



Executive
15 February 2010

**Report from the Director of
Children and Families**

Wards Affected:
All

**Crest Academies: the next steps including procurement
and submission of Outline Business Case (OBC)**

Forward Plan Ref: C&F-09/10-017

APPENDICES 5 AND 6 ARE NOT FOR PUBLICATION

1.0 Summary

- 1.1 The report updates the Executive on the progress in establishing the Crest Boys' Academy and The Crest Girls' Academy in new accommodation and seeks its approval to proceed with the submission of the Outline Business Case (OBC) for the construction of new buildings to Partnerships for Schools (PfS) and the Department of Children and Families (DCSF). It also informs Executive of the approach to engaging the Overall Project Manager (OPM) and the Technical Advisors.
- 1.2 At its meeting on 14 July 2009 the Executive agreed to proceed with the scheme to rebuild John Kelly Boys' and Girls' Technology Colleges (now known as Crest Boys' Academy and Crest Girls' Academy) on the existing site (the scheme). It also approved the release of some of the £5m Capital Investment Plan funding that had been earmarked for land acquisition and instructed officers to investigate the feasibility of clearing/making level or stepping the underutilised southern part of the site leading into Dollis Hill Lane so as to provide suitable land for the schools expansion, each by one Form of Entry (1FE) and a second access route (pedestrian and vehicular) to the site from the Dollis Hill.
- 1.3 Since July 2009 substantial progress has been made by officers, working in partnership with the key stakeholders: the Sponsor Edutrust Academies Charitable Trust (EACT) and the two Academies (including pupils as key

stakeholders) to develop the Outline Business case (OBC) for the development and construction of new buildings. The attention of the Executive is drawn to the following key strands of work:

- (i) consideration of options for the arrangement of the permanent accommodation on the site as part of the Outline Business Case (OBC);
- (ii) consideration of the options for temporary accommodation required whilst the permanent accommodation is rebuilt
- (iii) consideration of the planning implications of the new accommodation
- (iv) consideration of the affordability of the new proposals
- (v) school organisation, curriculum planning and maintenance/improvement of standards
- (vi) the potential change of location of a Children's Centre from Cricklewood to the Crest site.

The good progress made on each of these strands is set out in the main body of the report. Officers have reviewed lessons from the development and delivery start up of ARK Academy, which has been viewed positively by PfS, and those have informed the approach to developing and delivering Crest Academies and other large projects. Officers and consultants have developed a positive working relationship with PfS who commented to that effect in their approval of the OBC for the Ark Academy which was commended as excellent.

- 1.4 Whilst the new build of the Academies is funded by the DCSF, as set out in Appendix 5, the Executive is being recommended to agree that the Council earmarks a contribution to the scheme from its Capital Investment Plan at the level of £1.6m as set out in Paragraphs 8.3 to 8.7 without which the scheme cannot be delivered in line with the Expression of Interest agreed between the Secretary of State and the Council.

2.0 Recommendations

The Executive are requested to agree to;

OBC Submission

- 2.1 Authorise the Director of Finance and the Director of Children and Families to submit the OBC to PfS in the form set out in Appendix 1 with the detailed content completed by the Director of Children and Families, subject to the FAM allocation being increased to meet the Council's estimate of costs as set out in Appendix 5 or the Director of Finance being satisfied that any costs over and above the FAM allocation can be met from an existing capital budget and upon approval to commence procurement via the PfS National Framework.
- 2.2 Authorise the Section 151 Officer to complete and issue the letter confirming the affordability of the scheme, subject to the FAM allocation being increased or the Director of Finance being satisfied as set out in paragraph 2.1 Template attached as Appendix 4.

- 2.3 Confirm the LA's commitment to the project as set out in Appendix 2 and agree to the signing of the Memorandum of Understanding in the form set out in Appendix 3 or with such amendments as the Director of Children and Families, in consultation with the Borough Solicitor, considers to be appropriate.

Procurement: Construction

- 2.4 Give approval to the procurement route [Using the National Framework] for the construction of the Crest Academies and the criteria to be used to shortlist tenderers and evaluate tenders as set out in paragraph 6.6 of the report.
- 2.5 Give approval, subject to PfS approving the OBC, invite expressions of interest, selecting a shortlist of two bidders and invite tenders for the construction of the Crest Academies and evaluating them in accordance with the approved evaluation criteria referred to in 2.4 above.
- 2.6 Authorise the Director of Children and Families, in consultation with the Borough Solicitor to agree the selection of the preferred bidder for the Design and Build Contract following evaluation of the tenders.

Procurement: Consultants

- 2.7 Agree that for the reasons set out in paragraphs 5.13 to 5.15 in the context of the Not for publication details in Appendix 6 to this report, there are good financial and operational reasons to appoint an Overall Project Manager (OPM) through to FBC of the Academies' newbuild without seeking quotes in accordance with the Council's Standing Orders.
- 2.8 Note that officers will appoint Technical Advisors (TA) to support the Academy Project as noted in paragraph 5.16.
- 2.9 To note the risks of the scheme and the proposals set out for managing the risks (see Appendix 7).

Council Financial Contribution to the Development and Delivery of The Scheme

- 2.10 Agree, against the context set out in paragraphs 8.3 to 8.6 to allocate £1.6M from the existing provision of £5M in the Capital Investment Plan to secure the delivery of the Academies and the corresponding new buildings.

3.0 Background

- 3.1 This scheme is to re-build two Academies: The Crest Girl's Academy (formerly John Kelly Girls Technology College) and The Crest Boy's Academy (formerly John Kelly Boys Technology College). Both schools were established as Academies on 1 September 2009 in their respective former school premises. Both schools share the same site.
- 3.2 The scheme is to demolish both schools and rebuild them on the existing site. Although they will be rebuilt as independent schools they will share the same campus and will co-operate to provide excellent educational opportunities for all pupils. This co-operation will be particularly close at post 16 with shared post 16 opportunities.
- 3.3 It is agreed that the Academies are expanded by one form of entry (1FE), upon delivery of new buildings, with effect from 1 September 2012, to meet the continuing increase in demand for school places in the borough. This expansion would therefore be linked to the availability of new build accommodation subject to the approval of the Outline Business Case by the Secretary of State.
- 3.4 When re-built the Girls' Academy will be 6FE (900 11-16 pupils) entry with 200 post 16 places. The Boys' Academy will be 5FE (750 11-16 pupils) and 200 post 16 places. There will therefore be 400 post 16 places across the two Academies with dedicated post 16 accommodations.
- 3.5 Pending the rebuild, the Authority has secured £320K to improve the learning environment in the predecessor school buildings. This work, including improvements to toilet areas, dining areas, ICT infrastructure and external landscaping was completed in September 2009 and served to enforce the joint stakeholders' commitment to enhance the existing school buildings and raising school standards.
- 3.6 The Girls' Academy has Languages as its first specialism with Technology as a second specialism. The Academy, by using the two specialisms as a driver for academic and personal improvement, will give priority to the development of literacy, closely adapted to meet individual diagnosed need. The Boys' Academy has Mathematics as its first specialism with Technology as its second specialism. The Academy, by using the two specialisms as a driver for academic and personal improvement, will give priority to the development of numeracy and enterprise closely adapted to meet individual diagnosed need.
- 3.7 The Lead Sponsor for both academies is Edutruster Academies Charitable Trust (EACT) with the co-sponsor being Brunel University. Under the EACT umbrella, each Academy is a separate charity, with its own Board of Governors.
- 3.8 A four year lease between the Council and EACT dated 4 September 2009 is in place to enable the operation of the Academies pending redevelopment of the schools.

4.0 Feasibility Study

- 4.1 Following the Executive report in July 2009 MACE (who are on the Brent Framework) were appointed as technical consultants to produce a feasibility report on the rebuilding of the two academies on the existing site. Its' purpose and therefore the brief was to ensure that education delivery could be maintained on the site whilst the new build takes place within the existing site perimeter. MACE have carried out an options appraisal in consultation with the Design User Group (DUG) which includes representation from the key stakeholders: LBB, EACT and the two schools. Students' views have also been harnessed. The DUG's role is as guardian of the sponsor's educational vision for the Academies and has key responsibility for ensuring the design proposals are within the agreed funding envelope. The DUG has signed off its preferred option.
- 4.2 Although it is a tight site, the preferred option demonstrates that the two schools can now be re-built on the existing site without the need for additional land. However to make the scheme work a new vehicular access will need to be created from Dollis Hill. Given the tightness of the site it will be also necessary to make use of Gladstone Park for some sports activities which is currently used by both schools. It is not anticipated that any such arrangements will impede public access to the park.
- 4.3 The preferred option will also enable pupils to remain on site during the build programme. This will require additional temporary accommodation during the proposed 3 phases of build.
- 4.4 In addition to the main scheme there is potential to include a Brent led new Children's Centre. The Children's Centre is a LA wide initiative which cannot be funded from within the FAM funding regime and the costs therefore have to be met from within the LA's resources (see paragraph 8.4 on resources required from the LA).
- 4.5 In developing the preferred option the potential to re-locate the proposed phase 3 Children's Centre from Cricklewood to the Crest site has been explored. Delivering the Centre on the Cricklewood site is proving problematic with site and associated budget difficulties. Whether it can be re-located to the Crest site is still under consideration but its proposed siting has been included in the masterplanning for the site. Officers are exploring with DCSF the potential to join up funding regimes to make this possible. The Children's Centre will be funded from Sure Start grant via the Council.
- 4.6 The existing site accommodates a number of buildings on it such that the space is inefficiently deployed or used. The new proposed massing of the new building, making optimum use of the topography of the site will make better use of the site thus providing improved external, social, formal and informal spacing.

5.0 Outline Business Case (OBC) – Key Issues and Cost Estimates

- 5.1 The OBC is carried out within a predetermined format set out by the DCSF for which the template is attached as Appendix 1. It incorporates the feasibility study for the scheme and outlines the options appraisal, cost estimates, affordability assessment and procurement strategy for the schools in sufficient detail to allow capital funding to be confirmed and gain approval to proceed, from the DCSF, with the delivery of the scheme via the PfS Framework Panel Members. Once the OBC is approved the capital funding is finalised and capped – after which there will be no more funding allocated to the project. At that juncture, if the Academy proposals are implemented, the responsibility for delivering the newly built Academy within the defined resources and time schedule fully transfers to the Council.
- 5.2 The key conclusions of the feasibility study are:
- 5.2.1 The site area is below DCSF guidance for schools of this size, but the proposed schools can be accommodated on the existing site;
 - 5.2.2 It is possible for pupils to remain on site whilst the build takes place. This will require re-location of existing temporary accommodation as well as additional new temporary accommodation.
 - 5.2.3 A new vehicular and pedestrian access will be required from Dollis Hill which can be developed;
 - 5.2.4 Given the tight site, some sports activities will need to be off site in Gladstone Park.
 - 5.2.5 The scheme (this excludes the potential Children’s Centre) is affordable within the current funding envelope of £39.35M (plus, to be agreed increase in abnormals to cover temporary accommodation required).
 - 5.2.6 The first Academy(Crest Boys’) can be delivered for September 2012 but the timetable is challenging and dependent upon key decisions being made on time;
 - 5.2.7 The site surveys have revealed nothing substantial that would inhibit the development of the proposed Academies on this site.
- 5.3 The procurement of the Academy will be delivered within a National Framework for building contractors set up by PfS. This Framework will deliver high quality, sustainable, design and construction standards and will provide value for money. This is the same Framework as is being used to deliver the Ark Academy.
- 5.4 EACT and the LA must confirm their commitment to working together to procure the design and construction of the new Academies using the PfS National Framework (already set out at the EoI stage) and confirm that they will follow established PfS procedures and utilise the standard suite of documents

for procurement. This includes the use of the National Framework Development Agreement and Design and Build Contracts. It is essential to the lawful use of the framework that the LA does not amend the Design and Build contract other than for specific project reasons and where indicated in the Design and Build Contract. Both parties need to have satisfied themselves with the terms and conditions within these documents.

- 5.5 The draft letter of commitment is attached as Appendix 2. The LA's commitment includes a signed Memorandum of Understanding (MOU) (attached as Appendix 3). Subject to the Executive's agreement to the recommendations set out in this report and, in consultation with the Borough Solicitor, amendments to the MOU will be negotiated with PfS. The MOU is made between PfS and the LA and establishes the parties' respective obligations and commitments to each other. It is not intended to be legally binding except as specified. (See paras 6, 7, 8 and 9 of the MOU)

Pre-Construction Programme of Work

- 5.6 A detailed programme of work has been developed based on the guidance issued by PfS. The key milestones from the programme are detailed in the table below:

Milestone	Date
DCSF/PfS Approval of OBC	March 2010
Issue PITT to Framework Panel Members	March 2010
Receive PITT Submissions	April 2010
Announce short listed bidders	April 2010
Issue ITT to Bidders	May 2010
Receive ITT Submissions	August 2010
Announce Preferred Bidder	October 2010
DCSF/PfS Approval of FBC	February 2011
Award Design and Build for both schools	February 2011

Once the scheme has been given approval to proceed by PfS, the Framework User(Brent LA) writes to all the Panel Members(contractors) inviting them to take part in the Local Competition. Accompanying the invitation the Preliminary Invitation to Tender documents are issued (PITT). The purpose of the PITT is to select a shortlist of two Panel Members.

The Invitation to Tender (ITT) documents are then released and two shortlisted Panel Members are then given an average of three months to develop their bids. The scheme is developed in line with the funding envelope and the Authority's Requirements. This is a critical period in the development of the project and requires intensive support from the LA and sponsor to ensure that the options developed meet the educational vision for the Academies. It is essential that the LA provides adequate educational and technical project management during this phase of the project. The ITT bids are evaluated and the preferred bidder chosen.

Between selection and contract award the Preferred Bidder is expected to finalise the designs and submit contractor's proposals. During this period the LA prepares the Final Business Case (FBC).

The contractors' costs are at their own risk during the whole process.

PfS estimates the process from OBC approval to contract award to take around 44 weeks and the above programme assumes that timetable.

Members should note that the experience on the Ark Academy project was that the time required to develop the ITT and FBC exceeded the illustrative timescale by approximately 4 months. Although in the case of the Ark Academy through tight project management, the project is still on programme to be delivered to the forecast date, members need to be aware that the ITT/FBC stages could take longer than illustrated above.

- 5.7 The Executive will note that the programme is tight and the risk of slippage against timelines is high; the risks can better be monitored if key decisions are made on time. The project management structure and reporting/monitoring mechanisms put in place for the Ark Academy were successful and it is proposed to put in place a similar arrangement for this project. The Council will set up a cross departmental Project Board which will receive regular reports from the Overall Project Manager (Appendix 6).

Design and Construction

- 5.8 A robust and thorough options appraisal has been carried out to determine that both academies can be built on the site which meets the requirements of Building Bulletins 98 and 77. As part of the OBC the LA will need to confirm that they own the land upon which the Academy will be built and that there are no encumbrances, restrictive covenants that would place the development and operation of the Academy at risk.

The whole of the site vested in the Council on 1 September 2009 following the closure of John Kelly Boys' and Girls' schools and the dissolution of the Board of Governors and the reopening of these schools as Academies. Accordingly this point can be met.

- 5.9 Surveys and site investigations have been carried out and the results fed into the costings for the scheme.

Affordability

- 5.10 The table in the confidential Appendix 5 sets out the allocated funding from the DCSF/PfS, including the abnormal funding. It also sets out the estimated construction costs, including abnormals.
- 5.11 The cost of the works to create a new internal road from Dollis Hill are included within the FAM. Any highways works associated with this new road that are external to the site boundary will need to be met by the Council. See paragraph 8.3 below.
- 5.12 The main reason for the cost variance, set out in Appendix 5, is the provision of temporary accommodation for the pupils to enable them to remain on site whilst construction takes place. PfS have yet to agree to fund these additional abnormal costs. Until this is resolved to the satisfaction of the Director of Finance the OBC will not be submitted and the affordability letter signed (attached as Appendix 4). If this matter is not resolved then there will be a further report back to the Executive.

Readiness to Deliver

Development Phase and Construction

- 5.13 As part of the OBC and test of the Council's readiness to deliver, the LA has to confirm it has established and maintained a fully resourced project management regime for the successful development and delivery of the scheme. It is expected that this team includes a range of disciplines including a Project Manager and Technical Advisers (to include different specialisms). Taking account of the One Council programme and the responsibilities for schemes in the construction phase to be taken forward by a corporate team the LA will establish project management governance for the successful delivery of the scheme as it has done for the Ark Academy scheme. This will be for the duration of the project, including development, pre-contract and post contract, to monitor and maintain ongoing relations with the framework panel member (D&B) contractor and to ensure that performance is continually reviewed. The resources required to deliver the Ark Academy scheme which included costs for the project management regime (including Technical Advisers, Project Manager, legal costs and other specialist advice likely to be required from time to time), are estimated to be in the order of £735-920K. For this scheme, given it is for two Academies over a longer programme, the resource required is estimated to be in the order of £1.5M.
- 5.14 It is proposed to appoint the current Overall Project Manager for the duration of the development phase of the project. They have developed substantial knowledge and background around the project, have established effective relationships with various Council Departments, partner agencies including central government departments and will therefore be able to give high quality

progression to the remainder of this project seamlessly and without the need to revisit ground already covered. In addition, the (*per diem*) fee level negotiated with the proposed Project Manager is certainly no higher than the average consultancy rates and is indeed considered to be below the daily average rate for this type of work. The detail is set out in the Not for Publication Appendix 6. In the event that the LA seeks to invite competitive bids, it is likely that delays will be introduced into the timeline and the currently negotiated fee rates (deemed to be favourable to the Council) from the proposed project manager will no longer apply. In the unlikely event that someone else is able to submit a lower fee rate and are able to show the credentials comparable to the current project manager now being proposed for appointment for the duration of this project, it is likely that they will still need time to gather sufficient knowledge about this scheme and establish communication links for the better performance of the project.

- 5.15 There are therefore good financial, operational and efficiency grounds for appointing the project manager currently managing the OBC phase of this proposed Academy through to FBC.
- 5.16 It is proposed to appoint the Technical Advisor for this scheme from the Council's Property Services Framework.

Risk Management

- 5.17 As part of the OBC, a review has been undertaken of high level project-related "Top Ten" risks to the scheme. This is included as Appendix 7. The Appendix also sets out measures identified and that can be put in place to manage and mitigate the impact of those risks.
- 5.18 Notwithstanding the identification of the top ten risks, in Appendix 7, and the transfer of risk to the contractors (note: when the Design and Build contract is signed at RIBA Stage D the contractor will shoulder the risk for inflation, programme, adverse weather, unforeseen ground conditions, protesters, change of law etc.) there are risks associated with maintaining the scheme to budget which fall to the LA. These include :
- The cost plan assumes a start on site in February 2011. If slippage occurs, then there will be an inflationary impact on available resources which may need to be borne by the LA depending on the reason for the delay. It is therefore integral to the risk management process that the LA is able to make decisions on time, convey instructions to the preferred contractor;

Changes to the design brief can also impact on cost. It is therefore critical that at the point at which the PITT is issued (see programme above 5.6) any development of the brief takes place in consultation with both the technical advisers to the LA and the bidders in the competition and eventually the preferred bidder. Once the contract is issued the LA will not change the brief unless the change is cost neutral.

- As the contract is between the LA and the contractor, the LA will control the budget. The LA will therefore be able to take remedial action to bring the scheme in on budget should that be necessary. In hitherto unforeseeable circumstances (“force majeure”) and notwithstanding the good management of the scheme by the LA, the LA can discuss the consequential costs with PfS.

6.0 Procurement Process

6.1 As stated at paragraph 5.4 the LA must confirm its commitment to using the PfS National Framework for the procurement of the Academies when submitting the OBC. The National Framework was retendered by PfS in 2009 and accordingly is different to that used by the council for the Ark Academy. The LA will lead a Local Competition which involves the LA taking the following steps:

- inviting all Panel Members to confirm if it is their intention to bid
- selecting a short list of two bidders;
- working with two bidders to develop proposals for the Academies;
- evaluating the proposals and selecting a Preferred Bidder;
- finalising designs and the agreement to be entered into;
- preparing a Final Business Case (FBC) and securing DCSF approval for funds to be released; and
- reaching Contract Award and starting work on site

6.2 The National Framework is a panel of contractors which has been set up by the PfS specifically to build Academies for local authorities which are not part of the BSF programme. The panel was set up following an EU compliant procurement process and alleviates the need for individual Local Authorities to carry out their own EU procurement process. The National Framework requires that a local competition, involving all panel members, be held by the Local Authority to determine which of the panel members will be awarded the contract for construction of the Academies. This Framework will deliver high quality, sustainable, design and construction standards and will provide value for money.

6.3 Council Standing Orders require the approval of the use of this National Framework Agreement by the Borough Solicitor and the Director of Finance and Corporate Services. Both Chief Officers have confirmed such approval. The Borough Solicitor’s Office is currently undertaking a review of the framework.

6.4 In parallel with the work to complete the OBC, the LA Project Team has been developing the documents required for the local competition process. Once the OBC is signed the contractors on the National Framework will be issued with the following documents:

- Preliminary Invitation to Tender (PITT); and
- Draft Invitation to Tender (ITT)

- 6.5 The LA will be supported through the Local Competition by a Project Director from PfS. The Project Lead from DCSF Academy Division will work with the Sponsor and the LA through the development process.
- 6.6 The detail of the procurement process is set out in the table below.

Ref.	Requirement	Response
(i)	The nature of the contract	Design and Build (works) contract for the construction of the Crest Boys' and Crest Girls' Academies
(ii)	The estimated value of Contract.	£39.35m(plus agreed abnormals) This is subject to certain assumptions that are laid out in the Elemental Cost Plan as submitted to the Authority by its technical advisers
(iii)	The contract term.	Commencement date: January 2011 Construction Starts: February 2011 First Academy built: September 2012 Contract Term: 36 months.
(iv)	The tender procedure to be adopted including whether any part of the procedure will be conducted by electronic means and whether there will be an e-auction.	Call off from the PfS National Framework Agreement via a local competition. The LA will lead the local competition which involves the following steps: <ul style="list-style-type: none"> • Issuing Preliminary invitation to Tender (PITT) inviting all contractors on the National Framework to confirm if it is their intention to bid ; • evaluating PITT submission and selecting a short list of two bidders; • Issuing Invitation to tender (ITT) and working with two bidders to develop proposals for the Academy; • Evaluating tender submissions and selecting a Preferred Bidder; • finalising designs and the agreement to be entered into; • preparing a Final Business Case (FBC) and securing DCSF approval for funds to be released; and • reaching Contract Award and starting work on site
(v)	The procurement timetable.	The indicative procurement timetable is set out in paragraph 5.6.

(vi)	The evaluation criteria and process.	<p>The evaluation criteria and process for the PITT and ITT stages are set by the National Framework documents.</p> <p>The evaluation criteria for evaluating PITT submissions are as follows:</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Category</th> <th style="text-align: right;">Weightings</th> </tr> </thead> <tbody> <tr> <td>• School Design</td> <td style="text-align: right;">40%</td> </tr> <tr> <td>• Delivery</td> <td style="text-align: right;">40%</td> </tr> <tr> <td>• Handover</td> <td style="text-align: right;">10%</td> </tr> <tr> <td>• Pricing</td> <td style="text-align: right;">10%</td> </tr> </tbody> </table> <p>(The above criteria will probe the contribution of each of the criteria to raising standards of educational achievements)</p> <p>The evaluation criteria and weighting range for evaluating tender submission are as follows:</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Category</th> <th style="text-align: right;">Weighting</th> </tr> </thead> <tbody> <tr> <td>• Design and Design Management</td> <td style="text-align: right;">60-80%</td> </tr> <tr> <td>• Delivery</td> <td style="text-align: right;">20-30%</td> </tr> <tr> <td>• Handover</td> <td style="text-align: right;">10-20%</td> </tr> <tr> <td>• Pricing</td> <td style="text-align: right;">2-10%</td> </tr> </tbody> </table> <p>The specific weighting and detailed evaluation matrices will be developed for the PITT and the ITT using the evaluation criteria set out above. The criteria will be developed and refined as necessary to reflect specific of the Council's project. Weightings will be ascribed to each of the criteria.</p>	Category	Weightings	• School Design	40%	• Delivery	40%	• Handover	10%	• Pricing	10%	Category	Weighting	• Design and Design Management	60-80%	• Delivery	20-30%	• Handover	10-20%	• Pricing	2-10%
Category	Weightings																					
• School Design	40%																					
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• Pricing	10%																					
Category	Weighting																					
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• Delivery	20-30%																					
• Handover	10-20%																					
• Pricing	2-10%																					
(vii)	Any business risks associated with entering the contract.	The business risks associated with this project are set out in Appendix 7. This reflects the top 10 risks developed by the Authority and its technical advisors as part of the Outline Business Case. Other risks are set out above in paragraph 5.18.																				
(viii)	The Council's Best Value duties.	The tendering and award of the contract based on the criteria set out above will be that the Council meets its Best Value objectives. Further information on the Council's Best Value is set out in the Council's Contract Procurement and Management Guidelines available on the Council's website.																				

(ix)	Any staffing implications, including TUPE and pensions.	There are no staffing implications arising from the construction contract or setting up the school as there is no predecessor school.
(x)	The relevant financial, legal and other considerations.	See sections [8] and [9] below in this report.

- 6.7 To deliver the programme to enable the first school to be rebuilt by September 2012 is a challenge. To enable delivery to that timetable it is proposed that the Director of Children and Families be authorised, in consultation with the Borough Solicitor, to agree the selection of the preferred bidder for the Design and Build Contract following evaluation of tenders in accordance with the process set out above. Officers will report back to members for the award of the Design and Build Contract, approval to submit the final business case for the Academy and approval to enter into the Development Agreement with EACT in due course.

7.0 Consultation

- 7.1 Consultation about the Council's widest strategy for the development of school places (of which an expansion of the Crest Academies is an integral part) took place through the Area Consultative Forum (ACF) meetings during the summer and Autumn 2007; a collation of residents responses was collated following the distribution, in July 2008 of "A good school place for every child in Brent Have Your Say" The Strategy is kept under review by a Member Level Strategy Board.
- 7.2 The Council has carried out a thorough review of the site and the potential to acquire additional land. At the Executive in July 2009 it was determined not to proceed with a CPO of the adjoining land.
- 7.3 In addition to the ACF meetings, during the spring/summer of 2009 EACT and the LA have consulted specifically on the proposed organisation of the Academies, its ethos, admissions policy and specialisms.
- 7.4 Workshops have been held with students at both schools as part of the school design process.

8.0 Financial Implications

Outline Business Case and Build Cost

- 8.1 The basis for the costs and funding for the build costs are set out in Section 5 above and detailed in the Confidential/Not for Publication Appendix 5. This is

linked to the submission of the OBC and the assessment that the project is affordable. Members are reminded that once the OBC is approved there will be no more funding allocated to the project.

- 8.2 The indicative FAM has been revised downwards by PfS since it was reported to Executive in July 2009. The indicative figure has been adjusted to reflect the lowered September 2009 construction price indices and is as set out in Appendix 5. The contractors on the National Framework price their bids on the rates they originally tendered for build costs for the framework and this is adjusted to reflect the latest price indices. This means that the resources allocated in the FAM should replicate the build costs quoted by the contractors. Our technical consultants have confirmed that the reduction of the indicative funding allocation undertaken by PfS will not impact on the scope or specification for the project as this adjustment was undertaken to align the funding allocation with updated inflation indices and reflects projected market price levels. If the inflation indices increase, during the period from OBC to the contract being let, above that assumed then the contractor is expected to absorb that cost. Any costs above the funding allocation will have to be met by the Council. No specific provision has been made for this within the capital programme but remains as a risk for the project that the council must manage. Details of the significant risks and how they will be managed are set out elsewhere in the report.
- 8.3 PfS have confirmed that off site works e.g. highways improvements, through some form of Section 106 agreement, will not be funded by the DCSF. At this stage it is estimated that costs could be in the order of £100K. As these are likely to be mainly associated with improved access required because of the non expansion of the site it is recommended that these costs are funded from the £5M formerly earmarked for land acquisition. It will only be possible to establish the exact contribution required for highways improvements once the scheme has secured planning approval so it should be noted that potentially there could be a further call on the £5M.
- 8.4 If the Council is to proceed with the re-location of the Children's Centre then these costs will be met from Sure Start grant funding.
- 8.5 Project Development Costs

8.5.1 The Council is able to draw down funds from the capital allocation to assist with upfront design work, survey and procurement activities up to the production of the OBC. The Council has been asked by PfS to submit a bid for £300K for project support funding. The allocation could well be less than this and has not currently been accounted for in the available resources for the project. The Council will not have to repay the costs should the project not gain OBC approval.

8.5.2 The Council has a major role beyond the OBC as outlined in paragraph 5.13 above i.e. managing the Design Building Group through to completion, running the local competition, monitoring and managing the building contract etc. These costs will need to be met by the Council and

given the financial risks the Council will have to manage as part of the project it is felt that a proactive approach is required. It is estimated that around £1.5M will be needed to resource the project (including OBC) spread over 2009/10, 2010/11 and 2011/12. This is based on experience of the Ark Academy.

- 8.6 It is estimated therefore that the Council will need to set aside £1.6M to resource this project (£1.5M development costs (which includes the cost of the project manager) and £100K for highways improvements) less the project support funding secured from PfS. It is recommended that this funding be met from the existing provision of £5M in the Capital Investment Plan to secure the delivery of the Academies and the corresponding new buildings.

9.0 Legal Implications

- 9.1 The estimated value of the Design and Build Contract for the Academies will be higher than the EU threshold for Works and the contract will therefore be governed by the Public Procurement Regulations 2006. The contract will also be subject to the Council's own Standing Orders in respect of High Value contracts and Financial Regulations.
- 9.2 It is proposed that the Design and Build Contract will be procured using the National Framework Agreement set up by the PfS. The Public Procurement Regulations allow the use of Framework agreements (call-off contracts) and prescribe rules and controls for their procurement. Contracts may then be called off under such framework agreements without the need for them to be separately advertised and procured through a full EU process. A local competition will need to be undertaken with the contractors on the framework as set out in Section 6 of this report.
- 9.3 The Council's Contract Standing Orders state that no formal tendering procedures apply where contracts are called off under a Framework Agreement established by another contracting authority, where call off under the Framework Agreement is recommended by the relevant Chief Officer. However, this is subject to the Borough Solicitor advising that participation in the Framework Agreement is legally permissible and approval to participate in the Framework being obtained from the Director of Finance and Corporate Resources. The Borough Solicitor's office is currently undertaking a review of the framework.
- 9.4 Officers will report back to the Executive to request approval for the award of the Design and Build Contract in due course.
- 9.5 The estimated value of the contract for an Overall Project Manager falls below the EU threshold for advertising and therefore contract is not governed by the full application of the EU Regulations. It is however, subject to the overriding EU principles of equality of treatment, fairness and transparency in the award process. The Council's Standing Orders require that contracts valued above £20,000 and below £156,442 be procured by seeking at least 3 written

quotes. However, Standing Order 84(a) provides that the Executive may decide that a contract need not be procured in accordance with the Council's Standing Orders if there are good financial and/or operational reasons for this.

- 9.6 As part of the OBC submission the Council must confirm that the terms and conditions of the Design and Build Contract and the Development Agreement are acceptable to the Council. Legal Services will undertake a review of these documents prior to the Council confirming to PfS that they are acceptable.

10.0 Diversity Implications

- 10.1 The proposed redevelopment of the academies reflect the fact that the school buildings' current structural condition are not able to meet the current and exacting demands required to respond to transformation aspirations that enable education delivery to be brought into the 21st century which will benefit its pupils and local communities.
- 10.2 The Crest Boys' and Crest Girls' Academies are represented by pupils who are in the highest percentile group in terms of eligibility for free college meals; in addition, there is evidence of considerable social deprivation in all eight of the wards served by the colleges. It is therefore critical that the re-development of the Crest Academies is progressed within the timelines indicated in paras 5.6 and 6.6 above.
- 10.3 As noted in the Expression of Interest, dated 1 July 2008, Crest Girls' Academy is highly diverse [figures in square brackets relate to the equivalent statistics BUT for 2009]: 79% [82.8%] of its students have English as an additional language, which is above the national trend and likely to rise. In addition, students with SEN including statements are 1.4% [1.4%]. Similarly, 80% of Crest Boys' [82.7%] have a first language other than English; 1.8% [1.5%] of its students are SEN including statements.
- 10.4 As reported to Executive in July 2009, the schools have re-opened as Academies with effect from 1 September, which will provide excellence in education for all. The aspiration is that raising standards through innovation and investment in new facilities and accommodation will be achieved. The Academies will act as a learning and development hub for the entire community. The focus will be on young people, creating a learning environment where all students are supported to make sure they realise their personal potential and that no doors are closed to them.
- 10.5 The Academies will share their facilities and expertise with other schools and the wider community. The quality of education provision is monitored, in the same way as for all other community schools by OFSTED.

Background Papers

Executive Report 14 July 2009
Correspondence with PfS

Crest Academies Project Files

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APPENDIX LIST

Appendix 1 OBC template

Appendix 2 LA commitment letter

Appendix 3 Memorandum of Understanding

Appendix 4 Section 151 letter

Appendix 5 Affordability – Not for Publication

Appendix 6 Appointment of Project Manager – Not for Publication

Appendix 7 Top Ten Risks

Appendix 8 Glossary of Terms