

For General Release

REPORT TO:	Cabinet 8 July 2019
SUBJECT:	Commissioning of School Places for Pupils with SEND – The Beckmead Trust & Enhanced Learning Provisions within mainstream schools
LEAD OFFICER:	Robert Henderson, Executive Director of Children, Families & Education Shelley Davies, Interim Director of Education
CABINET MEMBER:	Cllr Alisa Flemming, Lead member for Children, Young People & Learning In consultation with Cllr Simon Hall, Lead Member for Finance & Resources
WARDS:	All

CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON

The Council's Corporate Plan 2018-2022 includes the following priority outcome:

Our children and young people thrive and reach their full potential

The Direct Contract Awards to The Beckmead Trust and Enhanced Learning Provisions (ELPs) within mainstream schools, for the provision of school places for pupils with SEND, directly link to the realisation of this priority.

FINANCIAL IMPACT

The Beckmead Trust

The Direct Award with the Beckmead trust is for a period from 1st September 2019 to the 31st August 2024 (inclusive of the full possible extension period), with a total contract value of £25,756,000 for up to 272 commissioned school places as listed in Table 1 below for the 19/20 academic year, and funded from the Dedicated School Grant (DSG) High Needs Block.

Enhanced Learning Provision (ELP)

The Direct Award with each individual ELP will also be for a period from 1st September 2019 to the 31st August 2024 (inclusive), with a total contract value of £10,335,000 for up to 304 school places as listed in Table 2 below, and funded from the Dedicated School Grant (DSG) High Needs Block.

FORWARD PLAN KEY DECISION REFERENCE NO.: 1419CAB

This is a Key Decision as defined in the Council's Constitution. The decision may be implemented from 1300 hours on the expiry of 5 working days after it is made, unless the decision is referred to the Scrutiny & Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below:

RECOMMENDATIONS

1. To approve the award of contract for school places for pupils with SEND as recommended by the Contracts and Commissioning Board, to The Beckmead Trust for a contract term of five (5) years at a maximum contract value of £25,756,000.
2. To approve the award of contracts for school places for pupils with SEND as recommended by the Contracts and Commissioning Board, to the sixteen (16) Enhanced Learning Provisions (ELPs) listed in this report, for a contract term of five (5) years at a maximum contract value of £10,335,000.
3. To note that the Director of Commissioning and Procurement has approved a waiver in order to direct award the contracts in accordance with Regulation 18a of the Council's Tenders and Contracts Regulations.

2. EXECUTIVE SUMMARY

- 2.1. The purpose of this report is to advise of the intention to make a Direct Contract Award to The Beckmead Trust, and to each of the 15 Enhanced Learning Provision (ELP) operating as Special Needs Units within mainstream schools in the London Borough of Croydon for pupils with SEN.
- 2.2. The Beckmead family of special schools converted to an Academy, 'The Beckmead Trust', with effect from the 1st April 2019. ELP provision in mainstream schools in the borough of Croydon has developed over the past 7-10 years, and again over this period all schools delivering ELP have also become Academies.
- 2.3. The growth of contracted provision at The Beckmead Trust and ELPs as outlined in the report recommendations is in line with the Council's SEN Strategy, in order to provide high quality specialist school places for children with SEN locally.
- 2.4. It is considered that there is a clear and robust rationale for the Direct Award of these contracts, as explained within the main detail of this report.
- 2.5. The approval of a direct award to these schools

- supports continuity of education provision for the SEND pupils,
- provides value for money through the reduction in spend on out-of-borough specialist provision, thereby contributing to the DSG Recovery Plan
- delivers education provision locally for Croydon pupils in line with the SEND strategy

CCB Approval Date	CCB ref. number
13 th June 2019	

3. DETAIL

- 3.1. The Council has a statutory duty to provide suitable education, which is an efficient use of public resource, for those children with Education, Health & Care Plans (EHCPs).
- 3.2. The Council's new SEND strategy details the Council's aim to place local children in local education provision, in those schools that are judged as good or outstanding by Ofsted. This will be delivered by ensuring that local specialist school provision is utilised for the most complex pupils, partnered with an improvement in the consistency and breadth of inclusive mainstream provision. The direct contract awards to both The Beckmead trust and ELPs supports the delivery of these objectives.
- 3.3. The Department for Education's (DfE) definition of an ELP is a Special Needs Unit. Attending an ELP means that a pupil with SEND is able to attend a mainstream school locally, whilst also being able to access a specialised learning environment, to meet their specific SEND needs.
- 3.4. There are 11 Primary ELPs and 5 Secondary ELPs in the borough of Croydon. Each ELP has a specific SEND designation across the following areas:
 - DLD: Developmental Language Disorder
 - MLD: Moderate Learning Difficulties
 - ASD: Autistic Spectrum Disorder
 - PD/Medical: Physical Disability / Medical
 - HI : Hearing Impairment
- 3.5. Since the creation of the ELPs over the past 7-10 years following the submission of an expression of interest by schools in delivering the provision, the Council has worked in partnership with the schools to develop the local provision, and all schools with ELPs have now converted to Academy status.
- 3.6. The Beckmead Trust which also converted to an Academy in April 2019, are currently considered the only suitable special school provision in Croydon with the necessary technical expertise, capacity, highly specialised premises and a quality rating of outstanding by OFSTED

- 3.7. Given the recent change in school status, the Council has obtained legal advice with regards the Council's commissioning relationships with Academy schools. As they are now separate legal entities, and as such procurement regulations apply, it is necessary to formalise contractual agreements with each of the schools.
- 3.8. Regulation 32 (PCRs) allows Contracting Authorities to apply a negotiated procedure to a Direct Contract Award without prior publication in specific circumstances. Regulation 32 (2) (b) (ii) provides that an Authority may use the procedure where competition is absent for technical reasons. The following paragraphs detail the case for a direct award at this point in time.
- 3.9. Both the Council and schools have made capital investments into the ELP provision in order to make the premises viable. There has also been significant personnel resource invested by all parties in terms of staff time and capacity, to assist schools to develop their ELP provision and build up their expertise.
- 3.10. Pupils will have provision at current ELPs written into their Education, Health & Care Plans (EHCPs), which constitutes a legal document. Pupils would need to remain at their designated ELP for the duration of their primary or secondary education, as appropriate. It would therefore not be appropriate to move these children to another school, or would open the Council to legal challenge.
- 3.11. For both The Beckmead Trust provision and the existing ELPs in mainstream Academy schools, the Council considers that the other school providers in the local area do not have the requisite specialist skills or environment, or an ability to increase their capacity in the required timeframe. This will need to be kept under review.
- 3.12. This does represent a shift in practice for the Council and will result in a change in commissioning relationships with these Academy Schools. This should be seen as a positive change as it will ensure that robust, fair, open, transparent agreements, with adequate protection for both parties, are now formalised between the Council and Academies.
- 3.13. The contractual agreement between the Academies and the Council covers the Council's standard requirements for a contract, as defined in the Council's Tenders & Contracts Regulations.

4. CONSULTATION

- 4.1 Consultation with stakeholders has been conducted as a key part of the Academy Conversion process.
- 4.2 In-depth consultation with stakeholders has also been undertaken as part of the development of the Council's new strategy for SEND 2019 – 2022. Further consultation is planned in 2019/20 on the five (5) key strands of the implementation plan for the strategy.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1. Revenue and Capital considerations

- 5.1.1. The DSG High Needs Recovery Plan identifies 3 key areas which will specifically impact on reducing spend:
- Development of local capacity to meet a broader range of needs and reduce reliance on higher cost placements in the independent / non-maintained sector.
 - Strengthening capacity for greater inclusion of SEND pupils in local mainstream schools. Croydon is the 2nd highest London Borough for the percentage of pupils in special school provision.
 - Improved pathways for post 16 young people with SEND. Currently 40% of the High Needs Block spend is on young people aged 17-25 with an EHC plan.
- 5.1.2. Critical to the financial delivery of the Recovery Plan is the commissioning of additional places at The Beckmead Trust and within the local ELPs to reduce spend in costly Out of Borough Special Schools. Local ELPs will now also be required to take pupils with a higher level of support needs to reduce the reliance on placements in the independent sector.

The Beckmead Trust

- 5.1.3. Funding for the contract with The Beckmead Trust is made up a combination of:
- a) **Core place funding of £10k per pupil place.** As Beckmead is now an academy it will receive the place funding for Elements 1 & 2, directly from the Education & Skills Funding Agency (ESFA).
 - b) **A 'Top-up' element from the High Needs Block.** There are a range of different Top-Up rates depending on the assessment of needs. The LA will provide the top up funding from the High Needs DSG allocation as indicated in the Table 1 below for the lifetime of the contract.
- 5.1.4. The total value of a five (5) year contract with The Beckmead Trust, will be £25.756m, based on the 2019/20 level of commissioned places.

Expenditure due to decision:

2019/20	£3.005m (7 months of 2019/20 financial year)
2020/21	£5.151m
2021/22	£5.151m
2022/23	£5.151m
2023/24	£5.151m
2024/25	£2.147m (5 month of 2024/25 financial year)

Total **£25.756m** funded from High Needs DSG.

Table 1: The Beckmead Trust – Place Funding Modelling

The Beckmead Trust - Family of Schools	Places	Place Funding per pupil per annum (EFSA)	Top Up Funding per pupil per annum (LA)	Total cost per annum (EFSA)	Total cost per annum (LA)	Total cost x 5 years (LA)
Beckmead Monks Orchard KS 2 & 3 SEMH	58	£10,000	£19,061	£580,000	£1,105,551	£5,527,754
Chaffinch Brook Lower (Ks 1 & 2) & Upper (KS 3 & 4) ASD (complex)	84	£10,000	£18,744	£840,000	£1,574,518	£7,872,589
Bramley Bank (SEMH) Long stay/EHCP	24	£10,000	£18,903	£240,000	£453,672	£2,268,360
The Beck - (KS1 & 2) SEMH (AP)	12	£10,000	£18,903	£120,000	£226,836	£1,134,180
Rainbow KS1 - AP and EHCP	6	£10,000	£18,903	£60,000	£113,418	£567,090
Beckmead College KS4 & 5	70	£10,000	£19,061	£700,000	£1,334,285	£6,671,427
Tharreo House SEMH KS3, 4 & 5	18	£10,000	£19,061	£180,000	£343,102	£1,715,510
Total	272			£2,720,000	£5,151,382	£25,756,910

5.1.5. The Beckmead Trust will work in partnership with the Local Authority to fill places. Top up payments will only be paid on the basis of the number of children on roll.

5.1.6 There may, infrequently and by exception, be a child for whom funding is agreed at a rate that is variant from the above, either through a small transition funding arrangement or through one child being allocated funding for two places by a bespoke arrangement.

Enhanced Learning Provisions (ELPs)

5.1.7 ELP place funding is calculated through a combination of

- Core place funding of up to £10k per pupil place (Elements 1&2).** All academies receive the place funding directly from the Education & Skills Funding Agency (ESFA).
- The ‘Top-up’ element from the High Needs Block (Element 3).** The LA contract is to provide the top up funding from the High Needs DSG allocation and reviewed annually.

Expenditure due to decision:

2019/20	£1.206m (7 months of 2019/20 financial year)
2020/21	£2.067m
2021/22	£2.067m
2022/23	£2.067m
2023/24	£2.067m
2024/25	£861k (5 month of 2024/25)
Total	<u>£10.335million</u> funded from High Needs DSG

Table 2: Primary & Secondary School ELP places- as of June 2019

	Primary Schools	Academy	Specialism	No. of places	Top Up Funding per pupil per annum (LA)	Total cost (LA) per annum	Total Top Up x 5 years (LA)
1	Aerodrome Primary	Reach	DLD	19	£6,000	£114,000	£570,000
2	Applegarth Academy	STEP	DLD	18	£6,000	£108,000	£540,000
3	Castle Hill Academy	Platanos	ASD	40	£6,000	£240,000	£1,200,000
4	Chipstead Valley Primary	PACE	PD/medical	14	£6,000	£84,000	£420,000
5	Courtwood Primary	Collegiate Trust	ASD	14	£6,000	£84,000	£420,000
6	Fairchildes Academy Community Trust	Faichildes Academy Community Trust (FACT)	MLD	14	£6,000	£84,000	£420,000
7	Gilbert Scott Primary	Collegiate Trust	MLD	14	£6,000	£84,000	£420,000
8	Kensington Avenue Primary	Manor Trust	ASD	14	£6,000	£84,000	£420,000
9	Kingsley Primary Academy	Cirrus	HI	16	£000*	£000	£000
10	Oasis Academy Shirley Park Primary	Oasis	MLD	14	£6,000	£84,000	£420,000
11	South Norwood Primary	Pioneer Trust	MLD	14	£6,000	£84,000	£420,000
Secondary Schools							
12	Orchard Park High	Greenshaw Trust	DLD	26	£9,000	£234,000	£1,170,000
13	Woodcote High	Academy	PD/medical	9	£9,000	£81,000	£405,000
14	Meridian High School	GLF	ASD	30	£9,000	£270,000	£1,350,000
15	Oasis Academy Coulsdon	Oasis	ASD	25	£9,000	£225,000	£1,125,000
16	Oasis Academy Arena	Oasis	ASD	23	£9,000	£207,000	£1,035,000
			Total	304		£2,067,000	£10,335,000

*Kingsley Academy is illustrated as a nil net cost, as the top-up element is recharged back to the council to cover the LA provision of support services to deliver the contract.

5.1.8. There will be an individual agreement with each of the 16 Academy Schools with ELPs. Each agreement will be for a period of five (5) years.

- 5.1.9. The total value across these 16 individual agreements will be £10,335,000, which is based on the 2019/20 projected level of commissioned places. Place numbers may vary over the lifetime of the contract so will be reviewed on an annual basis.
- 5.1.10 Both allocations are made in the context of well documented High Needs Block funding pressures, experienced both nationally and locally. Both Direct Contract awards will therefore significantly contribute to the DSG Deficit Recovery Plan 2019-2024 as they will enable more children to be placed in education provision locally.
- 5.1.11 All schools will be required in the contract terms and conditions, to commit to paying staff engaged in the service delivery at or above the London Living Wage

5.2. Risk Assessment

- 5.2.8. Deployment of Croydon's DSG High Needs Block Funding is subject to Schools Forum approval and as such will need to be reported and agreed annually. There is a minimal risk that HNB funding could be reduced during the lifetime of the contract, which would result in a reduction of local capacity, and impact on the DSG recovery plan.
- 5.2.9. There is minimal risk of challenge from other local providers who currently do not have the capacity, expertise or track record to deliver the specialist ELP provision required. This will need to be kept under review.
- 5.2.10. The only route for another provider to provide challenge to the award to Beckmead would be to set up as a free special school in Croydon. This is considered low risk, as one of the key tests for DfE permission to establish a free school is whether the need is already met within the borough. The existing provision formalised through these contracts, provides the additional capacity to demonstrate that the needs of Croydon pupils are already met.

5.3 Future savings/efficiencies

- 5.3.1 Future savings/efficiencies in this area are linked to the realisation of the aims and objectives of the Council's new SEND strategy 2019-2022, and the DSG Deficit Recovery Plan 2019-2024.
- 5.3.2 Budgetary provision for this contract exists but deployment of Croydon's Dedicated Schools Grant, High Needs Block Funding is subject to Schools Forum approval and, as such may vary in the future.

Approved by: Kate Bingham, Head of Finance -Children, Families and Education

6. LEGAL CONSIDERATIONS

- 6.1 The Director of Law and Governance comments that the legal considerations are as set out in this report.

Approved by: Sean Murphy, Director of Law and Governance

7. HUMAN RESOURCES IMPACT

- 7.1. This report recommends a direct award to The Beckmead Trust and to the 15 Academy Trusts with ELPs. This means the service provisions would remain as they are currently and there would be no direct HR considerations arising from this report for Croydon Council.
- 7.2. However, if there are any changes in the future that result in a service provision, this may invoke the effects of the Transfer of Undertakings (Protection of Employment) 2006 Legislation (amended 2014). It is therefore important to seek HR advice at an early stage.

Approved by: Nadine Maloney on behalf of the Director of Human Resources

8. EQUALITIES IMPACT

- 8.1. There is no proposed change to existing service provision and the commissioning of high quality school places for pupils with SEN, contributes to the Council meeting the public sector equality duty and advance equality of opportunity across all protected characteristics groups.
- 8.2. An Equality Analysis was undertaken as part of the Council's new strategy for SEND 2019-2024 to ascertain the impact of the proposed change on groups that share a protected characteristic. The SEND strategy sets out to improve the outcomes and life chances for children and young people with Special Educational Needs and Disabilities. The overall aim of the SEND strategy and the supporting criteria and policies is to improve and make enhancements to the service for all children and young adults with SEND in Croydon through effective identification, assessment, planning and review of children and young people's progress. The analysis identified the proposed changes as being low risk.

Approved by: Yvonne Okiyo, Equalities Manager

9. ENVIRONMENTAL IMPACT

- 9.1. N/A

10. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 N/A

11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

11.1 A Direct Award is considered justified for the following reasons:

The Beckmead Trust

- The Council has a statutory duty to provide suitable education, which is an efficient use of public resource, for those children with EHCPs. The Council's new SEND strategy also details the Council's aims to place local children in local provision, in schools that are judged as good or outstanding by Ofsted.
- The Beckmead Trust are the only local providers with the necessary technical expertise, capacity, highly specialised premises and quality rating (outstanding OFSTED rating).
- The Council has made significant capital investment in these schools to support the development of this specialist provision.

Enhanced Learning Provision

- The Council has a statutory duty to provide suitable education, which is an efficient use of public resource, for those children with EHCPs. The Council's new SEND strategy & DSG Deficit Recovery Plan also details the Council's aims to place local children in local provision. Placing pupils within these Enhanced Learning Provisions enables us to meet these statutory requirements.
- Both the Council and the schools have invested significant staff time to develop the capacity and expertise of the schools hosting ELPs.
- Both the Council and/or the schools themselves have invested in physically adapting the premises and improving their ELP offer.

12. OPTIONS CONSIDERED AND REJECTED

- a) **Do Nothing:** Without these Direct Awards, the Council would not be meeting its statutory obligations in relation to ensuring appropriate education placements for all SEN pupils.
- b) **Run a competitive procurement exercise:** The original development of ELP provision was offered as an option to all local schools. Children are placed at these Special School provisions for the duration of their education as defined within their EHCPs, and it would therefore not be appropriate to move these children to another school. This will be kept under review, should there be other appropriate competitors joining the local market in the future.

CONTACT OFFICER: Alison Farmer, Head of SEN.

BACKGROUND DOCUMENTS: None