



Executive
14 November 2011

**Report from the Director of
Regeneration and Major Projects**

Wards affected:
Dollis Hill Ward

**Authority to Award the Design and Build Contract to
Rebuild the Crest Girls' and Crest Boys' Academies**

***Appendices 1, 2 and 4 are "Not for publication"**

1.0 Summary

- 1.1 This report seeks authority to award the Design and Build Contract to completely rebuild the Crest Girls' and Crest Boys' Academies. The report outlines the project background and the procurement process undertaken. It also seeks approval to enter into a Development Agreement with the Academies' sponsors and approval to submit the Final Business Case to Partnerships for Schools in order to subsequently award the Design and Build contract.

2.0 Recommendations

The Executive is recommended to:

- 2.1 Approve the draft Final Business Case (FBC) for the rebuild of the Crest Girls' and Crest Boys' Academies in the form annexed as Appendix 1 and delegate to the Director of Regeneration and Major Projects in consultation with the Director of Finance and Corporate Services authority to approve the FBC and to submit it to Partnerships for Schools (PFS).
- 2.2 Award the Design and Build Contract to Wates Construction Ltd for the rebuild of the Crest Girls' and Crest Boys' Academies subject to approval of

the FBC from PfS and the Council entering into a Development Agreement with the Sponsor.

- 2.3 Approve the Council entering into a Development Agreement in connection with the rebuild of the Crest Girls' and Crest Boys' Academies with the Sponsor.
- 2.4 Note the financial implications for the Council (as detailed in paragraphs 4.1 – 4.13 and Appendices 3 and 4).
- 2.5 Note the arrangements for project management and technical advice for this project (as detailed in paragraphs 3.6 – 3.8).
- 2.6 Note the risks attached to this project and the strategy outlined for managing risk (as detailed in paragraphs 3.34 – 3.36).
- 2.7 Note Officers' intention to appoint Wates Construction Ltd to undertake additional works outside of the Design and Build Contract (as detailed in paragraph 3.37).

3.0 Detail

Project Background

- 3.1 This is a single procurement project of the Crest Girls' and Crest Boys' Academies; two separate Academies sharing one site in the Dollis Hill ward. The Crest Girls' and Crest Boys' Academies (the Academies) were formerly the John Kelly Boys and John Kelly Girls Technology Colleges before becoming academies in September 2009 (see minutes of Executive meeting of June 2009 for further details). The existing Academies buildings are in very poor condition and have exceeded their lifespan. This project, funded by the Governments Academies Programme through Partnerships for Schools (PfS) will see both Academies totally rebuilt on the existing site whilst the current Academies remain in operation.
- 3.2 In February 2010 the Executive gave approval to a number of recommendations for this project, including the submission of the Outline Business Case (OBC) to PfS. A technical amendment report was required in April 2011 as the minutes of the February meeting had not recorded decisions on all recommendations. This report will outline the progress made to action those recommendations prior to the submission of this report and will highlight any areas where the recommendation was implemented differently to that originally envisaged.
- 3.3. Since February 2010 officers have completed the following instructions from the Executive committee:
 - Submitted and gained approval to the OBC from PfS
 - Undertaken the procurement of a design and build contractor in line with the PfS Contractors' Framework (see paragraphs 3.12 – 3.19 for further detail).

- The Director of Regeneration and Major Projects has appointed the Selected Panel Member (note that the February 2010 Executive delegated this to the Director of Children & Families but it was accepted by the Executive in April 2011 that due to the change in departmental responsibility the Director of Regeneration and Major Projects was the appropriate Officer) (see paragraphs 3.20-3.21 for further detail).
- The procurement of consultants to assist with this project was undertaken and this is detailed below as the approach taken slightly altered from the approach outlined in the report to the February 2010 Executive. Members should be satisfied that the project is well supported by external consultants and LBB staff in accordance with their instructions (see paragraph 3.7 for further detail).

3.4 Since approval of the Outline Business Case (OBC) in March 2010 and commencement of the procurement process, this project has undergone two funding reviews by Central Government. The first took place during July/August 2010 (at the same time that Brent's Building Schools for the Future programme was cancelled) when the project was reviewed in terms of whether it could proceed at all. A delegation from Brent met with Ministers and although the outcome was that the project could proceed with the allocated funding it did cause a delay which will be outlined further below in table 2 in paragraph 3.5 showing the overall programme. A further Government efficiencies review took place in December 2010 and the project budget decreased by 3.4% (£1.6million) whilst out to tender in January 2011.

3.5 The project programme has changed from the programme issued at OBC and detailed in the report to the Executive in February 2010, partially as a result of delays described above and partially because the OBC was based on a control scheme which gave a three phase construction programme with completion of the first Academy in March 2012, final building completion in January 2014 and the completion of all external works by April 2014. This was based on an award of contract in March 2011. This was not deemed possible to achieve after the process and project reviews which took place between May-August 2010 and after the Preliminary Invitations to Tender (PITT) phase of the project had to be re-run. The current programme accepted by the Crest Project Board following Invitation to Tender (ITT) evaluation indicates that the award of contract could take place in December 2011 with both Academies completed in April 2014. This was considered to be an achievable and realistic programme with minimal disruption to the Academies during a single phase construction. Table 1 below outlines the key project dates showing both the planned date in the OBC and the actual date of completion/date planned in FBC. A number of additional milestones are shown indicating the cause of delay:

Table 1

Milestone	Date Planned in OBC	Actual/Date Planned in FBC
OBC approved	10 March 2010	10 March 2010
PITT issued	18 March 2010	
PfS review of PITT and Technical Adviser (PM/TA) appointment process		May 2010
New PM/TA tenders returned		7 July 2010
Government confirmed project approved to proceed after review		6 August 2010
Appointment of new PM/TA		16 September 2010
PITT re-issued		19 October 2010
ITT issued	16 April 2010	29 November 2010
Selected Panel Member announced	6 September 2010	12 April 2011
Planning Application Submitted	19 October 2010	29 June 2011
Planning Committee	February 2011	28 September 2011
Planning Decision Notice Issued	7 February 2011	19 October 2011
Executive Approval to award contract	February 2011	14 November 2011
Approval of Final Business Case by PfS	28 February 2011	23 November 2011
Enter into Development Agreement and Award Design and Build Contract	7 March 2011	5 December 2011
Start Works on Site	21 March 2011	17 December 2011
Completion of Building phase 1 (practical completion of boys school)	March 2012	n/a
Completion of Building phase 2 (Joint 6 th form and part of girls school)	February 2013	n/a
Completion of Building phase 3 (final build completion)	January 2014	April 2014 (all Academies buildings completed together)
Complete demolition and construction of external works	April 2014	December 2014

Arrangements for Project Management, Technical Advice and Project Governance

- 3.6 In February 2010 the Executive agreed there were good financial and operational reasons to appoint an Overall Project Manager without seeking quotes in accordance with Council Standing Orders. This was implemented but for a limited period only (with supervision by a Council Officer). In September 2010, client Project Management began being undertaken solely

by Council Officers; this reflected the Council's general position on the employment of consultants. Internal re-organisation meant that this project transferred from the Children and Families Department to the Regeneration and Major Projects Department. This new team has remained with the project since September 2010 and is proposed to continue to deliver the project.

- 3.7 In February 2010 the Executive agreed to the appointment of Technical Advisers from the Council's Property Framework. This was started in March 2010 after approval of the OBC however in May 2010 after advice from PfS in relation to the first PITT process a new team of Technical Advisers was procured from the PfS Framework of Consultants. Tenders were returned for Technical Advisory/Project Management Services (TA/PM) in July 2010. Due to the Government review of the project in August 2010, the appointment of the TA/PM was delayed until September 2010 when this appointment was approved under delegated powers by the Director of Children and Families. The appointment is made against a scope of works which is set out by PfS and lasts until project completion so the Council can be satisfied that the required roles to complete this project are being fulfilled.
- 3.8 The Local Authority is the accountable body and contracting authority for this project but it is required to work closely with the Academies and their sponsor E-ACT. This is to ensure that the project meets the requirements of the education brief. This collaborative approach is employed at project team and governance level. The Crest Project Board is chaired by E-ACT and attended by the Directors of Regeneration and Major Projects and Children and Families as well as members of the project team and Principals and Governors from both Academies. The role of the Project Board is to monitor the delivery of the project against programme, budget and quality and to resolve issues that cannot be resolved at project team level. The Local Authority is ultimately responsible for the project though and this cannot be devolved to the Project Board. It is therefore proposed that this project will also report to the Council's Capital Portfolio Board.

Delivery of Additional School Places

- 3.9 The rebuilt Academies will provide a total of 2050 school places for students aged 11-18. There will be 900 places for the Crest Girls' Academy, 750 places for the Crest Boys' Academy and 400 places in the joint girls and boys sixth form.
- 3.10 The total number of 2050 school places represents an increase of 300 places or one form of entry per academy. This was approved by the Executive in June 2009 when a report was presented with the outcome of the consultation on the statutory proposals to discontinue the John Kelly Technology Colleges. The report set out the need for the additional forms of entry and the local authority's statutory duty to provide school places for every child resident in the borough. At the time of that report it was anticipated that the first of the new school places would become available in September 2012 but expansion was linked to the availability of the new buildings and additional school places will not now be available until April 2014.

- 3.11 The opening of the secondary provision at Ark Academy from September 2010 has created an additional 900 Y7-Y11 school places in Brent. It is forecast that the current pressure on primary school places will lead to a pressure for secondary school places from September 2013 onwards. Hence, the availability of an additional form of entry at each of the Crest Academies by September 2014 will help to meet future demand.

Procurement Process

- 3.12 The Outline Business Case (OBC) was approved on 10 March 2010 and the procurement of contractors from the PfS Contractors' Framework began shortly afterwards. The procurement process was delayed due to three key factors: discrepancies with the appointment of TA/PM and subsequent re-tender, discrepancies with the Preliminary Invitation to Tender (PITT) process requiring re-issue and delay to the project due to review by Central Government (these dates are outlined in table 1).
- 3.13 As outlined above the Council has now procured a TA/PM from the PfS National Framework. The Council re-issued the PITT in October 2010 and submissions were returned. Following the PITT re-issue the project has progressed on time and the procurement process is outlined below. The Council's Procurement Unit has supervised the procurement process of the PM/TA, re-issue of the PITT and the subsequent ITT.

Preliminary Invitation to Tender

- 3.14 The PITT was issued to all twelve Framework Panel Members on 19 October 2010. PITT submissions were received from six Panel Members: Balfour Beatty Construction Ltd, Rydon Construction Ltd, Kier Education, BAM Construction Ltd, Wates Construction Ltd and Willmott Dixon Construction Ltd, on or before the deadline on 2nd November 2010.
- 3.15 All of the bids were evaluated by representatives from E-ACT, Brent Council, the Academies, and Turner and Townsend (Technical Advisors). Consensus scoring was undertaken on 8 November 2010 against the published evaluation matrix, with weightings as follows:
- Part A – Design Management – 40%
 - Part B – Delivery Works – 40%
 - Part C – Handover – 10%
 - Part D – Pricing – 10%

- 3.16 After consensus scoring (chaired by the Council's Procurement Unit), four Panel Members were invited to clarification interviews held on 15 November 2010 after which the original consensus scores were confirmed. Both the short-listed and unsuccessful panel members were informed of the outcome and offered formal feedback. ITTs were then issued to the following two short-listed panel members: BAM Construction Ltd and Wates Construction Ltd.

Invitation to Tender

- 3.17 ITT documents were sent to both panel members on 29th November 2010. Thereafter a series of nine clarification/engagement meetings were held between 6 December 2010 and 28 February 2011 where both teams met with the Sponsor, Brent Council, Academies and technical representatives. During this process the response to the ITT was developed by the panel members and information clarified by the client/technical advisory team. During the ITT period, formal Requests For Information (RFIs) and clarifications were recorded on the electronic portal and managed by the Project Manager. Responses were provided to all RFIs in a timely manner and further LA clarifications were issued to both bidders where necessary. Unless information was commercially sensitive, all responses to requests for information were shared with both bidders. Final compliant bid submissions were received on Thursday 10 March 2011.
- 3.18 Both of the bids were evaluated by representatives from E-ACT, Brent Council, the Academies, and Turner and Townsend (Technical Advisors). Consensus scoring was undertaken on 28 March 2011 (chaired by a Council Procurement officer) against the published evaluation matrix with weightings as follows:
- Part A – Design Management – 60%
 - Part B – Delivery – 20%
 - Part C – Handover – 10%
 - Part D – Pricing – 10%
- 3.19 Both tender submissions were of a high standard. The outcome of the ITT evaluation is detailed in Appendix 2. Wates Construction Ltd scored highest against the published criteria, its proposal was considered affordable and it was therefore appointed as the Selected Panel Member.

Selected Panel Member

- 3.20 Following evaluation, the Selected Panel Member (SPM) – Wates Construction Ltd was appointed under delegated authority by the Director of Regeneration and Major Projects. Both panel members were informed by emailed letter of the decision on 12 April 2011. BAM Construction Limited attended a full feedback session on Thursday 21 April 2011 where all elements of the design and engagement process were discussed. Wates Construction Limited did not take up the offer of formal feedback.
- 3.21 The formal SPM letter was issued to Wates Construction Limited on 21 April 2011. Subsequent minor revisions were requested and agreed and a revised letter sent. A signed Selected Panel Member letter was received by LBB on 11 May 2011. Since the announcement of the SPM the client and project team have worked closely to more fully develop the designs, co-ordinate stakeholder engagement, develop and submit the planning application and progress contract documentation.

Final Business Case

- 3.22 As part of the procurement process, it is necessary for the Council to submit a Final Business Case (FBC) to PfS for approval. Officers have worked closely with the PfS Project Director on the content of the FBC and a draft FBC has now been submitted for peer review to PfS. A copy of the draft FBC (and appendices) is attached to this report as Appendix 1.
- 3.23 The FBC states that the Local Authority is ready to enter into a Design and Build Contract with Wates Construction Ltd and a Development Agreement with E-ACT. It details the procurement process undertaken and provides information on the interface with other contracts such as ICT hardware procurement undertaken by E-ACT. The FBC provides a detailed programme of work and a breakdown of the contract sum confirming that the project is both deliverable and affordable.
- 3.24 The FBC also includes a statement of support from the Academies Sponsor E-ACT who has confirmed that the Sponsor has been fully involved in the work to develop these detailed designs, has signed off the designs and confirms that they support the Education Brief developed for the Academies. In accordance with the Terms of Reference of the Crest Project Board the draft FBC has also been issued to Project Board members for their agreement prior to submission to PfS.
- 3.25 Due to the programme timetable and the wish to award the contract in December 2011 in order to complete the Academies by April 2014 (Easter school holidays), Members are asked at this stage to approve the draft FBC attached as Appendix 1. It may be that certain changes to the draft FBC are requested by PfS as part of the peer review process and therefore Members are also asked to delegated authority to the Director of Regeneration and Major Projects in consultation with the Director of Finance and Corporate Services to approve the final FBC and to submit it to PfS.

Planning Approval and Consultation

- 3.26 A planning application was submitted for the scheme on 29 June 2011 following both pre-application advice from the Planning Service and pre-application consultation with local residents. Both processes are detailed in the planning application but Members can be assured that this was an extensive process of engagement both with the public and statutory bodies.
- 3.27 The application was referred to the Greater London Authority (GLA) and a number of additional and/or revised planning conditions were recommended as a result. A number of amendments were required to the scheme in order to comply with the new London Plan which had not been in effect when the planning application was submitted. The changes focus on access and sustainability issues and include the provision of a green roof, contributions to Transport for London for bus stop and bus capacity enhancements, extensive covered cycle parking and additional electric car charging points. There is also a requirement to respond to Environmental Agency requirements on selection of external hard landscaping materials and surface water drainage

strategy. These changes attract additional costs which are detailed further in paragraph 4.2 of the Financial Implications section and Appendix 3. The pre-application advice from LBB Planning Service and indeed advice after the application was submitted indicated that the application did not need to be referred to the GLA, therefore the costs associated with these late and necessary scheme revisions will need to be borne by the Council outside the designated project budget but from the Council's agreed capital allocation for this project. The majority of costs associated with general revisions to the scheme in order to achieve planning approval have been met by the Contractor. This is in line with the provisions of the D&B Contract.

- 3.28 On 28 September 2011 the Planning Committee delegated authority to the Head of Area Planning to approve the application as recommended subject to additional conditions. The GLA then provided the outcome of the second stage report on 17 October 2011 and the Planning Service then issued the Planning Decision Notice on 19 October 2011.
- 3.29 There is a residual risk of Judicial Review of the planning decision which the Council accepted the liability for in the OBC. Members are reminded that authority to award the contract is sought and if provided would be implemented before the period in which an application for a judicial review could take place had expired (see paragraph 5.7 for further detail).

Design and Build Contract

- 3.30 The Executive is recommended to award the Design & Build Contract to Wates Construction Ltd subject to final approval of FBC from PfS and the Council entering into a Development Agreement with the Sponsor. As PfS approval of the FBC is required and the Development Agreement signed before the contract can be entered into, Members are asked to approve the Council entering into a Development Agreement and delegate authority to the Director of Regeneration and Major Projects in consultation with the Director of Finance and Corporate Services to finalise the FBC (if required) in order to enact the award of contract.
- 3.31 Details on the Design & Build Contract are provided in the Legal Implications section of this report (paragraphs 5.2-5.6). At the time of drafting this report the contract documentation is being finalised for issue to PfS Commercial division for their review and approval of any derogations to the standard form. It is expected that approval will be forthcoming.
- 3.32 The Design & Build Contract sum is detailed in paragraph 4.2 of the Financial Implications section of this report.
- 3.33 Members should note that the Council proposes to increase the contract sum over that funded by PfS by way of fixed sum contribution for the following:
- Scheme revisions required for the GLA (see paragraph 3.27 for further detail)
 - A specific revision requested by the Planning Service to re-locate the sports pitches (as a risk mitigation measure due to the proximity of the pitches to the boundaries)

- Works in connection with the telecom mast re-location. The latter is additional work specific to this contract due to the presence of a number of telecom masts on the existing Academies buildings. The Local Authority is expected by PfS to provide an unencumbered site to the contractor and the costs attached to re-locating these telecom masts onto the new buildings (as the least risk option for project delivery rather than remove them) is a project specific cost. The Council intends to recover all costs associated with telecom masts from third parties and this is detailed further in paragraph 4.10 of the financial implications section.

Risk Management

- 3.34 A comprehensive risk register has been developed and is provided as an appendix in the draft FBC which is Appendix 1 of this report. The risk register was developed and agreed in a formal risk workshop held on 7 September 2011 which was attended by the Crest Project Board including PfS and representatives from Wates Construction Ltd. The risk register has subsequently been updated by the project team to reflect changes in risk profiles of items as continuing project work has either reduced or closed the risk.
- 3.35 The top ten risks to the project are currently:
1. Coordination between the programmes in relation to increased risk attached to ICT, based on appropriate access by the ICT Provider
 2. Loss of continuity of education provision (standards and attainment)
 3. ICT interface between infrastructure and hardware procurement doesn't work or is unreliable
 4. Risk of Judicial Review of planning approval
 5. FF&E budget will not provide level of quality required
 6. Discovery of further asbestos on site
 7. Staff non-acceptance of learning spaces and FF&E in spaces
 8. Construction programme phasing of scheme not deliverable/ impacts on continuity of education. Buildings not opening on time
 9. Risk of call-in of Executive award of contract
 10. The project does not fund the aspirations of the sponsor, the academies and the LA
- 3.36 In respect of risk mitigation, each risk has a management strategy/mitigation process identified in the risk register as well as an action owner and review date. Risks will be monitored against review dates and/or in regular meetings at both project team and governance level. At project team level risk management will be a regular item on the Design User Group agenda and will continue after the contract is awarded in monthly progress meetings. Key risks and issues are highlighted by the LBB Project Manager to the Project Board in monthly meetings. The project contingency budget will be used to cover the cost of any risks should they materialise and have a mitigation cost. Members are asked to note this approach to risk management.

Additional works outside of the Design and Build Contract.

3.37 Members are asked to note Officers intention to appoint Wates Construction Ltd to undertake additional works outside of the Design and Build Contract. This contract covers urgent repairs to drainage on the site some of which must be completed before the enabling works phase of the Design and Build Contract (planned to commence on 17 December 2011 as a result of the recommendations in this report) to avoid either any delay to the contract and/or any disruption to the Academies. Delays to the contract as a result of the condition of existing drainage would significantly compromise the whole delivery of the Academies programme on time. As such works are so intrinsically related to the Design and Build Contract, Officers have obtained an exemption from the Director of Finance and Corporate Services from the usual requirement to seek three quotes for this low value contract as there are good operational and financial reasons for awarding such contract to Wates Construction Ltd.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval.

4.2 The value of this works contract will be £37,323,456. This includes the D&B Contract sum (as funded by PfS) plus the Council's additional contribution of £272,378.

4.3 The funding for the project is paid to the Local Authority from Partnerships for Schools as shown below in table 2:

Table 2

Funding Element	Funding (£)
D & B Contract Sum	£37,051,078
ICT Hardware	£2,675,500
Project Support	£300,000
Total funding allocation	£40,026,578
VAT on ICT Hardware (at prevailing rate at 1 st February 2011)	£535,100

Project Support funding of £300k has already been paid to the Council and the remainder of the funding will be paid in quarterly instalments based on the cashflow phasing schedule provided to PfS in the FBC. The cashflow phasing schedule identifies quarterly payments in line with the contractors milestone payments for the D&B Contract.

4.4 Funding for ICT Hardware (plus VAT on ICT Hardware) is paid to the Council in quarterly instalments as above however the ICT Hardware will be procured by E-ACT who will invoice the Council for reimbursement accordingly.

- 4.5 At OBC the original funding for this project from PfS was £41,627,577. In January 2011 as a result of a national efficiencies exercise a reduction of £1,601,000 was applied to the Crest project. The way in which this reduction was attributed to the D&B Contract and ICT Hardware elements of the budget was agreed with E-ACT and is reflected in table 2 in 4.3 above.
- 4.6 No further reductions in funding are anticipated. Members may wish to note that as one of the last Academies to be approved through the Academies Programme, the Crest Academies project is considered to be well funded in comparison to current Government school funding programmes.
- 4.7 In February 2010 the Executive approved the use of £1.6million from the Councils main capital programme for project support for Crest. At that time it was expected that a significant proportion of that budget would be spent on technical advisory and project management services. Members are asked to note that the project has remained within this £1.6m budget despite it now covering the following:
- Technical advice and project management (including internal resources)
 - Legal costs
 - Surveys
 - Communications and consultation costs
 - Additional contributions to the D&B Contract sum (as detailed in paragraph 3.33)
 - Separate contracts for emergency drainage repairs and off-site highway works, plus contributions to TfL for bus stop enhancements (as detailed in paragraphs 3.37 and 4.8).
 - All costs associated with telecom mast re-location (as detailed in paragraph 3.33 and 4.10)
 - Project contingency (to be used to address risks and unforeseen events)

All capital costs for the project are contained within the total funding available from the Council and PfS (£300k project support funding outlined in 4.3 above). See Appendix 3 for further details.

- 4.8 As the contracting authority the Council carries the risk of cost overruns; therefore officers will ensure that any potential additional costs are managed appropriately through the established project management framework. The Council's capital contribution outlined above includes a small client project contingency to address such risks and unforeseen events should they occur. Members are asked to note that the Council's contribution to the project was reduced to £1.6 million from the £5 million originally in the capital programme as a result of a decision made in the February 2010 Executive committee. That decision was made in the context of the relevant paragraphs in the report which highlighted that "potentially there could be a further call on the £5 million." For information, the Council has subsequently reduced the amount in the capital programme for Crest to £2.735 million. See further detail in Appendix 4.

- 4.9 The expenditure of project funding (including contingency) is approved by the Assistant Director for Property and Asset Management or Director of Regeneration and Major Projects accordingly. It is also reviewed monthly by the Crest Project Board and it is expected that the Council's Capital Portfolio Board will also review this project in monthly meetings.
- 4.10 Costs associated with the telecom mast relocation are shown in the council's budget (as a worst case scenario) but officers intend to recover these costs from others to ensure there is no financial impact to the council. For clarity, the cost shown in 4.2 above is the cost of additional work Wates Construction Ltd will complete as part of the D&B contract to physically accommodate the masts on the roof of one of the new buildings. This will be recovered from the telecoms operators (under the terms of agreements to lease). There are also costs for professional fees and legal costs which will be recovered from E-ACT (from existing rental income from telecom operators). At the start of the project to relocate the telecom masts (November 2010) the Council confirmed to PfS that it would underwrite any costs associated with the actions required. At that time, those costs were estimated to be up to £750k. The Council has now reduced these costs to a total of approximately £150k and has agreements to recover all of these costs to ensure there is no financial impact to the council.
- 4.11 In addition it is anticipated that the costs of the bus stop enhancements required by TfL (planning condition) and off-site highways works which are currently profiled in the council's budget will be recovered by Section 106 contributions from the Dollis Hill Estate residential development. Off-site highways works will be undertaken as a separate contract with the LBB Highways department.
- 4.12 The separate contract with Wates Construction Limited to undertake urgent drainage repair will be funded from the council's capital contribution.
- 4.13 There are also revenue implications for this project. There is an estimated requirement of £100k to cover general revenue costs to completion of the project; approximately £50k during 2011-12 and £50k between 2012-2015. This will be met by the existing Regeneration and Major Projects revenue budget. There is also a potential revenue requirement from April 2014 to meet the requirements of the Transport for London planning condition to implement bus capacity enhancements should the bus capacity assessment (to be undertaken by December 2011) identify a shortfall in capacity. Officers will appoint a planning consultant to assist in the discharge of this planning condition; responsibility for which falls directly to the Council. If required, the estimated cost of the bus capacity enhancements is a maximum of £55k per annum for three years (2014-2017); a total commitment of £165k. The Council will need to absorb this revenue cost in core budgets from April 2014 onwards should it be required.

5.0 Legal Implications

- 5.1 The Council is the registered proprietor of the freehold of the Crest Academies site with ownership being vested in the Council's name on 1st

September 2009 under education legislation following the closure of the Foundation Schools forming the John Kelly Technology Colleges. When the two schools became the Crest Academies on 1st September 2009 Brent Council granted E-ACT a 4 year lease of the existing school buildings pending completion of the development of the new Crest Academies buildings.

Design and Build Contract

- 5.2 The Design and Build Contract is being procured using a national framework agreement set up by PfS. The Public Procurement Regulations 2006 allow public bodies to set up framework agreements and prescribe rules and controls for their procurement.
- 5.3 Contracts can be called off under such framework agreements without the need for them to be separately advertised and procured through a full EU process. However, the call off process is itself quite heavily regulated. The Legal & Procurement Department has been involved in advising officers throughout on adherence to the rules contained in the Regulations and on the rules of the process established by PfS.
- 5.4 The call off contract is also subject to the Council's own Standing Orders in respect of High Value contracts and Brent's Financial Regulations. 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 Director of Legal & Procurement 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 Director of Legal & Procurement has confirmed that participation in the PfS Contractors' framework is legally permissible.
- 5.5 On 15 February 2010, the Executive gave its approval to the procurement route for the Academies and to the criteria to be used to shortlist tenderers and evaluate tenders. The same Executive meeting further authorised the Director of Children and Families Services, in consultation with the Borough Solicitor, to agree the selection of the selected panel member for the Design and Build Contract following evaluation of tenders. Having considered all relevant matters, the Director made the decision to appoint Wates Construction Ltd as Selected Panel Member on 12 April 2011. Following further liaison with Wates Construction Ltd, Officers now seek approval to award the Design and Build Contract subject to approval of the FBC and the signing of a Development Agreement with the sponsor, E-ACT.
- 5.6 The Design and Build Contract is a template PfS document on standard terms. Officers and representatives from Wates Construction Ltd have met to discuss minor derogations from the template contract to reflect project specific elements. There has been agreement between the parties that

certain derogations are required and the council will seek PfS consent to all such derogations.

- 5.7 As detailed at paragraphs 3.28 and 3.29, the Planning Service issued a Planning Decision Notice on 19 October 2011 and in view of the intended date of award of the Design and Build Contract there is a residual risk of judicial review of the Planning Decision Notice. This is because judicial review proceedings may potentially be commenced within 3 months of the date of such Notice. The council has previously accepted such residual risk of judicial review of the planning decision in the OBC. Officers have not to date received notice of any intended judicial review proceedings.
- 5.8 Because of its financial implications and community significance, approval of the FBC is a Key Decision and should normally be for the Executive. However, as the FBC is still in draft and further comments are awaited from PfS as part of the peer review process, taking the FBC to a later Executive would delay submission of the final FBC to PfS and subsequent approval of the FBC. Until the FBC is approved, the council is unable to award the Design and Build Contract therefore a delay to the commencement on site would occur. Accordingly, the Executive is asked in the recommendations in this report to approve the draft FBC and to delegate to the Director of Regeneration and Major Projects, in consultation with the Director of Corporate Finance authority to approve the FBC for onward submission to Partnership for Schools (PfS).
- 5.9 In addition to the Design and Build contract, Officers wish to award a contract to Wates Construction Ltd in respect of urgent repairs to drainage on the site some of which must be completed before the enabling works under the Design and Build Contract. Such contract is classed as a Low Value Contract and would ordinarily require Officers to seek at least three quotes. As detailed at paragraph 3.37, given the nature of the works is so closely related to the main Design and Build Contract, the Director of Finance and Corporate Services has granted an exemption from such requirement pursuant to Contract Standing order 84 (b).

Development Agreement

- 5.10 The Development Agreement to be entered into by the Council and E-ACT provides for the grant of 125 year lease to E-ACT. It is a template PfS document on standard terms which provides for the Crest Academies to occupy the existing buildings and temporary classrooms on the Crest Academies site during the development phase and decant to the new Academies buildings on a phased basis.
- 5.11 From practical completion of the phases the Crest Academies will occupy the new Academies buildings on an occupational licence until the expiry of the defects liability period. On issue of the Final Certificate the Council will grant E-ACT the Academy Lease a 125 year lease at a peppercorn rent.
- 5.12 The two Telecom consortia comprising the operators of the existing six installations on the existing buildings will enter into agreements for lease with

the Council in respect of two new joint telecom installations to be constructed on the roof of the new Boys' Academy building. The Assistant Director for Property and Asset Management will enter into these Agreements for Lease under his delegated authority. The two telecom leases which provide for the payment of commercial rents will be granted to the consortia on the completion of the new telecom installations and the surrender of the existing installations. E-ACT will become the landlord of the telecom consortia on completion of the Academies Lease.

- 5.13 There will in addition be a lease granted to the electricity undertaking of the new electricity substation to be constructed as part of the development.

6.0 Diversity Implications

- 6.1 An Equality Impact Assessment of the rebuilding of Crest Academies has been undertaken in consultation with the Council's Diversity Team and is attached as Appendix 5.
- 6.2 The Equality Impact Assessment indicates that there is no adverse impact as a result of the rebuilding of the Crest Girls' and Crest Boys' Academies.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 No LBB staffing/accommodation implications for the immediate purpose of this report.

Background Papers

Project files

Executive Reports

- C&F-09/10-001 Discontinuance of John Kelly Boys' Technology College and John Kelly Girls' Technology College and their replacement by the Crest Boys' Academy and the Crest Girls' Academy (June 2009)
- C&F-09/10-004 New Accommodation for John Kelly Boys' Technology College and John Kelly Girls' Technology College to be replaced by the Crest Boys Academy and the Crest Girls' Academy (July 2009)
- C&F-09/10-017 Crest Academies: the next steps including procurement and submission of Outline Business Case (February 2010)
- April 2011 Technical Amendment report

Appendices

1. Draft FBC (and all appendices including risk register) - Not for publication
2. ITT Evaluation Summary - Not for publication

3. Summary breakdown of Council's capital contribution
4. Additional Council's Capital Contribution - Not for publication
5. Equality Impact Assessment

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