PROPOSAL TO AMEND THE NYCC LOAN SCHEME FOR SCHOOLS

1.0 PURPOSE OF THE REPORT

1.1 To amend the terms and conditions of the loan scheme for schools and to ask the North Yorkshire Education Partnership for views on the proposed amendments.

2.0 BACKGROUND

2.1 Statutory Guidance published in December 2015 "Schemes for financing schools" provide for this possibility:

"*It is open to an authority to include in its scheme a form of loan arrangement for schools which does not operate by way of a licensed deficit but rather by way of actual payments to schools or expenditure by the authority in respect of a particular school on condition that a corresponding sum is repaid from the budget share*."

2.2 Where a local authority operates such a scheme, it needs to take into consideration the following parameters:

- the maximum length over which schools may repay the loan;
- the purposes for which the loan arrangement may be agreed;
- the maximum size of the loans which may be agreed (this may be by reference to the size of the budget share or in cash terms or some combination);
- the maximum proportion of the collective balances held by the authority which will be used to back the arrangement;
- the role of the Director of Children's Services and the Chief Finance Officer of the Authority in agreeing any arrangements for individual schools.

2.3 The Regulations also state that:

"…an authority may wish to invite schools with balances in external accounts to use some or all of those balances to back a loan scheme, and the scheme should make clear on what basis this would occur.

If there is a loans scheme on this basis the authority must show in its budget statements the amount centrally retained for what would be a devolved payment to schools, and the payment should appear in the out-turn statements."

2.4 NYCC have been operating the current loan scheme since January 2015 following discussion at the Schools Forum. There have been six loans agreed which have been subject to robust business cases. The total loan fund outstanding as at April 2017 amounted to £3,365k.

2.5 In addition, the Energy Management Team also operates a Resources Fund. This started in 2008 and operates an interest-free arrangement to help schools reduce energy and water consumption and limit environmental impacts. The fund is available to cover the capital cost of energy and water saving measures. In theory, the loan is repaid from the estimated financial savings a school will make from the reduction in energy and water bills in the first five years. The total amount outstanding as at April 2017 amounted to £599k.

2.6 NYCC and its schools faces some significant financial challenges. Whilst the Council has a good track record in delivering planned savings and managing projects involving changes to services and schools, the availability of one-off funding is crucial to continue to be able to operate the scheme. Latest projections indicate that the accumulated surplus Dedicated Schools Grant (DSG) reserve previously used to operate the Schools Loan Scheme will be fully depleted by the end of March 2018 or shortly afterwards. The reserve has been used in the past to address specific short-term pressures, for example, to enable school budgets to be subsidised and protected against the full cost of Broadband, to pay for individual projects, help schools deal with effects of funding reform or assist schools in financial difficulty). Although some of the DSG reserve will be replenished by schools repaying their loans in accordance with their pay-back plan this will, in isolation, be insufficient to effectively operate the scheme (some loan repayments continue to 2029/30).

2.7 As indicated in January 2015, there is, in the absence of the LA holding school collective balances, the ability for the Council to use its corporate reserves in some instances.

3.0 PROPOSED CHANGES TO THE LOAN SCHEME

3.1 NYCC would prefer to continue to be able to assist schools with investments in the short to medium term, and where this is not possible to continue to provide support within the rules allowing Licensed Deficit Action Plans. This makes sense when capital funding streams available to the LA and schools are effectively rationed with competing pressures on the Council’s centrally-managed capital plan.

3.2 The NYCC loan scheme for schools has, therefore, been amended and is attached as Appendix A. This complies with regulations and sets out the requirements for schools who wish to apply and also the authorisation process within NYCC. Importantly, it does not seek to change any terms already in place for individual schools.

3.3 The main changes are detailed below:

- the rate of interest will be amended from slightly above base rate to the maturity rate payable by NYCC which reflects the cost of borrowing over the period of the loan, plus 1%. This reflects the increased risk to NYCC given depletion of reserves, opportunity cost of using cash to finance the school loan scheme, and administration costs of administering the scheme.
- the updated Schools Loan Scheme – Conditions are updated to acknowledge that should a school convert to Academy status, the expectation is that the loan repayment will be transferred to the new Academy Trust as part of the Commercial Transfer Agreement.
- the Conditions are also updated to reflect that loan approval on strategic, ‘fitness for purpose’ or value for money grounds will be subject to review by the Corporate Director – Children and Young People’s Service in conjunction with the Corporate Director – Strategic Resources (or nominated representative: Assistant Director – Strategic Resources).

4.0 RECOMMENDATIONS

4.1 The North Yorkshire Education Partnership is asked to:

- support the amended loans scheme for schools
- comment on Annex A: Amended Loan Scheme (2018) and Appendix 1: Schools Loan Scheme - Conditions

STUART CARLTON
Corporate Director – Children and Young People's Service

Report Prepared by Howard Emmett, Assistant Director – Strategic Resources

NYCC SCHOOL LOANS SCHEME – TERMS AND CONDITIONS

1.0 PURPOSE

1.1 To detail the terms and conditions of the loans scheme for Schools (including Schools that have converted to Academies where the loan has been novated over to the Academy Sponsor), and Pupil Referral Services with delegated budgets through use of reserves held by NYCC, including DSG and Corporate Reserves.

2.0 BACKGROUND

2.1 The need for schools to be able to phase payments for large items of expenditure, over several years, is an important facility which is often difficult to manage within a system based upon annual budget allocations.

2.2 Without a loans scheme schools can accumulate funds for one off purchases by delaying the purchase until the school has sufficient balances to finance the investment.

2.3 Alternatively it is possible for schools, with the approval of the Corporate Director – Strategic Resources to enter into Leasing or hire purchase arrangements. Such arrangements are the subject of separate advice and are not usually encouraged as they can be expensive and 'tie' the school to a particular supplier.

2.4 Schools with insufficient balances can apply to the Corporate Director – Strategic Resources[1] for a Licensed Deficit in order to make the purchase. This is, of course, approved only if the proposal is viable in the medium term and does, in any event, create 'presentational' difficulties for schools in explaining their deficit position to, for example, parents.

2.5 The cash available to finance these loans is available from DSG Reserves, any school budget reserves which have been deposited into the general County Fund, but may also be guaranteed by NYCC Reserves and the accumulated balances of schools.

2.6 Schools would pay interest at a level which would also cover the cost of administration incurred by the Authority.

[1] Or the nominated representative of the Corporate Director. In this case the authority is delegated to the Assistant Director – Strategic Resources (CYPS)

3.0 LOANS SCHEME

3.1 Schools with relatively large balances would not need to use the scheme. Loans would not usually be granted to schools in a deficit position unless it was part of an agreed recovery plan.

3.2. The scheme would operate under a set of stringent conditions.

3.3 For loans agreed after 1 March 2018, the rate of interest charged under the scheme will reflect the additional risk of depleted DSG reserves and, therefore, the cash-flow provided by NYCC corporate reserves. Interest rates will, therefore, reflect the opportunity cost to the council and would either be a fixed rate or variable rate. The fixed rate will reflect the maturity rate at the time that the loan offer is provided, that the council would pay if borrowing over the term of the loan plus 1%. This rate will be fixed for the period of the loan. The principle repayments and interest will be repayable, in equal instalments, over the period of the loan. The variable rate will be calculated on the same basis as the fixed rate but the rate of interest charged will be updated each year on 1st April and the repayment instalments will be re-calculated annually to reflect any change in the interest rate.

3.4 Since balances are held in school bank accounts it is proposed, if necessary, that schools be given the opportunity to assist the financing of the scheme. This can be achieved by BAFS schools depositing, for at Least 12 months, a proportion of their cash resources. The Corporate Director – Strategic Resources would pay interest equivalent to the level it would earn if invested. It is likely that the level of interest paid to schools will at least equal to, and likely to exceed slightly, the interest the school could otherwise earn.

3.5 The Authority will have regard to how the loans are funded – as this will be from reserves and not through additional borrowing. This will be reviewed annually to take account of a number of factors including the level of demand, the level of reserves held by the council and school balances.

3.6 This loan scheme will encompass all previous NYCC school loan schemes, including

- Loans, administered by the Schools ICT Service to phase the purchase of computer equipment over the life of the asset.
- Loans, administered by North Yorkshire County Caterers to invest in catering facilities by
- Loans administered by the Energy Team as part of the “Resources Fund”

3.7 The national provision on Devolved Formula Capital allows schools to commit resources for the current years and up to two future financial years. Schools taking advantage of this flexibility can do so via an application for a Capital Licensed Deficit. Potentially, subject to their own cash balances, schools may require a cash advance to support their Licensed Deficit; these are administered by the BAFS Scheme/system rather than this Loans Scheme.

3.8 Conditions of the Scheme are attached at Appendix 1.

Appendix 1

NORTH YORKSHIRE COUNTY COUNCIL

SCHOOL LOANS SCHEME – CONDITIONS

Schools and Pupil Referral Services are permitted to borrow money from the Authority to be repaid from their school budget shares over more than one financial year. The type of expenditure, which would be eligible for a loan and the conditions relating to the loan are covered in the sections which follow:

1. No school has an absolute right to receive a loan, but all schools maintained by NYCC with delegated budgets, are eligible to receive consideration. Loans cannot be made to Academies, Free Schools or Independent Schools.

2. Any school wishing to receive a loan is required to prepare an individual bid, meeting all the requirements contained in this proposal, which would then be examined by the Assistant Director – Strategic Resources, on behalf of the Corporate Directors for Strategic Resources and Children and Young People's Services.

3. The scheme will be overseen by the Education Partnership. The Partnership will receive periodic reports on the operation of the scheme and will offer guidance on the criteria for granting loans. However it will not be involved in making individual decisions on loan applications.

4. Loans are available only for expenditure which would be of benefit to the school over a period greater than one financial year (i.e. of a capital nature).

5. Loans are not available to support general problems with a school's revenue budget.

6. The Council will wish to consider those bids which, in particular, incorporate a guaranteed saving which covers, or contributes significantly, to the repayments. Projects with an environmental aspect, e.g. expenditure resulting in energy savings which will contribute to, or actually repay, the debt, would be encouraged.

7. The maximum period of loan will be 10 years, but the Authority may agree in exceptional circumstances an extension to this. The life of the asset purchased through the loan must exceed the length of the loan period.

8. For smaller capital purchases it would be expected that a school would use their devolved capital budget with possibly a combination of revenue contributions and/or a licensed capital deficit. It is therefore unlikely that capital expenditure of less than £25k would attract a loan, although there may be exceptional circumstances.

9. Interest will be charged at a fixed interest rate as follows. The rate of interest charged under the scheme would be fixed for the period of the loan at the maturity rate that NYCC would pay at the time that the loan offer is provided if borrowing plus 1% for the period of the loan. There may be an adjustment in the first year to reflect the timing of the advance. Variable interest rate loans will be available on request.

10. Loans may be fully or partially repaid early thus reducing interest charges.

11. In determining whether to endorse a loan request the Assistant Director – Strategic Resources will assess the credit worthiness of the school. The school’s record on balances may also be taken into consideration. A financial plan covering the period of the loan repayment will be required and any other budget management information that is deems relevant.

12. The loan will be immediately repayable if the school fails to comply with the terms and conditions of the loan. Should a school convert to Academy status, the expectation is that the loan repayment will be transferred to the new Academy Trust as part of the Commercial Transfer Agreement. The terms and conditions may be amended as part of this process to reflect the different status of the Trust. The discretion to make this transfer, and on what terms, will be entirely the Local Authority’s.

13. The loan offer will be valid for 3 months. It will, however, be extended where contracts have been agreed, but works delayed. Should the scheme fail for any reason, the offer will be withdrawn with immediate effect.

14. In the unlikely event that any asset bought or built is subsequently sold, the loan must be repaid in full.

15. Loan repayments will be collected by the Authority from the school's budget allocation.

16. Prior to approval of any loan the feasibility and ‘fitness for purpose’ will be assessed by the Corporate Director (CYPS). Loans may be rejected if they are not considered to represent value for money taking into account strategic financial and planning considerations at a county and locality level.

LOAN TERMS AND CONDITIONS

INTERPRETATION

1. In this Agreement the following words and expressions shall have these meanings:

Default	An event described in clause 6.
Loan	The money loaned to the School for the specified purpose
NYCC	North Yorkshire County Council.
Project	the project detailed in Section 1 of the School Loan application form
School	The School or Pupil Referral Service named on the attached form.
Specified Purpose	The purpose of implementing the Project.

2. When this Agreement refers to natural persons it shall also be taken as referring to companies, corporations, partnerships, firms, joint ventures, trusts and any other type of organisation whether or not the law treats them as legally separate entities and vice versa.

3. Where this Agreement is signed by more than one person as partners, each person who signed the Agreement will be jointly and severally liable.

4. This Agreement is not intended to give any third party any benefit under the Agreement or the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

THE AGREEMENT

1.0 <u>The Loan</u>

1.1 The School must use the Loan only for the Specified Purpose. NYCC will have the right to monitor how the Loan is used but we will not be obliged to do so.

2.0 <u>Preconditions to making the Loan available</u>

2.1 The statements made by the School in clause 5 must be correct immediately after the Loan is made available and that none of the events set out in clause 6 will have occurred.

2.2 If these pre-conditions are satisfied, NYCC will make the Loan available to the School by transferring the appropriate amount to the designated bank account.

3.0 Repaying the Loan

3.1 The school shall pay by cheque or BACS transfer the annual repayment of capital and interest due as per the repayment schedule issued by NYCC

3.2 Each year NYCC will provide on request an annual statement showing the amount of the Loan outstanding and the repayments that have been made during the previous year.

4.0 Responsibility of the School

4.1 The School accept responsibility for:

(a) Ensuring that the Project is procured in accordance with all relevant European and domestic laws and all rules applicable to the School;

(b) Ensuring that the project is properly designed, correctly implemented and that all relevant health and safety laws and other relevant requirements are met;

(c) Paying for goods and services in connection with the Project.

5.0 School representations

5.1 The School represent and warrant to NYCC that:

(a) The School have validly signed this Agreement under any constitutional documents and have obtained all authorisations needed to sign it;

(b) The obligations under this Agreement are legal, valid, binding and enduring obligations;

(c) To the best of its knowledge and belief nothing has occurred or is about to occur which will affect the solvency of the School;

(d) To the best of its knowledge and belief all written information supplied by the School in connection with the Loan is true, complete and accurate in all material respects;

(e) To the best of its knowledge and belief there are no plans being created or considered to convert the School into an academy.

6.0 Default

6.1 The School agree that if any of the following events occurs it will notify NYCC immediately and the School shall repay the Loan and Charge immediately:

(a) The School fails to comply with any of its obligations under this Agreement;

(b) Any of the Schools representations or warranties given in this Agreement turns out to be incorrect;

(c) The School become unable to pay its debts;

(d) The School converts to Academy status or otherwise alters its status, although as set out in paragraph 12 of the Loan Conditions (above), the Council will without obligation consider the possibility of including the existing loan and repayment conditions within any Commercial Transfer Agreement; this may involve amending the terms of the loan as stated above.

(e) The School is closed down.

7.0 <u>Legislative Compliance</u>

7.1 The School acknowledge that NYCC are bound by the Freedom of Information Act 2000 and will co-operate with NYCC in respect of the processing of a request for information made to NYCC under the Act so far as the request relates to this Agreement or any related matter.

7.2 The School agree to obtain all necessary consents in relation to the Project.

7.3 The School agree to indemnify NYCC in respect of any costs NYCC incur as a consequence of the Schools failure to comply with Clause 7.

8.0 <u>Other Provisions</u>

8.1 In view of European State Aid legislation NYCC must include this provision which overrides any other provision in this Agreement. If NYCC are required to do so by decision of the European Commission or under any law of England or the European Community, it has the right to vary, withhold and/or reclaim all or part of the Loan.

8.2 The School shall make all payments due to NYCC without setting off any amounts or deducting or withholding any amounts from the full amount due.

8.3 The failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy and no waiver shall be effective unless it is communicated to the other party in writing.

8.4 Any notice or demand from either party must be by letter to the address shown on the attached form.

8.5 The School must not assign or charge the benefit of this Agreement. NYCC may assign the benefit of this Agreement to any successor authority.

8.6 Except as otherwise stated this Agreement, including attached form, is the entire Agreement between the School and NYCC and no variation will be binding unless made in writing and signed on behalf of each party.

8.7 This Agreement is governed by the laws of England.

Reviewed – March 2018