of the provision of a loan facility for Wiltshire College

### Relevance to the Council's Business Plan

2. The proposals directly support the Council's objective in the business plan to grow the economy in that it supports high quality higher education provision.

### Background

3. A loan of £2.435m has been agreed with Wiltshire college to enable them to complete the redevelopment programme. The loan was secured on assets identified in the report to Cabinet in July as well as an additional asset. Independent advice was obtained on the security provided for the loan.
4. It was not possible to offer the requested loan facility loan facility of £2.5m as the security offered by Wiltshire College was valued at £2.435m based on an alternative use valuation.
5. Wiltshire college has asked the Council whether it would consider offering a further loan facility to cover refinancing of their current loan portfolio and making up the shortfall on the first loan of £65k. The total loan requested is £6.312m. The larger loan would be offered at an interest rate below that for the first loan. The overall margin above public works loan board rates I would be lower compared to that achieved on the first loan but the cash return to the Council would be higher. In addition, if the college offered its Lackham college site as security for the loan this may offer the opportunity to bring forward negotiations on land requirements for the Chippenham Futures programme such that the Council secures an option on the land required if the preferred route crosses that site.
6. There will be need to include a new allocation on the 2020/21 capital programme to cover the value of the new loan.

## **Main Considerations for the Council**

7. Wiltshire Council has statutory duties in respect of education, including a general duty to secure that efficient education is available to meet the needs of the population in Wiltshire (Section 13 Education Act 1996). There is also a statutory duty to promote high standards of education, ensuring fair access to opportunity for education and training and to promote the fulfilment of learning potential (Section 13A Education Act 1996). These duties apply to persons under the age of 20 and persons over 20 and for whom an Education, Health and Care plan is maintained
8. The Cabinet agreed to provide a loan facility to Wiltshire college at its meeting in July to enable the college to complete its redevelopment of its Salisbury and Lackham college campus.
9. The first loan facility has been agreed. As part of the negotiations on the first loan it became apparent that the Council could offer further loan facility that would enable the college to refinance its existing loan portfolio. Subject to the college being able to offer sufficient security and proof of cash flow to repay the loans the refinancing would prove advantageous to the College and also the Council due to the margin on the loan.
10. The Council is subject to state aid rules when selectively providing financial support to third parties.
11. There are three exemptions that the Council could rely upon to ensure a loan facility is state aid compliant; the first is the market economy investor principle and lending on commercial terms, the second is a comparable EC proxy based on the level of collateralisation provided for the loan and a credit rating for the college which would establish a percentage mark up on the base rate and lastly the Council could conclude that the college is not an economic undertaking under state aid rules meaning it can provide a loan on sub-market terms. Following external advice it has been established the Council can rely on the third exemption.
12. If the Council is minded to support the provision of loan facility then it will be necessary to undertake work to establish the loan rate and it is recommended that the detail of the arrangement is delegated to the cabinet member finance, procurement, transformation and operational assets in consultation with the Director of Finance and procurement. In addition, if the College offers its Lackham college site as security it will offer the Council the opportunity to seek an option on land that could be required to further the Chippenham Futures project in return for the facility.

## **Overview and Scrutiny Engagement**

13. This report will be considered by financial planning task group.

## **Safeguarding Implications**

14. No significant implications have been currently identified

## **Public Health Implications**

15. Evidence shows that high quality education and learning can have a significant impact on both economic well-being and social inclusion. It is strongly linked with higher earnings, lower chances of becoming unemployed, better health and reduced crime. The provision of this loan facility will improve opportunities for Wiltshire College to deliver a high quality offer which, in turn, could have a positive impact on the health of our population.

## **Procurement Implications**

16. There are no procurement implications arising from this loan proposal.

## **Equalities Impact of the Proposal**

17. No significant implications have been currently identified

## **Environmental and Climate Change Considerations**

18. No significant implications have been currently identified

## **Risks that may arise if the proposed decision and related work is not taken**

19. Wiltshire College would not be able take advantage of the advantageous interest rate offered by the Council and in turn the Council would not be able to bring forward negotiations on the land required in relation to the Chippenham Futures project..

## **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

20. If the loan facility is provided there is a risk that Wiltshire College will be unable to meet the repayment obligations. This risk is mitigated by ensuring the Council has independent advice on security offered and audited accounts to show the colleges ability to meet the repayment obligations..

## **Financial Implications**

21. A capex loan for £2.435 million has already been approved by Cabinet for Wiltshire College. This proposal is for two additional loans to be issued; a further £0.65 million capex loan and a £6.247 million re-financing loan. This will bring the total loan value up to £8.747 million.
22. The additional loans would need to be fully securitised on assets that could be realised assets and that are not charged by lenders. The length of the loan agreed will not exceed the useful economic life of the securitised asset in order to protect the Council from risk.
23. The interest rate would be determined to ensure that any interest on borrowing paid by the Council is fully mitigated and Legal advice will be sought to ensure the rate is set at a level that complies with state aid legislation. The rate will not be at commercial levels but will be set at a level to ensure it is favourable to the

College in order to bring forward negotiations on the land required in relation to Chippenham Futures project.

24. The Council will benefit financially from the margin on the loan.
25. Full due diligence will take place including scrutiny of credit check, cashflow projections, financial standing, and independent valuation of assets for security.
26. The risk to the Council is default or late payment of Loan repayments, worst case this would result in a charge to the Councils General Fund.

### **Legal Implications**

27. External legal advice has been sought from Bevan Brittan LLP on the state aid implications associated with this proposal. Bevan Brittan has advised on how the arrangements could be structured, as set out in paragraph 11 above
28. Legal is satisfied with the external legal advice received from Bevan Brittan LLP confirming that Wiltshire College is not an economic undertaking under state aid rules.
29. Wiltshire Council is relying on its powers to lend contained in Section 1 of the Localism Act 2011 and Section 12 of the Local Government Act 2003.
30. Wiltshire Council must enter into a robust and legal-binding Loan Agreement with Wiltshire College which sets out the loan arrangements and obligations on both parties clearly.
31. Wiltshire Council's loan to Wiltshire College should be secured by Wiltshire Council taking a Legal Charge over Wiltshire College's land - with the potential possibility of an additional Option over Wiltshire College's land also considered and taking appropriate advice from Legal's Property Solicitors, and consulting with the Estates Team in Wiltshire Council.

### **Workforce Implications**

32. Not applicable

### **Options Considered**

33. The Council could decide not to offer the loan. This will deny the college a financially advantageous offer that will enhance its ability to offer post 16 education in Wiltshire and in turn deny the Council the financial benefit from the margin on the loan. As such it is recommended that the offer of a loan is investigated.
34. The report sets out the three options that will be assessed to establish the best approach to offer a loan based on due diligence that will be presented to the cabinet member to inform the detailed arrangements

## **Conclusions**

35. It is recommended to agree in principle to offer a loan facility to Wiltshire college subject to due diligence to ensure that the offer is state aid compliant, sufficient security is offered, cash flow demonstrates ability to repay the loan and an option on Wiltshire college land to further the Chippenham futures project is secured.

**Alistair Cunningham OBE, Executive Director of Growth, Investment and Place**

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Report Author: Simon Hendey, Director Housing and Commercial Development

23 December 2019

## **Appendices**

None

## **Background Papers**

State aid advice on loan to Wiltshire college provided by Bevan Brittan.