



**Cabinet**  
15 January 2018

**Report from the Chief Finance  
Officer**

## **Council Loans Framework for In-borough Capital Projects**

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b>	Open
<b>No. of Appendices:</b>	1
<b>Background Papers:</b>	None
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### **1.0 Purpose of the Report**

1. This report seeks authority to establish a capital advances lending framework. Responsibility for the advance of loans and administration of the loans pool will be delegated to the Chief Finance Officer in consultation with the Deputy Leader of the Council.
2. Under this framework, loans will be available to part-finance the delivery of in-borough capital schemes that produce outcomes in line with the Council's aims and objectives. For the avoidance of doubt, this is about providing an option to provide debt finance to schemes that are already part of the council's approved capital programme.
3. Agreeing this report will therefore provide a structured approach to this aspect of financing in the capital programme, with the proper governance and clarity of decision making required for such transactions and a framework for financial monitoring and control.
4. Agreeing this report will not change the existing framework for adding new schemes to the overall capital programme, each of which would require

Cabinet decisions within the overall budget and policy framework set by Council.

## **2.0 Recommendation(s)**

1. Approve the establishment of framework for the provision of senior loans to:

- Joint ventures to which the Council is party;
- Council subsidiaries; and
- Third party organisations in which the Council has no direct financial interest.

subject to conditions (the 'framework') outlined in this report.

2. Delegate the advance of loans to organisations as set out in 2.1, above, to the Chief Finance Officer in consultation with the Deputy Leader of the Council.

3. Approve the list of voluntary loan controls included at Appendix 1.

4. Delegate the daily monitoring and administration of loans to the Council's Chief Finance Officer.

5. Delegate to the Chief Finance Officer authority to procure and award a contract for specialist advice on loans pool management if required.

6. Make available to the South Kilburn (Queen's Park 2) Council proposed Joint Venture with LondonNewcastle a loan facility of up to £40m.

## **3.0 Background**

1. Within Brent, there are currently many private capital projects that are either underway or in the pipeline.

2. Many of these schemes will facilitate the provision of services which are in line with the Council's own objectives and where this is the case Council officers have begun to look at how to improve prospects for delivery.

3. A key factor in the attractiveness of all capital schemes is the availability and cost of capital finance (borrowing) to fund schemes.

4. The ability to attract a suitable financing package can occasionally prove to be problematic for privately funded capital schemes and represents an area where the Council may be able to provide support thereby facilitating the furtherance of Council aims by third parties.

5. Though any scheme satisfying the qualifying criteria may be considered, it is anticipated that Council-offered financing packages will be most suitable to property development projects within Brent.

#### **4.0 Detail**

1. The Council has the ability to borrow funds at preferential rates to fund capital expenditure from the Public Works Loan Board (PWLB). Once borrowed, current capital rules allow these funds to be used to make capital loans (“onward lend/on-lend”) to other organisations (specifically those that do not have access to PWLB loans).
2. In addition to supporting Council objectives, on-lending also has the following potential benefits:
  - a. An early benchmark of the cost of borrowing, allowing developers to more accurately assess their cost-base during the feasibility stage of capital schemes;
  - b. An incidental revenue stream accruing to the Council equivalent to the difference between the interest charged on the loan advanced, and that paid on the PWLB borrowing undertaken (less administrative costs); and
  - c. The possibility of making market loans more attractively priced as they seek to compete with local authority on-lending.
3. It is therefore recommended that the Council make available the facility to act as senior debt provider for in-borough capital schemes that will ultimately deliver outcomes in line with Council objectives.
4. In becoming a provider of capital finance, the Council will be subject to statutory controls that will restrict the scope of products that can be offered. Specifically, the Council:
  - a. Must lend funds at a rate that is competitive with market rates for similar loan products;
  - b. Must not on-lend funds at a rate lower than its own average borrowing rate, even if such rates are subsequently competitive; and
  - c. Must not use the finance product to provide State Aid in other ways, e.g. full or partial discounts on fees or charges incurred for;
    - i. deferred instalment repayments;
    - ii. late payment of instalments; and
    - iii. full or partial premature loan redemption.

unless and until specific legal advice has been obtained which provides for an exception (including *inter alia*, advice on Services of General Economic Interest).

## **5.0 Policy Framework & Support**

1. Prior to establishing the loans framework, officers will competitively commission a firm specialising in loans pool management to advise on the recommended processes and procedures that should be established to best record, administer and account for loans advanced.
2. Working in partnership with Council officers, this firm will also be charged with overseeing the implementation/integration of the required loans pool controls into existing Council business routines.
3. In addition, legal support will be sought in preparing a generic loan agreement template. Minor technical amendments to this may be made by the Chief Finance Officer on a case by case basis, but any amendments that would contravene either the spirit or detail of this report would require further Cabinet authority.
4. Responsibility for the advance of loans to organisations in which the Council has an interest will be delegated to the Chief Finance Officer (CFO) in consultation with the Deputy Leader. Accounting for and recovery of loan balances and repayments will also be the responsibility of the CFO.
5. Authority to approve loans to third parties in which the Council has no direct financial interest will remain with Cabinet, with each proposal to lend the subject of a detailed officer report.

## **6.0 Pending Approvals**

1. The Council has previously agreed to enter into a Joint Venture (JV) with Londonewcastle to progress the redevelopment of a second residential site in Queens Park (QP2).
2. The Council and Londonewcastle through their membership of the JV will invest as equity both land and cash in QP2, and seek to secure a loan facility of up to £40m required to fully finance the scheme.
3. It is recommended that the Council make available to QP2-JV a loan facility in line with the conditions of the Loans Framework outlined in this report. Subsequent authority to negotiate the terms and conditions of that loan arrangement will be delegated to the Chief Finance Officer in consultation with the Deputy Leader, also in line with the conditions of the Loans Framework.

## **7.0 Financial Controls**

1. In undertaking the role of senior debt provider, the Council will be subject to statutory controls which will govern practices, some of which are mentioned above.

2. Notwithstanding paragraph 4.4, it is recommended that the Council implement its own voluntary controls which will take account of Brent's appetite for risk and market exposure.
3. This will assist Council officers in administering the loans facility portfolio within the constraints of the General Fund capital programme.
4. The full recommended list of voluntary controls to be implemented in the first instance is attached at Appendix 1. Key controls include:
  - a. The Council would insist on a legal charge over project assets;
  - b. Limits on the size and term of individual loans; and
  - c. The required credit-worthiness of third party borrowers.
5. It is also recommended that this list of controls is kept under constant review, and potentially tightened or relaxed as further risks or benefits arise or become apparent. Any changes, other than minor technical ones, will require subsequent Cabinet authority.

## **8.0 Financial Implications**

1. To fund capital advances, the Council will primarily borrow from the Public Works Loan Board (PWLB). Interest rates charged on capital advances to the Council are significantly less than what is generally available on the lending markets.
2. To remain compliant with State aid regulations, the rates charged on amounts 'on-lent' must be in line with market rates available for similar projects.
3. As a result, there is an incidental financial benefit to the Council created by the difference in rates at which borrowing is undertaken, and loans are made.
4. The surplus generated will be used to meet the cost of administering the loans pool and ensuring all financial controls specified in this report (and controls approved in future reports) are enforced.

## **9.0 Legal Implications**

1. As detailed in paragraph 7.1, it is proposed that the Council borrows funds primarily from the Public Works Loan Board to on-lend. A council has a general power to borrow under Section 1 of the Local Government Act 2003. A council has a specific power to invest under Section 12 of the Local Government Act 2003 and a specific power to make a loan under Section 24 of the Local Government Act 1988 (housing loans only). A council also has a general power to borrow and to make loans under the General Power of Competence in Section 1 of the Localism Act 2011. This power is not to be relied upon as a specific power to lend or invest but rather to supplement Section 12 of the Local Government Act 2003 or Section 24 of the Local Government Act 1988 when investing or lending.

2. Lending by a council could potentially require authorisation by the Financial Conduct Authority. However, there are a number of potential exemptions under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 which avoid the requirement for FCA authorisation. The details of the loan help to determine whether there is an exemption and if so which one can be relied upon.
3. As indicated in paragraph 4.4 c, there is a potential for any loan to constitute State Aid. There are a number of approaches and potential exemptions which a council can rely upon when lending. The potential exemptions include the General Block Exemption Regulation and De Minimis. If a council provides a loan on market terms as is proposed, it should not be State Aid because the council is acting in line with the Market Economy Investor Principle. When making loans, the council will need, amongst other things, to carry out prior due diligence to demonstrate that the loan is a prudent use of the council's resources and such that any other lender would have provided a loan on those terms.
4. The Council should take steps to protect its investment or loan, for example by requiring the loan to be secured against the borrower's assets and/or guarantee from a linked party. Not only will this protect the Council should the borrower become insolvent before repaying the loan in full but also assist the Council to show it is acting in line with the Market Economy Investor Principle thus avoiding State Aid issues.

#### **10.0 Equality Implications**

1. It is anticipated that the lending arrangements proposed will be highly suited to in-borough housing developments.
2. This would facilitate the delivery of affordable homes in the borough and provide the Council with the opportunity to offer vulnerable and disadvantaged residents permanent accommodation.

#### **11.0 Consultation with Ward Members and Stakeholders**

1. No such consultations were required to progress this report.

#### **12.0 Human Resources/Property Implications (if appropriate)**

1. None.

**Report sign off:**

**CONRAD HALL**  
Chief Finance Officer