



ADUR & WORTHING
COUNCILS

Joint Strategic Committee
9 July 2019
Agenda Item 17

Key Decision [Yes/~~No~~]

Ward(s) Affected:

**Supporting further and higher education provision:
Strategic loan to local education provider GBMet**

Report by the Director for Digital & Resources

Executive Summary

1. Purpose

- 1.1. Greater Brighton Metropolitan College is embarking on a major new scheme to create a Centre for Creative and Digital Industries (CCDI) involving the construction of a 3,000m² of new build development and partial redevelopment of Pelham Tower, in the centre of Brighton.
- 1.2. Over the last three years 1,142 students from Adur (499) & Worthing (643) have studied at the Pelham Campus. The new CCDI will deliver 100 new advanced-level and higher-level apprentices, 140 higher or technical level graduates and 260 additional level 3 students by 2020/21, creating an exciting local offer for our residents.
- 1.3. The development of the CCDI centre of excellence at the Pelham Campus will also enable the delivery of a creative and digital **higher education offer in Worthing**, in a partnership with the University of Arts London (UAL), through the development of a University Centre in West Durrington.
- 1.4. Worthing Council has been approached for a £5m loan by Greater Brighton Metropolitan College to facilitate the development of the

Pelham Street campus, within an overall scheme value of £21m, with funding from the sale of assets (also reducing overheads going forward) and the Coast to Capital local enterprise partnership.

- 1.5.** The report briefs members on the proposal and seeks approval for the granting of a £5,000,000 loan secured on the worthing Campus at Durrington, which will generate an annual income for the Council of £100,000 alongside delivering the significant benefits to the further and higher education offer for our residents.

2. Recommendations

2.1 That Joint Strategic Committee recommend to Worthing Borough Council that:

- i. To note support for the Greater Brighton Metropolitan College in its ambitions to create a Centre for Creative and Digital Industries at Pelham Street and a University Centre at West Durrington in partnership with the University of Arts London.
- ii. To note the significant benefits expected from these developments for students from the local area, in particular the provision of a higher education offer in Worthing as well as the improved offer at Brighton readily accessible to our local students.
- iii. To agree to a loan of £5m to Greater Brighton Metropolitan College to facilitate the delivery of the scheme, funded by prudential borrowing, and providing an income to Worthing Borough Council of circa £100,000 per year.
- iv. To amend the capital programme accordingly, and increase the operational and authorised borrowing limits by £5m to accommodate the proposed borrowing.
- v. To amend the approved investments listing to include GBMet as an authorised investment.
- vi. To amend the Minimum Revenue Provision (MRP) Policy to enable a provision to be set aside in line with the repayments of principal in respect of loans to third parties funded by borrowing.

3. Context

- 3.1 Greater Brighton Metropolitan College (GB Met) is a tertiary education provider specialising in the education of 16 - 19 year old young people. The College provides a range of courses for 16-19 year olds, university degrees, full and part time courses for adults, apprenticeships and professional qualifications. The Met operates across five campuses in Brighton, Shoreham and Worthing. Student numbers consist of approximately 3,200 16-18 year-olds, 700 undergraduates, 8,000 adult learners and 2,000 apprentices.
- 3.2 GB Met was created from the merger of Northbrook and City College and its geography and student body reflects the functioning economic and travel to work/learn area spanning Worthing in the West to Newhaven in the East. During the past three academic years (2016/17, 2017/18 and 2018/19) 1,142 students from Worthing (643) and Adur (499) postcodes have studied at the Pelham Campus where the new Centre will be housed. Current travel to learn patterns indicate that more than 7,500 Adur & Worthing residents will study in the CDIC over the next 20 years, and more than 15,000 over the minimum planned life of the building (40 years).
- 3.3 The College is an exempt charity under Part 3 of the Charities Act 2011 and is regulated by the Secretary of State for Education as Principal Regulator for all Further Education Corporations in England. The Met was incorporated as Northbrook College Sussex. On 31 March 2017 a merger took place with the City College Brighton and Hove, with Northbrook College Sussex being the “retained” Corporation. On the same date the Secretary of State granted consent to the Corporation to change the college name to the Greater Brighton Metropolitan College.
- 3.4 There are currently 251 further education and sixth form colleges in England. This compares to almost 450 when colleges were incorporated in 1993. Since 2015 there has been an increase in the number of college mergers and a new option for sixth form colleges to convert to become 16-19 academies. The government's review programme required every college to consider their future and provided official encouragement for mergers. The merger process can be quite expensive in the short term and cause additional financial pressures through the restructuring required to achieve longer term efficiencies.

- 3.5 The Met has been awarded £5 million of Local Growth Funding by Coast to Capital Local Enterprise Partnership (“LEP”) to redevelop its city-centre campus on Pelham Street. The £5 million LEP grant will be matched by an investment generated primarily through the disposal of part of the Pelham Campus land located to the East of Pelham Street (the Cheapside / Trafalgar Complex) which will support a £21 million redevelopment budget. The funding will be used to build a Centre for creative and digital industries (“the Centre”) providing a 3,000m² state-of-the-art facility integrated into the Pelham Tower which will also be substantially refurbished. The new and refurbished buildings will provide outstanding teaching facilities located in the heart of Brighton’s creative, digital and IT cluster replacing out of date buildings which are no longer fit for purpose.
- 3.6 Furthermore, the new Centre will support a significant expansion to the Creative Industries offer in Brighton and in Worthing. GB Met will be entering into a new strategic partnership with University of the Arts London UAL (ranked the 2nd best University in the World for Art & Design in 2018) that will see the development of new programmes for International students as well as extended progression routes into Under and Postgraduate programmes in London.
- 3.7 The partnership will underpin a major programme of redevelopment for Higher Education provision. From September 2020 GB Met plans to become the only College in the country to offer UAL validated Degrees to all of its Creative Industries undergraduates. New capacity created by the CDIC in Brighton, will allow the College to locate all of its Creative Industries higher education programmes in Worthing, at the higher education centre in West Durrington, boosting the University offer in the town. The new capacity in Brighton will also allow the College to implement plans to utilise excess capacity on its Broadwater campus in Worthing and is in discussions with both Adur & Worthing and West Sussex Councils regarding the most appropriate form of redevelopment for part of our site.
- 3.8 GB Met is seeking a £5m loan from the Authority to support the delivery of this substantial redevelopment project on their Pelham campus. The loan will act as ‘bridge’ financing during the build period and then provide long term financing. Repayments will be substantially covered by efficiency savings from the project, based on reduced floor area, more efficient buildings, and operational efficiency savings.
- 3.9 The granting of a loan to the Met would help the Council deliver upon commitments within the Financial Economies platform to ‘To champion the

development of a learning and skills ecosystem that enables economic growth and supports local businesses’.

4. Issues for consideration

4.1 Proposal to grant a loan

4.1.1 The Council has received a request from the Met for a 20 year £5,000,000 loan to support the redevelopment of the Pelham Street campus. Key features of the loan are:

Principal	£5,000,000
Interest rate	PWLB + 2% (approximately 4.0% - 5.0% per year)
Length of loan	20 years
Repayment terms	Repaid in equal installments of principal with no repayment in the first year.
Security	West Durrington Campus

The proposed Heads of Terms are at Appendix 1. The College have asked the Council to advance the funds in January 2020.

4.1.2 To support the Council’s consideration of the request due diligence work has been undertaken so that the Council is fully aware:

- i) That the loan can be granted using Council powers, that it counts as capital expenditure, and that it does not count as commercial activity
- ii) Of the risks that the Council is undertaking when making the loan and that measures can be put into place to mitigate against such risks.
- iii) That the proposed loan is fully compliant with State Aid requirements.

4.2 Financial summary of GBMet’s current and forecast financial performance - see Appendix 2

4.3 Risk management - see Appendix 2

Please see Appendix 2 for the financial details and risk management measures which are exempt sections of the report as they include

information relating to the financial affairs of a person or body, in accordance with paragraph 3 of schedule 12A Local Government Act 1972 as amended.

4.4 State Aid considerations

4.4.1 The EU Commission has substantially reviewed the State Aid rules applicable to risk capital measures, to promote better access to loan finance. The provisions consider an investment does not constitute State Aid if it is in line with the market economy operator (MEO) test, i.e. if it is made under the same terms and conditions by public and private investors.

4.4.2 A transaction is presumed to be made under the same terms and conditions if public and private investors share the same risks and rewards and hold the same level of subordination in relation to the same risk class. If the public investor is in a better position than the private investor, for instance because it receives a priority return in time compared to the private investors, the measure may also be considered to be in line with normal market conditions, as long as the private investors do not receive any advantage.

4.4.3 However, the college is likely to be exempt from these requirements as:

“Public education organised within the national educational system funded and supervised by the State may be considered as a non-economic activity. The Court of Justice held that the State: “by establishing and maintaining such a system of public education and financed entirely or mainly by public funds and not by pupils or their parents ... does not intend to become involved in activities for remuneration, but carries out its task towards its population in the social, cultural and educational areas.”

4.4.4 Consequently, it will be for the Council to set an appropriate rate using the benchmark of the PWLB rates. In this case, it is suggested that a rate of PWLB + 2% is used to reflect the risks that the Council is assuming.

5. Engagement and Communication

- 5.1 Officers have liaised with the college to better understand the risks and the nature of the proposal.
- 5.2 Officers and members have been consulted on the development of the Heads of Terms.

6. Financial Implications

- 6.1 The initial due diligence work has cost £7,000 and will be funded from within the existing treasury management budget.
- 6.2 The costs associated with the legal agreement underpinning the agreement (£20,000), and valuation work will be funded from the 1% arrangement fee of £50,000.
- 6.3 The loan will generate income of £100,000 per year for the Council in excess of any associated borrowing costs.
- 6.4 The Council's current policy for setting aside resources for the repayment of debt (Minimum Revenue Payment), uses the annuity method, except in the case of loans to Registered Social Landlords. The policy will be amended to apply the exception to all third party loans funded by borrowing and the Council will make provision for the repayment of the debt in line with the repayments made by the Met. Any payments of principal by the Met will be used to fund the associated Minimum Revenue Payment.

7. Legal Implications

7.1. Power To Make The Loan

- 7.1.1 Local authorities have power to invest (which clearly encompasses the making of loans) under s12 of the Local Government Act 2003. This provides that a local authority may invest:
 - (a) for any purpose relevant to its functions under any enactment;
 - (b) for the purposes of the prudent management of its financial affairs.
- 7.1.2 The proposed loan is relevant to the authority's functions under the Education and Skills Act 2008. This includes a provision (s10) imposing a duty on local authorities to ensure that their functions are exercised "so as

to promote the effective participation in education or training of persons belonging to its area to whom this Part applies with a view to ensuring that those persons fulfil the duty imposed by section 2”. The duty under section 2 relates to the provision of education and training to young people who are above the school leaving age but below the age of 18 and have not achieved a level 3 qualification (equivalent of two A levels).

7.1.3. GB Met is the Greater Brighton Metropolitan College which is a general further education college. It offers further education to those above the age of fourteen. The making of a loan to GB Met is therefore relevant to the Council’s functions. It makes no difference for this purpose that the proposed development is outside the Council’s area. It will be in Brighton which is near the area and it is anticipated that it will be used by young people from the Councils’ area.

7.1.4. The Council has the power to make the loan under s12 of the Local Government Act 2003 and s10 of the Learning and Skills Act 2008.

7.1.5. Alternatively the Council has the power to make the loan under s1 of the Localism Act 2011 which provides that a local authority has powers to do anything which an individual can do, subject to compliance with the public law requirements which apply to public authorities.

7.2. **Capital Expenditure**

7.2.1. Capital expenditure is defined in s16 of the Local Government Act 2003 as “expenditure which falls to be capitalised in accordance with proper practices”. In this context “proper practices” refers to accounting practices. This is a matter for the judgement of the local authority chief finance officers who need to have regard to the guidance and codes of practice issued by the Chartered Institute of Public Finance and Accountancy (CIPFA), the latest being the Code of Practice on Local Authority Accounting 2018/9.

7.2.2 Section 25 of 2003 Statutory Instrument No. 3146 - Local Authorities (Capital Finance and Accounting) regulations 2003 requires that ‘the making of an advance or the giving of a grant or other financial assistance to any person, whether for use by that person or by a third part, towards expenditure, which would, if incurred by the authority, be capital expenditure shall be treated as capital expenditure.

7.2.3 Whilst the legal definition refers to accounting practice, the carrying out of works of construction is under relevant professional guidance classified as capital expenditure, as it relates to the creation of assets which will be used over a number of years rather than being used during the course of a single financial year. The provision of a loan for the creation of a capital asset constitutes capital expenditure under the legislation.

7.3 State Aid

7.3.1 The proposed loan would not constitute unlawful state aid as GB Met is not engaged in economic activity and is therefore not an 'undertaking' for the purposes of the state aid rules.

7.3.2 The loan is provided from state funds and education and training are capable of being subject to competition, in that there is a market for education. However, the provision of education by GB Met is primarily in the nature of a public service, its main activity is the provision of education and 69% of its income is derived from education sector funding bodies.

7.4 Consequently, the Council has the power to make the loan under the Local Government Act 2003 and the Learning and Skills Act 2008. The making of the loan constitutes capital expenditure.

Background Papers

- Legal advice note from Sharpe Pritchard LLP
- Due diligence review - Link Asset Services
- Legal advice note to GB Met from Eversheds concerning State Aid

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Sustainability & Risk Assessment

1. Economic

The proposal will deliver a significant extension to local education provision, providing high quality learning in the key areas of creative and digital industries, benefitting well over 1,000 students per year. The proposals from GB Met align closely with Adur & Worthing's Economic Strategy and the focus on Creative & Digital industries.

2. Social

2.1 Social Value

Local and accessible education provision is critical to the success of local people, job creation and the local economy. Investment in state of the art facilities in the further and higher education sectors, that can be easily accessed will deliver significant social value for years to come.

2.2 Equality Issues

Increasing local provision will increase accessibility to the local population, for example improving ease of access to those with disabilities.

2.3 Community Safety Issues (Section 17)

Matter considered and no issues raised

2.4 Human Rights Issues

Matter considered and no issues raised

3. Environmental

Increasing local provision will reduce the need for students to travel further afield and have a positive impact on carbon emissions.

4. Governance

Matter considered and no issues raised

Draft Heads of Terms:

Date:	22 nd May 2019
Borrower:	Greater Brighton Metropolitan College (GB MET) Littlehampton Road Worthing West Sussex BN12 6NU
Lender:	Worthing Borough Council, Town Hall Chapel Road, Worthing, BN11 1HB
Facility:	£5,000,000 fixed rate loan repayable in equal instalments over a period of 20 years with no payment of principal in the first year (2020/21). The loan is to be advanced on the 6 st January 2020.
Purpose:	The loan is to be used as part of the financing package for improving the facilities on the Pelham Street Campus in Brighton
Drawdown:	One payment of £5,000,000 payable on the 6 st January 2020.
Interest rate:	Interest rate is dependent on the prevailing PWLB interest rate for a 20 year EIP loan at the time the loan is advanced and is at a margin of 2% above the equivalent PWLB rate.
Interest calculations:	The annual interest is calculated by applying the interest rate to the outstanding value of the loan. This will then be apportioned on the number of days within the half year period for the half yearly payment of interest. Interest will be charged at the loan rate on the late payment of any interest payments.

Repayments	<p>Half-yearly payments of interest together with payments of principal of:</p> <p>5th July £131,578.94 5st January £131,578.95</p> <p>There are no repayments of principal in the first year of the loan with the first repayment being due on the 5th July 2021. The final payment of principal due on 5th January 2039 will be £131,579.03.</p> <p>Payments will be due on the 30th June and 31st December unless this is not a working day in which case the payment will be made on the first working day following the repayment due date</p>
Arrangement fee:	<p>There will be a 1% arrangement fee charged on any sums advanced payable upon the transfer of funds.</p>
Other fees:	<p>GB MET will be responsible for all legal fees in connection with (but not limited to):-</p> <ol style="list-style-type: none"> 1. Investigating the title to the security properties; 2. Providing certificates of title in respect of the security properties to Worthing Borough Council; 3. All disbursements in connection with the security properties including (but not limited to) all necessary searches and land registry fees. <p>Worthing Borough Council will be responsible for its own legal and initial valuation fees.</p> <p>Any disbursements incurred in verifying the security offered to support the loan will be paid by GB Met.</p>
VAT	<p>VAT is not chargeable on the loan or the arrangement fee. This is exempt as detailed in the EU VAT directive Article 135(1)(b) '(granting and) negotiation of credit'</p>

Security	<p>Security for the first tranche of the loan is to be provided in the form of the campus at: Northbrook Metropolitan College Littlehampton Road Worthing West Sussex BN12 6NU</p> <p>This property should not have been used as collateral for other loans.</p> <p>The security will be based on the market value (OMV).</p> <p>The Council has the right to revalue the property offered as security for the loan at any point in time at its own cost. However if the value of the security offered by the loans is insufficient to underwrite the value of the loan, then GB MET will reimburse the Council for any re-valuation costs and offer additional security for the loan.</p>
Governing Law:	English law