



Executive
8th October 2007

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

Wards Affected:
Preston Ward

**Update on the proposed Second City Academy at
Wembley Park**

Forward Plan Ref: C&F 07/08-005

***Not for publication ('below the line')**

Attachment G is not for publication as it contains the following category of exempt information as specified in Para 3, Schedule 12(a) of the Local Government Act 1972 namely : “*Information relating to the financial or business affairs of any particular person (including the authority holding that information)*”.

1.0 SUMMARY

- 1.1 The report sets out an update on the proposals for setting up the second City Academy (Wembley Park Academy – an operational name) and seeks Executive approval to proceed to develop the scheme to Outline Business Case. This report also offers a preview of the procurement process (able to start in February 2008) as outlined in Paragraphs 4.1 to 4.16 in the context of the risks set out in Paragraphs 6.5 to 6.7 and in Attachment A and seeks approval in principle to the Council procuring the buildings for the Wembley Park Academy.
- 1.2 Since the last report to Executive on 15 January 2007, further progress has been made in respect of the land purchase from Transport for London (TfL) for the second Academy. Paragraphs 3.13 to 3.15 of the report summarises the progress made, in respect of land purchase.

- 1.3 A Corporate wide project group has been set up, sponsored by the Director of Children and Families. The outcome on its deliberations is reported in respect of the Sponsorship (Paragraphs 3.8 and 3.9), Admissions arrangements (Paragraphs 3.10 to 3.12), Town Planning Considerations (Paragraph 3.16), the Funding Agreement (Paragraph 4.18) and the governance of the Academy (Paragraphs 5.1 to 5.4 and set out in Attachments B and C) for Executive's attention and scrutiny.
- 1.4 A Project Steering Group (PSG) has also been set up with membership that includes the Sponsor, the DCSF, PfS and the Local Authority. At its inaugural meeting it agreed to bring forward the completion of the Outline Business Case (OBC) to the end of January 2008. This is possible as much of the preliminary work relating to the funding of the OBC phase has been agreed between the Sponsor, the DCSF and the LA. In addition there are no complex school organisation issues (such as closure of an existing or predecessor school).
- 1.5 The NUT lodged a complaint to the (now disestablished) Commission for Race Equality (CRE) about the proper siting of this intended second Academy. Paragraphs 8.4 and 8.5 set out the thrust of the Council's response.

2.0 RECOMMENDATIONS

The Executive are requested to:

- 2.1 Agree in principle that the Council will procure the buildings for the Wembley Park Academy.
- 2.2 Note that officers will report back to members prior to the commencement of the procurement to seek approval for the procurement process and to the evaluation criteria.
- 2.3 Note the initial risk assessment carried out (Paragraphs 6.5 to 6.7 and of Attachment A) in respect of the procurement process for the Wembley Park Academy and note that officers are undertaking work to develop the risk assessment further.
- 2.4 Agree that officers proceed with the development of the Outline Business Case (OBC) procurement process for the construction of the second Brent Academy as set out in Paragraphs 4.1 to 4.6.
- 2.5 Note the financial implications associated with the development of the OBC and the procurement of the buildings for the Wembley Park Academy.
- 2.6 Note that officers intend to procure consultant architects to assist with the development of the OBC using the PfS Framework for consultants, or the Council's own framework of consultants.
- 2.7 Note that it is proposed that the Wembley Park Academy will open in temporary accommodation near to or on the Wembley Park site in **September 2009** with an intake in Reception (Year R) age and Year 7 and that officers will report back to members for approval to the early opening once temporary accommodation has been sourced, the siting identified and the associated costs determined.

3.0 BACKGROUND

3.1 Much of the background to this initiative has been set out in previous reports to the Executive. The 15th January 2007 Executive therefore AGREED to:

- (i) acquire from Transport for London their Bridge Road site in Wembley Park together with its associated playing fields.
- (ii) authorise the Head of Property and Asset Management to acquire the site at or within 10% of the value set out in the Not for Publication attachment to the report and to then dispose of the land for the purposes of constructing the new City Academy provided that, having considered the responses to any consultation carried out, he is satisfied that the disposal should proceed.
- (iii) instruct officers to prepare a comprehensive plan for ensuring substantial community access to the new school's sports hall, playing fields and other facilities which should form an integral part of the scope of the feasibility study that will need to be undertaken on the new school.
- (iv) commence consultation with schools, other stakeholders and the wider public on the Council's strategy for school development as set out in this officer report and the earlier report to the November 2006 Executive.

3.2 Set out below (Paragraphs 3.3 to 3.7) is a brief synopsis of some of the key elements of the Expression of Interest (EoI) with key themes in bold. The Council has set up a Corporate project group to steer the project forward. Some of the outcomes of its deliberations are set out below under "Admissions Arrangements", "Land Matters – An Update", "Town Planning Considerations". Section 4.0 below deals with procurement matters and Section 6.0 the assessment of risk (also outlined in Attachment A) associated with the procurement process. It also provides more information on the timelines for the proposed Wembley Park Academy. Attachments D and E set out respectively the Glossary of Terms used in this report and the broad process of establishing an Academy.

Expression of Interest

3.3 The Expression of Interest (EoI) has been revised and submitted to the then DfES (now DCSF). The EoI received Ministerial approval in July 2007. The EoI is a document that has been developed in partnership with the sponsor. Once approved the project moves into the feasibility stage and funding is released to develop the **Outline Business Case**.

3.4 The EoI confirms that the proposed Academy will be for **1630, 3-18 year old students and** will be sited at Wembley Park. The 1630 total comprises 60 nursery places, 420 primary places (2 form entry), 900 secondary places (6 form entry) and 250 16-19 sixth form places. This new school is required to meet the demands for extra primary and secondary school places which will

result from new housing in the Wembley regeneration scheme and from new housing developments generally in Brent. The Council commissioned review of school places in the borough has been refined; the revised review identified a need for an additional 9FE primary places and 14FE secondary places by 2014.

- 3.5 As the demand for school places is increasing in the borough, with particularly acute pressure now being felt in the Wembley area, it is proposed that the Academy will open in temporary accommodation, near to the site in **September 2009** with proper intake in Reception (Year R) age and Year 7. The proposed new building is targeted for **completion and opening in September 2010**. This is a tight time frame and it is therefore necessary to consider a phased handover of the new build Academy with effect from September 2010. At the time of drafting this report discussions are under way with relevant stakeholders over the potential temporary sites. The site will need to be agreed with the Academy sponsor before a recommendation is made. The LA is in discussion with PfS on funding this temporary accommodation. A further report will be brought before an Executive providing further details regarding the proposed site and associated costs and seeking approval to the early opening.
- 3.6 The Academy is to be built on the Wembley Park, Bridge Road site after a site options appraisal carried out by officers and the judgements by a Young People's panel which was set up to consider three site options. The site offers a number of **benefits** – its area of 45000m², good access by public transport and a location to meet the needs of a growing school population in the area. The other two sites considered by the Young People's Panel included Chalkhill temporary Health Care Centre site and the Gwenneth Rickus site. These sites were not considered to be suitable.
- 3.7 At secondary level the Academy will **specialise** in Citizenship and Mathematics. There will be **no selection** by ability. In line with the Admissions Code, the admissions criteria will be clear, fair and objective, and broadly consistent with other Brent schools. The proposed admissions criteria will be developed with the sponsor and consulted upon during the feasibility stage and will be in line with the Admissions Code that the Authority and Academy Trust will abide by. They will be part of the Funding Agreement signed off by the DCSF. At secondary level in order to ensure that the Academy serves the most deprived areas of the Borough and in order to minimise traffic congestion around the site it is proposed to develop a mechanism for admitting children who live within easy access of the Academy by public transport as well as straight line distance from school. This is developed further in Paragraphs 3.9 to 3.11.
- 3.8 As agreed by the Executive on 16th April 2007, ARK (Absolute Return for Kids) is the **sponsor** of the Wembley Park Academy. ARK is an international charity whose mission is to transform children's lives. ARK Schools was created in 2004 to help children break the cycle of underachievement. As part of the Academies programme ARK Schools is working with the DCSF and local authorities to set up new schools. ARK's goal is to ensure that all children at its schools have access to an education that gives them real options to move into higher education or pursue a career of their choice. The first of ARK's schools opened in White City in September 2006. There are four other schools,

sponsored by ARK, at feasibility stage in Westminster, Southwark and Lambeth.

- 3.9 ARK will provide £1.5m of revenue funding to this Academy project principally to establish an endowment fund for the Academy. This money could be used over the lifetime of the Academy to fund activities which will focus on countering the educational impact of disadvantage and deprivation and/or for educational work with the local community. The specific programme of activities to be funded will be decided by the Governing Body which will include Council representation.

Proposed Admission Arrangements

- 3.10 In line with the Admissions Code, the criteria will be clear, fair and objective, and will be further developed and consulted during the feasibility phase. The Sponsor has committed to work very closely with the Council on this aspect since it is crucial to the agenda for raising achievement and standards for all of Brent's communities.
- 3.11 It is envisaged that applications will be dealt with in the following priority order for reception admission at 5 years
- children who are looked after;
 - children with identified social and/or medical need;
 - children with siblings on roll at the Academy;
 - children who live closest to the school by the shortest safe walking route
- 3.12 It is envisaged that applications at 11+ will follow the same priority for the first four categories; it is proposed that for the fourth category there will be consultation on using distance (shortest safe walking route) between home and school and ease of access by public transport in accordance with the admissions code of practice chapter 2- Setting Fair Oversubscription Criteria.

Land Matters –An update

- 3.13 The Council has now entered into an Overriding Lease with TfL under which it is permitted to carry out site and soil surveys. The area included within the lease excludes the currently occupied house and is subject to access arrangements with Tubelines and their contractors who are undertaking trackside engineering works. As head-lessee the Council now has the ability to control certain activity on the site and also is able to deal directly with the various legitimate occupiers. Thus the unauthorised occupiers have recently quit the site. This is likely to be an on-going issue and as such officers are now considering the best method to deal with the latest incursion, being the construction of tree-houses. The current sub lease to Brent Community Sports Limited (BCSL) expired on 28th September 2007. At the time of drafting this report officers intend to grant a further sub lease through to 4th January 2009 to Brent Community Sports Limited though with the power to break the lease after six months on three months' notice if so required. Some of the other occupiers of the site will also be required to take formal contracted out leases from BCSL. The effect of this is the Council will be able to regain vacant

possession when it is required but ensures the site is utilised as much as possible until that time thus obviating the need for alternative arrangements and security. The rental cost of the over-riding lease to Brent Council is £25,000 pa as from 1st October 2007 rising to £34,000 upon vacant possession of the currently occupied residential property. It is anticipated TfL will secure vacant possession in early 2008. Subject to completion of the sub-lease to BCSL some of this cost will be recoverable via a sub-rent

- 3.14 The Council has agreed heads of terms for an agreement for lease and this is currently being negotiated with TfL. Under the agreement for lease the Council will be able to construct the new academy and then grant a sublease to the academy trust. The agreement for lease will be conditional upon obtaining of planning permission, the academy trust being in existence and willing to enter into the necessary agreement with the Council, and vacant possession having been obtained. The Council will not have an obligation to relocate any existing businesses on site when vacant possession is obtained).
- 3.15 It is expected that the Council will be in a position to grant a 125 year lease to the Academy Trust at the required time. At present there are buildings on the site which will need to be demolished. It should be noted that in regard to Para. 3.1 (ii) above the question of part of this site as being considered as public open space has been resolved such that the consultation, which had been proposed as a condition prior to disposal of the site by Brent Council, is no longer a requirement. As part of an academy building programme the Council is required to provide the site for the Academy as an unencumbered site. The norm is therefore that the Council would meet the associated costs such as demolition costs. However, the Council has raised with PfS whether the costs of demolition can be met from budget provision for abnormal site conditions.

Town Planning Considerations

- 3.16 This was reported to the Executive in January 2007. The considerations remain as set out in the report. For ease of reference, the Executive is reminded of the thrust of the assessment in the January 2007 report, which stated:

“The Council have assessed the general planning issues relating to the development of part of this site for a school and are satisfied that a school could be accommodated whilst leaving the bulk of the sports ground open for continued open recreational use. Any proposal for a new school would have to show how safe access could be achieved and a traffic impact assessment would be required as part of any planning application. In the event of a planning application being made for a new school, a full consultation will be undertaken with local residents and businesses prior to any decision being made.

Part of the frontage of the Wembley Park site (Bridge Road) is already identified in the UDP as having development potential. If a school is not developed, the most likely form of development would be shops/offices with flats above, although a development that comprised wholly of office would be acceptable to the planning service. Failure to secure this site for school use, could therefore enable a different type of development on site.

The Wembley Park site therefore provides an immediate and affordable opportunity for a school to be developed on site. The need to ensure that population growth in the borough is supported by appropriate infrastructure, including schools is made clear in Brent's Draft Core Strategy to the new Local Development Framework. The Wembley Park site is identified as Proposal 11 in the Council's Site Specific Allocations preferred options that are presently subject to consultation. The preferred development option is for a new school building along the Bridge Road frontage, with dual use playing fields for public use with improved facilities and accessibility".

4.0 PROCUREMENT OF ACADEMY BUILDINGS

Outline Business Case (OBC) – Feasibility Stage

4.1 We are now in the OBC (feasibility) stage of the project (see Attachment E for the summary of the process). It is estimated that this phase will be completed by end of January 2008. During this phase the OBC and Funding Agreement will need to be developed and agreed by the Executive. The stages in setting up the Academy is as follows:

	Stage	Target date for Approval/Completion
1.	Expression of Interest (Eol)	Approved
	<u>Feasibility Stage</u>	
2.	Outline Business Case	January 2008
3.	Funding Agreement	January 2008
	<u>Implementation Stage</u>	
4.	Final Business Case	January 2009
5.	Contract Award	January 2009
6.	Completion of the Academy	September 2010

4.2 The LA will develop an OBC which includes a feasibility study for the scope of works for the school and provides evidence of the process (e.g. site selection, appraisal of optimum build zone, land ownership issues etc). The OBC will contain basic high level outline designs and cost estimates for the new Academy building, which will be in sufficient detail to allow the capital funding to be set. Outline Planning permission is not required at this stage but a planning statement confirming that the development of an Academy on the site is allowable development within the Council's Town Planning parameters (such as UDP, LDF) will be required. Once the OBC is approved and the cost estimates agreed, there will be no more funding allocated to the project unless

in circumstances of “force majeure”. Although the responsibility for delivering the OBC rests with the LA it will be supported in this process by PfS. The sponsor will input into design development through the Design Briefing Group (as explained in Paragraph 4.3).

4.3 At feasibility stage the LA will establish a Design Group for the Academy. C&F have successfully established this as a way of delivering large schemes across a number of school schemes. This group will be in place until the building is handed over or even beyond. The Sponsor’s input into the project will be through the Design Group, which will also include the Academy Trust, LA officers and other interested parties as appropriate. The Authority will seek to engage the help of design advisers as appropriate to ensure high design quality, functionality and excellent build quality within available resources. The Design Group will sign off the design on behalf of the Project Steering Group for which the membership includes the Sponsor, the Local Authority, PfS and DCSF.

4.4 It is proposed to appoint consultant architects from the PfS framework to carry out the feasibility study. This is a discrete piece of work which is essential to identify any site abnormalities to ensure that the budget set can deliver the school size (m²) as defined in Building Bulletins 98 and 99. Using architects from the PfS Framework brings the following advantages:

- They have been selected as part of a competitive procurement process and so have the correct skills and experience
- Their fees have been bid in competition and are fixed as part of the Framework agreement
- They may have been involved in the development of a business case previously

4.5 **If it is not possible to procure architectural services from the National Framework due to unavailability or lack of capacity**, the Council may procure the architects services through the Council’s own framework agreement.

4.6 It is estimated that the value of this commission, architectural services is of the order of £50k plus there will be additional costs for other allied professional services.

4.7 The EoI requires that the LA procures the buildings for the academy. Accordingly, the Council undertake the procurement of the contractor for building the Academy and enter into the contract with the contractor. An overview of the process for the procurement is set out below and in Attachment E. The risks associated with the Council being responsible for building the Academy are discussed at Paragraphs 6.5 to 6.7.

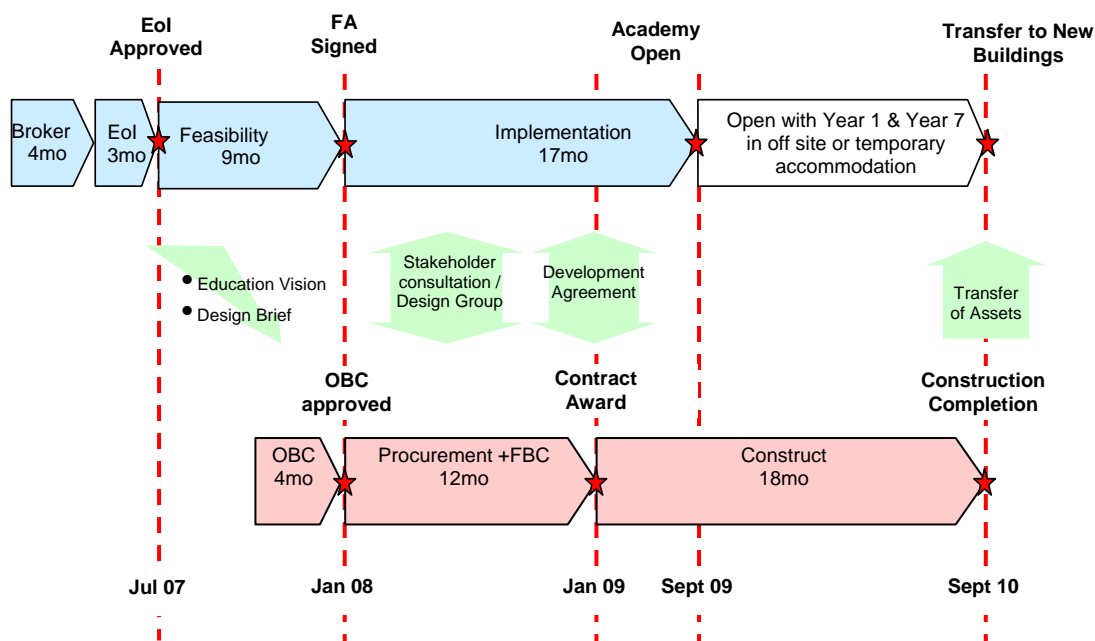
4.8 Construction contractors for Academies can be procured either within the Building Schools for the Future (BSF) arrangements (for Local Authorities which are part of the BFS programme) or via a National Framework set up by the PfS (for LAs which are not currently part of the BSF programme). The Council is not due to be part of the BSF programme before 2011 and accordingly must procure the Contractor via the PfS National Framework. The

Eol confirms that the Academy buildings will be procured using the PfS National Framework route.

- 4.9 The National Framework is a panel of contractors which has been set up by the PfS specifically to build Academies for LAs 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 Academy. The Council will have authority to use the National Framework once it has signed a Memorandum of Understanding with PfS. This will allow the Council to procure the school through the National Framework whilst achieving value for money.
- 4.10 The LA will lead the Local Competition once the OBC has been approved by the PfS and the DCSF. The Local Competition involves the following steps :
- Issue of Preliminary Invitation to Tender (PITT) inviting all six Panel Members (Balfour Beatty, Carillion, Kier, Laing O'Rourke, Skanska, Wilmott Dixon) to confirm if it is their intention to bid;
 - Selecting a short list of two bidders by evaluating reviewing this submission of PITT
 - Issue of Invitation to Tender (ITT) providing guidance, information and direction to shortlisted bidders on the development of the proposals;
 - Working with two bidders to develop proposals for the Academy;
 - Evaluating the proposals and selecting a Preferred Bidder;
 - Finalising designs to Stage D and the agreement to be entered into;
 - Preparing a Final Business Case (FBC) and securing DfES approval for funds to be released; and
 - Reaching Contract Award and starting work on site.
- 4.11 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.
- 4.12 The framework contractors will employ their own design teams to develop the designs to RIBA Stage D. The LA will need to consider whether it wishes to retain lead consultants to remain on the client side to provide technical support to the Design Group to help them review the Framework Contractors Proposals and select a preferred bidder.
- 4.13 It is important to note that there will be no contractual commitment from the LA until the D&B Contract is awarded, so shortlisted bidders will be expected to carry all development (ensuring the proposal complies with Town Planning

requirements in the context of the planning statement referred to in Paragraph 4.2 above) costs at risk until contract /sis. A further report will set out for the Executive the details of this process.

- 4.14 The preferred bidder will be responsible for submitting the full planning application before contract award. There will be no costs to the LA associated with the planning application.
- 4.15 The D&B contract will be novated to the Academy Trust at a date immediately following completion of the Defects Liability Period. The contract is novated for the purpose of Intellectual Property Rights and latent defects.
- 4.16 The Academy Trust will enter into a Development Agreement with the LA which allows the LA to deliver the Academy building to the Trust through a long term leasing arrangement – minimum 125 years from the date of opening. A non-exclusive Occupational Licence is contained within the Development Agreement. It is a standard form document which permits the Academy in certain circumstances to occupy the building prior to the grant of the long lease. LAs are strongly discouraged from seeking to negotiate amendments with the Academy Company which could impact on VAT treatment of the arrangements provided for in this agreement. The Development agreement provides for the LA in their own right to enter into a Design and Build Contract with the National Framework Partner.
- 4.17 The Executive is requested to agree the programme for the outline procurement route for the Wembley Park Academy buildings, noting the risks set out in paragraph 6.6 to 6.8 Officer's will present a further report to members requesting formal approval to go out to tender prior to commencing the Procurement process in February 2008 .The timeline for the delivery of the Academy is shown below:



(Note: The PSG agreed to bring forward OBC to the end of January 2008)

Funding Agreement

- 4.18 In parallel with the OBC development, the LA and Sponsor will work to reach a Funding Agreement. This work will be led by the Project Lead from DCSF Academies Division and funded directly by the DCSF, who will ensure it is closely coordinated with the detail in the OBC. DCSF will ensure that the Funding Agreement is approved alongside or prior to OBC approval. The Funding Agreement will set out the education vision for the school including the curriculum model, the staffing and organisational policies, develop the consultation plan (including any PR and publicity) and establish the governance of the Academy. Funding for developing the Funding Agreement is via a separate funding stream direct to the sponsor.

5.0 GOVERNANCE OF THE ACADEMY

- 5.1 The sponsor will set up the Academy Trust which will run the Academy. The Articles of Association of the Trust set out the governance of the Academy (Attachment B). In summary, as a minimum the Trust will have three governors including a sponsor governor, an LA governor and a parent governor. In practice there are likely to be more governors including co-opted and additional governors. A future report to the Executive will provide further details on Governance whilst seeking confirmation of the Council's nomination.
- 5.2 The Principal Sponsor shall appoint the sponsor governors and may appoint himself as a sponsor governor. The LA may appoint the LA governor.
- 5.3 The head teacher shall be a member of the governing body who shall be treated for all purposes as being an ex officio governor. The elected parent governor(s) shall be elected by parents of registered pupils at the Academy.
- 5.4 Attachment C sets out the generic governance structure for all ARK Academies with the division of responsibilities between the ARK schools Board and the local governing body. It sets out the composition of the governing body confirming LA representation and lists its responsibilities.

6.0. FINANCIAL IMPLICATIONS

Acquisition of Wembley Park Site

- 6.1 The report to Executive in January sets out the provisional financial terms agreed for the acquisition of the Bridge Road Wembley Park site for the Academy from Transport for London (TfL). Further detailed implications (terms for the acquisition of Wembley Park Site) are set out in the "Not for Publication" section for the Acquisition of Wembley Park Site.

The Council is to be responsible for the vendor's solicitor's costs. This is standard commercial practice when a purchaser directly approaches a landowner. The Council will negotiate and try and cap these costs.

These terms have not fundamentally changed in the subsequent negotiations since the January report. Provision for these costs has been made as follows:

- (a) 15% deposit payable in 2007/08 and associated legal costs. Provision has been included in the Children and Families Capital Programme.
- (b) Balance of purchase price and stamp duty will be provided from the overall Children and Families Capital Programme for 2009/10. This will be considered within the overall allocation of the programme for that year. Any delay in construction may mean payment will slip into the following financial year.
- (c) The costs of managing the in-house project team is being met from existing budgets.

6.2 Revenue Costs

6.2.1 Having now entered the over-riding to lease the Council will be required to meet the costs of managing the site including any security costs and ad hoc estate management issues. These are estimated to be £12k in 2007/08 with a similar amount in a full year. Additionally there is the annual rental cost of £25k per annum, rising to £34,600 as from early January 2008 until the completion of the final lease to TfL. These costs will be partially offset by rental income receivable from those tenants who continue to use the site. This is subject to current negotiations with the various organisations currently using the site. Any net balance will be met from the Children and Families Revenue Budget.

6.3 Build Costs

6.3.1 Academies are funded at the same level as other BSF schools. As with BSF schools, available funding is calculated on the BB98 gross floor area based on the proposed number of pupils on a school roll.

6.3.2 PfS has visited the proposed site, made an assessment of the need and set an indicative funding envelope. The indicative funding allocation assumes 100% new build and has been set at £31.068m, pending the completion of the OBC. The rates used in the calculation have been agreed with the framework contractors. The new build base rate used in the calculation is in the order of £1,900 per square metre including site costs, abnormals and professional fees. An allowance of around 5% for contingency is included within this indicative funding envelope. 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 as this remains a risk for the project to be managed. The LA will not enter into the building contract until it is assured that the funding allocation will deliver the accommodation brief.

6.3.3 The LA 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. PfS will work with the LA to agree how much of this allowance can be drawn down at the outset of the project. The project support funding allocation is confirmed as £300k to support the OBC work. The LA will not have to repay the costs should the project not gain OBC approval. It is likely that the initial costs of developing the

OBC will be at least £300k (See Attachment F for initial cost estimates). This will be managed closely to see if the estimate can be reduced as any costs above £300k will have to be met from the C&F budget.

6.3.4 The LA has a role beyond the OBC as outlined 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 LA, and the amount will be dependent on how pro-active the approach is in implementing the scheme. Evidence from other projects indicate the overall cost through to delivery of the new build and this element could range from £100k to £300k spread over 2008/09 and 2009/10. This will need to be contained within existing Children and Families budgets.

6.3.5 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 a realistic estimate cannot be made of the possible costs but the council will be required to fund this and no specific sources of funding have yet been identified but it will fall as a cost for the extra school places and hence on the Children and Families Capital Programme. Indicative budgets for providing additional school places are included within the Capital Programme for 2008/09 to 2010/11.

6.4 Other Issues

(i) Stamp Duty

Stamp Duty is payable by the Council on the initial lease transaction with TfL (see above). It is possible that there may be a Stamp Duty liability when the site is transferred to the Trust. Specific advice is being taken to seek to structure the transaction in such a way as to avoid any second payment.

(ii) VAT

One major advantage of the Council being responsible for procuring and managing the construction of the Academy is that it will be able to reclaim the VAT input tax on the work. The Trust would be unable to do this. Again specialist advice is being obtained to ensure all transactions are tax efficient.

(iii) Early Opening on Alternative Site

See Paragraphs 2.7 and 3.5 of the report. The Council will initially seek Government funding before progressing this proposal.

(iv) Demolition Costs

In order to provide a cleared site for construction existing buildings will need to be demolished. The Council is seeking to include these costs in the overall funding envelope as an abnormal cost. If this authority is not obtained the costs potentially fall on the Council through the Children and Families Capital Programme. The demolition costs are estimated to be up to £100k.

Risk Assessment and Management by LA in Procurement Process

- 6.5 The cost risk to the LA of developing the OBC is picked up within the project support funding which will cover the costs of surveys including the traffic impact assessment etc. If at the OBC stage the Academy does not proceed then the LA is not required to refund the project support funding.
- 6.6 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. Risks to the LA are therefore minimal either force majeure or poor management of the contract.
- 6.7 The table at Attachment A provides some further information on risk transfer.

7.0 LEGAL IMPLICATIONS

Procurement of the Design and Build Contract

- 7.1 The estimated value of this contract of the Design and Build Contract for the Academy 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.
- 7.2 It is proposed that the Design and Build Contract will be procured under a 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 mini competition will need to be undertaken with the contractors on the framework as set out in Paragraphs 4.9 and 4.10 of this report.
- 7.3 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 initial view is from the Borough Solicitor is that use of the PfS framework for the Design and Build contract is likely to be legally permissible however, further detail is needed on the mini-competition process in order to give a definitive view. The necessary approvals will be sought from the Borough Solicitor and the Director of Finance and Corporate Resources once more detail is available on the procurement process.
- 7.4 Officers will report back to the Executive to request approval for the procurement process and evaluation criteria for the Design and Build Contract prior to commencing the procurement.

Procurement of Consultant Architects

- 7.5 The value of the contract for consultant architects is below the EU threshold for services contracts and accordingly the procurement will not be bound by the full application of the Public Procurement Regulations 2006. It is however, subject to the overriding EU principles of equality of treatment, fairness and transparency in the award process.
- 7.6 The contract is a low value contract under the Council's Contract Standing Orders and accordingly standing orders would usually require that 3 written quotes be sought for the contract. However, as it is proposed that the contract be procured using the PfS framework which has been set up for consultants, the requirement to seek 3 quotes may be dispensed with as long as the Borough Solicitor advises that participation in the framework is legally permissible and approval to participate in the framework is obtained from the Director of Finance and Corporate Resources. At this stage legal services has not been provided with documentation regarding the framework but it is assumed that the necessary approvals will be sought in due course.
- 7.7 Chief Officers have the necessary delegated authority to award the contract for consultant architects pursuant to Part 4 of the Council's Constitution.

Property Matters

- 7.8 The legal issues relating to property matters are addressed in Paragraphs 3.13 to 3.15 of this report.

8.0 DIVERSITY IMPLICATIONS

- 8.1 Much of the implications are set out in the July 2007 report and the January 2007 Equality Impact Assessment.
- 8.2 Children and Families have successfully implemented to large school projects successfully ensuring that the diverse community is able to engage with the power, is able to obtain relevant and appropriate information from the Council and has been able to influence both the process and the outcomes.
- 8.3 The Council will review now the process it worked and will seek to further improve stakeholder engagement.
- 8.4 Since the report to the Executive in April 2007 the NUT have made a formal complaint to the CRE alleging that the Council failed to carry out a sufficient race equality impact assessment before embarking on this new Academy project. The main argument of the NUT is that the siting of the new Academy favours Asian children as against Black children. The CRE wrote to the Chief Executive to invite the Council to respond. A full response to the CRE was sent on 1st August 2007.
- 8.5 The Council's response has fully rebutted the allegations. The CRE has responded to encourage continuing dialogue between the Council and the NUT. There is no indication by the CRE that it has concerns that there has

been specific racial discrimination by Brent or that it intends to investigate the matter further.

- 8.6 Consultation on the implementation strategy for developing school places (of which the specific proposal for Wembley Park Academy is an element) is also to begin in the Autumn.

9.0 STAFFING CONSIDERATIONS

- 9.1 There are no staffing implications arising out this report . As there is no predecessor school, there are no TUPE considerations

10.0 ENVIRONMENTAL CONSIDERATIONS

- 10.1 An Environmental Impact Assessment will be carried out. Relevant Council departments will be consulted on any environmental considerations.

11.0 HUMAN RIGHTS CONSIDERATIONS

- 11.1 Everyone has a right to education as set out at Protocol 1, Article 2 of the European Convention on Human Rights. The proposed further enables the Council in meeting this right.

BACKGROUND PAPERS

- i) Executive report of 13th November 2006
- ii) Executive Report of 15th January 2007
- iii) Executive Report of 16th April 2007
- iv) Expression of Interest

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