

Leader's Key Decision Form

REF NO

1865

Department

Development

Subject

Support for the Further Education sector in Nottingham

Decision

This is a Key Decision taken by the Leader of the Council.

Subject to call-in: **Yes**

Total value of decision: **£ 5.000million**

Revenue or Capital: **Capital**

Decision taken

That the Council offers a £5m capital loan to New College Nottingham (NCN) as lender of last resort, subject to appropriate terms and the commitment of other funders.

That terms of the loan are delegated to the Corporate Director of Development in consultation with the Portfolio Holder for Resources & Neighbourhood Regeneration and Strategic Director of Strategic Finance and subject to the following limits:

- Loan period as short as possible and no greater than 30 years
- Sufficient security to protect the Council's loan in the form of an asset which can be readily liquidated
- A commercial interest rate, higher than the PWLB borrowing cost for the same length, and compliant with State Aid
- A substantial re-commitment to collaborative working within the Further Education sector in Nottingham
- Other required funding being secured elsewhere
- Appropriate and satisfactory financial and commercial due diligence.

That officers continue to pursue the Skills Funding Agency to provide or guarantee the full amount of funding required by NCN from the public sector.

Loan from Local Enterprise Partnership (LEP)

An initial approach was made to the LEP to consider awarding a grant or loan to the Basford Hall scheme. The LEP indicated that it would consider a loan with the following conditions:

- Nottingham City Council was the Accountable Body for the loan.
- The loan would be part of the Skills Hub project and link the outcomes of the two schemes together.
- The application for the Skills Hub project be revised accordingly.

While the support was welcomed, this was not felt to be the best option. If Nottingham City acted as Accountable Body, then it would hold the same risk of default as if it lent the money direct. Linking the Basford Hall and Skills Hub projects would add an unhelpful complication at the present time; the Skills Hub is intended to be a joint collaboration between Central College and New College Nottingham, whereas Basford Hall is a specific New College development.

Other Options Considered

(with reasons for rejecting options not favoured)

Other Options Considered

(with reasons for rejecting options not favoured)

It was concluded that this option generated created extra complexity and dependencies compared to a direct loan without any additional benefits.

Do not make a loan

Without a loan then it is almost certain that the development will be rapidly halted (the building contractors will need to be assured that there is funding for development post March 2015) and New College will be unable to achieve their financial recovery plan. This could well destabilise the whole Further Education sector in Nottingham, including the development of a Skills Hub on Broadmarsh East, for which central Government is providing a £30m Local Growth Fund grant.

There is an argument that this situation will lead to either central government or another investor (whether from the FE sector or elsewhere) needing to step in to secure provision for Nottingham's learners; leading to a desirable, radical change. While this is plausible, it presents a number of challenges, including:

- **Impact on Basford Hall development** – if funding cannot be found in the next few weeks, work will stop on site. Basford Hall has the potential to be an iconic asset for North Nottingham – strongly supported by the Council and its local MP. Any decision to re-start work would depend on the longer-term solution imposed on NCN and would lead to a higher build cost given the need to re-mobilise contractors and potentially re-scope the work.
- **Impact on the Skills Hub** – NCN's participation in the Skills Hub is dependent on resolution of their financial position with Basford Hall. We have had assurances from the LEP that the grant for the Skills Hub can be extended into 2017/18 in order to allow a short breathing space now to stabilise the FE sector. However, a prolonged period of uncertainty could jeopardise that commitment.
- **Impact on current students** – any pro-longation of the current situation would impact on the morale and potentially education of current students..
- **The desire to shape a local solution** – the City Council has been working with national and local stakeholders, including the FE Commissioner, to demonstrate our leadership of this agenda for the benefit of learners and the City. We anticipate that the FE Commissioner will want to see local solutions emerge to improving FE in Nottingham. A pro-longed and/or deeper crisis raises the risk that central Government or an outside agency/investor looks to take control of the situation.

Make an unconditional loan

This option is felt to be high risk and expose the Council to unacceptable financial exposure. Without sufficient security there is a risk that the college may seek negotiate additional flexibility over payment terms or seek to covert some or all of the loan to a grant at some point. There is also a risk that other lenders may withdraw and the Council would have to consider lending a greater sum in order to protect the existing loan.

Reasons for Decision(s)

The loan is required for the Basford Hall site to continue to be developed. The space is required as part of New College Nottingham's recovery plan. If the site was not completed then site rationalisation could not occur and the college would not be able to make the savings they are planning, significantly worsening their overall financial position. Commitment to the loan is likely to be a requirement for other sources of funding for New College Nottingham.

The terms of the loan are recommended to be delegated to the Corporate Director of Development in consultation with the Portfolio Holder for Resources & Neighbourhood Regeneration and Strategic Director of Strategic Finance because these terms are subject to agreement with the college and will be influenced by the terms and conditions of other funders (for example all lenders will not want security on the same assets). The limits are set to give reasonable constraints to the deal.

Affected Wards

All

Advice Sought

	Yes	No
Legal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Finance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Human Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Equality & Community Relations Team	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Procurement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Details of Consultations undertaken

	Yes	No	Name and Date
Portfolio Holder	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Ward Councillors	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Area Committee	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Other Council Bodies	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Strategic Regeneration Board (3/2/15)
Corp. Directors Affected	<input checked="" type="checkbox"/>	<input type="checkbox"/>	David Bishop (12/5/15)
Trades Unions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Minority Group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Others (Specify)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____

Reasons for not consulting

Those not consulted are not directly affected by the decision.

Consultation Outcomes

Financial Observations

This report recommends that the Council loan New College Nottingham £5m in order for them to continue development of the Basford Hall Campus.

Previous to this report a loan of £10m was considered, however this was withdrawn due to the College's financial status and it was felt that the associated risks could not be mitigated. The College has since produced a recovery plan and have approached commercial lender for a £5m loan (subject to due diligence), the College have asked the Council to match with an additional £5m loan, and have also approached the Skills and Funding Agency (who have indicated they will provide some short term support to assist with the working capital).

The recovery plan is subject to due diligence and we are currently awaiting the outcome of the independent assessment which is being carried out by an Accounting Firm.

The Council would only consider committing to a £5m loan on the conditions that:

1. A commercial lender agrees to lend the college £5m and the Council is fully informed of the terms of this loan.
2. SFA agree to financially support the College with the working capital issues.
3. The loan is subject to sufficient security, which can be realised in the event that the college defaults on the loan.
4. The Council has reviewed the due diligence report currently being prepared by an Accounting Firm and is in agreement with its findings.

The terms of the loan will be agreed when the other sources of finance have been confirmed and the Council has had chance to consider the potential financial impact, in addition the terms of the loan are to be agreed by the Director of Strategic Finance.

If the Council approve the loan (based on the conditions listed above) it will

be funded by borrowing from reserves, which will be paid back by the repayments over the period of the loan.

Tina Adams
Finance Manager – Capital & Tax Management
16th February 2015

Legal Observations

The risks associated with making the proposed loan are, to a large extent, already highlighted in the report. However, the key issues from a legal perspective centre on the ability of NCN to repay the loan, adequate and appropriate security and a clear understanding of NCN's current and projected financial position.

In particular questions should be asked about the build contract for Basford Hall and the likely penalties should it be terminated. Equally the Council will need to know if there are any projected cost overruns.

If funding is to be made available from the private sector that funder will, no doubt, also require appropriate and adequate security. To that extent it would be far better if any security put forward to the Council is for its benefit alone. The Council does not want to be in a position where it has a second charge on an asset which is already the subject of a first charge to another lender unless there is significantly more than sufficient equity in the asset to cover both loans and associated costs in the event of default.

If property assets are put forward as security it is recommended that the legal team undertake a full title investigation and that a valuation be obtained from a suitably qualified surveyor.

Provided that the loan is made at an appropriate rate of interest there should be no risk of a State Aid challenge.

Malcolm Townroe
Head of Legal Services
16th February 2015

Background to the decision

Further education in Nottingham faces chronic issues of underperformance, lack of capital investment and now financial instability. Its state is a major barrier to achieving the Council's goal to 'Ensure more school leavers get a job, training or further education than any other City'.

NCN has identified that they have significant financial difficulties, and have developed a financial recovery plan and invited the Further Education Commissioner to review the situation.

There have two major financial issues:

- A working capital issue – cashflow at the current time is projected to be insufficient to make payroll payments in March.
- A capital funding issue – NCN are contractually committed to completion of Basford Hall, which required external funding of £10m; the original

funder has withdrawn. Without support NCN will have to terminate the build contract in March (this will incur significant penalty payments and make their recovery plan unviable).

There have been ongoing discussions between the Council, NCN, the LEP and the Skills and Funding Agency (SFA) to determine the most appropriate support to be provided. The current situation is as follows:

- SFA have indicated that they will provide (at least short-term) support for the working capital issue and will ensure that there is sufficient funding available to pay staff. They claim that there is no funding available in the current financial year for grant or loan contributions in addition to their current funding provided for Basford Hall
- NCN have approached a commercial lender for a £5m loan towards the costs of Basford Hall – this is subject to a due diligence exercise being carried out on their recovery plan by an accounting firm (this review started on 3rd February) and the remaining funding being secured
- This leaves a shortfall of approximately £5m capital

NCN has approached the Council to lend the £5m and accept that there needs to be sufficient security and that it will be at an interest rate greater than our cost of borrowing. They have agreed with the firm doing the due diligence that we can have sight of the report being prepared on a 'hold harmless' basis. Without the Council providing a loan (as part of the wider external package of finances) then it is not expected that NCN will be financially viable (as it will not be able to generate the savings required to meet its financial recovery plan without a completed Basford Hall site and it will have to pay additional costs for ceasing the build mid-contract).

We are currently awaiting the outcome of the external assessment of the financial recovery plan and the terms that the commercial lender will lend to NCN. We are having ongoing conversations with NCN, but until the terms of other support is understood we will not be in a position to finalise any terms for the Council loan. All of the funding (including the Council loan) is effectively co-dependent upon the other sources of funding. Just as our loan will be contingent upon the other financial support, our commitment to loan will be required to secure the loan from the commercial lender and the funding from the SFA.

The college has developed a financial recovery plan, which is currently being assessed on behalf of the commercial lender. If this lender is satisfied then we understand that they will replace their current rolling credit facility with a long-term loan of £5 million. All parties have agreed that the Council can receive a copy of this report on a 'hold harmless' basis. This will allow the Council to receive a copy of the report and the findings, however the Accounting Firm has no liability to the Council for the report. They were approached to consider producing a joint report, however the response was that it would cost an at least an additional £60k and require a separate letter of engagement. It is recommended that the Council therefore is satisfied that the security it holds for the lending is sufficient to cover the loan, alongside the comfort derived from a commercial lender being confident enough to loan the same amount of money as the Council.

Key Risks

The most significant risk is that the college is unable to repay the loan and thus defaults upon repayments. We are seeking to mitigate this through only lending alongside a commercial lender (who has carried out due diligence on their lending) and ensuring sufficient security for the loan in the event of default (and ensuring that the security can be realised in the event of a default).

State Aid risk on the loan. There is a risk that any financial support may be challenged as illegal State Aid. This risk is mitigated by charging a market rate of interest, through reference to the rate other lenders are willing to loan to New College Nottingham and standard European lending benchmarks.

A final key risk is that other lenders / funders do not contribute. It is recommended that the Council's loan is contingent on an overall funding package being agreed.

**Declared colleague/
Councillor Interests**

Portfolio Holder for Jobs and Growth, Councillor McDonald
(Board member of New College Nottingham)

**Dispensation by
Standards Committee**

Date: N/A

Dispensation Reference: N/A

Equalities

Has the equality impact of the decision been assessed?

NO

YES – equality impact assessment attached

Not Needed (the report does not contain proposals for new or changing policies, services or functions, financial decisions or decisions about implementation of policies development outside the Council)

Social Value Implications

There are no direct social value implications arising from this report.

**Crime and Disorder
Implications**

There are no crime and disorder implications arising from this report.

Published Documents

None

Background Papers

None

**Exempt/Confidential
report**

None

Contact Person

Paul Clarke, Programme Manager,
Major Programmes

Contact No. Tel: 0115 876 3579
Email
paul.clarke@nottinghamcity.gov.uk

Chris Henning, Director, Economic
Development

Contact No. Tel: 0115 876 4906
Email
Chris.henning@nottinghamcity.gov.uk


Corporate Director or
authorised colleague
(Print name)

David Bishop

Date:

25-2-15

Signature



Leader of the Council Councillor Jon Collins

Date:

Signature



26.2.15

Date Published: 27/2/15 Last Date for Call-in: 6/3/15