

**Report for:
ACTION**

**Item Number:
14**

Contains Confidential or Exempt Information	Yes – Appendices C and D are exempt from disclosure by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972
Title	Broadway Living Registered Provider (BLRP) Business Plan
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Portfolio(s)	Cllr Julian Bell, Housing
For Consideration By	Cabinet
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Affected Wards	All
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Purpose of Report:

Following the successful registration with the Regulator of Social Housing of Broadway Living Registered Provider (BLRP), this report presents BLRP's growth proposals and draft business plan and associated allocation of funding for approval. These proposals will substantially increase the housing development programme and will require an unprecedented level of investment funding via a loan from the Council to BLRP. This report sets out the viability of the proposals, the risks to the Council but also the benefits that will ensure that the Council's ambition of delivering 2,500 Genuinely Affordable Homes by the end of March 2022 can be realised and that a substantial programme of new homes can be delivered each year into the future.

1. Recommendations

It is recommended that Cabinet

- 1.1. Notes that BLRP has now been successfully registered as a Registered Provider.

- 1.2. Notes and approves the draft BLRP Business Plan to be considered for approval by the BLRP Board on 9th November 2020 (at Appendix B and Confidential Appendix C) and summarised in paragraphs 3.5 below
- 1.3. Notes the existing funding allocation within the Councils General Fund capital programme of £149.212 million for the Broadway Living Capital Loans programme.
- 1.4. Agrees to incept a further £250.788 million funding allocation into the Councils General Fund capital programme for the Broadway Living RP Capital Loans programme, to provide an overall £400 million loan facility, consistent with the BLRP Business Plan, to be funded from prudential borrowing, with all the associated revenue costs being met from the income received from BLRP as summarised in paragraphs 4.1- 4.27 below.
- 1.5. Notes the £388.368 million loan funding requirement of the BLRP Business Plan, split £337.025m for development/investment loans relating to rent and shared ownership developments and £51.343 million market/commercial loans (£14.721 million development working capital loan and £36.622 million development loan) relating to market sale developments, with an additional £11.632 million providing capacity to respond to any variations during the development phase.
- 1.6. Notes the existing 2020/21 budget allocation within the Councils General Fund capital programme of £4.875 million to ensure that the delivery of the GLA programme can be progressed, approved by Cabinet at its 14 July 2020 meeting in the Housing Delivery Update report.
- 1.7. Agrees to incept a further £31.800 million budget allocation into the Councils General Fund capital programme, providing an overall £36.675 million budget allocation, to cover the pre-transfer costs of sites from the Council to BLRP and the re-provision of existing Council services. To be funded initially from prudential borrowing, with the associated interest costs being recovered from the overall interest receipts flowing back from BLRP to the Council and the capital costs recovered from capital receipts received upon the transfer of sites from the Council to BLRP.
- 1.8. Recommends to Full Council amendments to the necessary Prudential indicators to reflect the above capital commitments including the Capital Expenditure Forecast, the Councils Borrowing Need (Capital Financing Requirement), Affordability Prudential Indicator, the Operational Boundary, the Authorised Limit for External Debt and Authorised Limits. Following approval by Cabinet, Council officers will prepare a report to Full Council to amend these Prudential Indicators.
- 1.9. Subject to Full Council approving the required amendments to the Treasury Management Strategy and relevant prudential indicators, delegates authority to the Chief Finance Officer (following consultation with the Director of Legal and Democratic Services and the Executive Director of Place) to agree the terms and authorise the Council to enter into an overarching funding

agreement with BLRP, consistent with the funding allocation and the BLRP Business Plan.

- 1.10. Agrees that during the development period the Council will receive quarterly reports on the delivery of the Broadway Living RP Business Plan, such reports will include scheme by scheme details at a granular level and show how such schemes meet the Councils overall investment criteria.
- 1.11. Notes that the capital receipts generated through the sale of shared ownership or market sales will flow back to the Council to help manage the debt exposure.
- 1.12. Notes that establishment of a Housing Delivery Cabinet Committee approved by Cabinet in July 2020 was approved by full Council on 21 July 2020.
- 1.13. Notes that scheme specific reports will generally be considered by the Housing Delivery Cabinet Committee seeking approval for individual schemes including the disposal of Council owned sites and provision of funding to BLRP consistent with the approved Business Plan and overarching funding agreement respectively.
- 1.14. Delegates authority to the Executive Director of Place to enter into any revised GLA grant agreement necessary to reflect the transfer of responsibility for delivery of part of the GLA programme to BLRP as set out in the approved BLRP Business Plan.
- 1.15. Notes that a further report will be brought to a later Cabinet for approval of the Broadway Living (BL) Operational Business Plan and associated proposed staff transfers

2. Reasons for Decision and Options Considered

- 2.1. The Council approved setting up of a wholly owned subsidiary in October 2013 and incorporated a company, Broadway Living (BL), in March 2014 in order to progress the delivery of council housing and affordable housing in particular. This approval was considered in the light of a business case and options appraisal that were put together within the constraints of the then funding environment to tackle homelessness and housing pressures caused by the lack of good quality affordable rented homes to meet the needs of Ealing's residents.
- 2.2. The Council delegated authority to the Executive Director of Place in October 2018 to set up and register a new housing company Broadway Living Registered Provider (BLRP) to complement and supplement delivery of homes through its housing company Broadway Living (BL).
- 2.3. It is proposed that the Council (as shareholder, landowner and funder) commissions BL Ltd and BLRP to deliver a programme of housing as set out in the attached BLRP Business Plan which will include the transfer of Council owned land to BLRP at "best consideration" and Council funding alongside

GLA grant needed for the development of new homes. As a 'non-profit' RP, surpluses from market sale and shared ownership are reinvested in expanding the programme to deliver more affordable homes. Over the longer term BLRP will create a substantial asset base that will be able to support borrowing from other sources and therefore reduce the need for lending from the Council.

- 2.4. A substantial increase in the Council's house building development programme through BLRP provides social benefits of high quality, cheap to heat, secure homes at affordable rents and financial benefits to the Council in reducing the need for Temporary Accommodation, reducing demand on social care and other support services. This also contributes to delivery of the Council and manifesto target of 2,500 genuinely affordable homes.

3. Key Implications

3.1. Relevant previous recommendations approved by Cabinet

3.1.1. At its meeting of 14th July 2020 Cabinet approved a report entitled Housing Delivery Update at which the following recommendations were agreed:

1. Notes the options for delivery of the Programme and agrees that the schemes in the Programme should be delivered on the basis that
 - a. Some housing delivery schemes should transfer to and be delivered by BL/BLRP and others should be retained by the Council and delivered by BL on the Council's behalf
 - b. Cabinet delegates authority to the Executive Director of Place to determine which schemes should be transferred to BL/BLRP and which schemes should be retained by the Council following consultation with the Portfolio Holder
2. Subject to approval of recommendation related to the delivery of the programme
 - c. There should, subject to the outcome of a staff consultation and registration of BLRP as an RP and approval of a revised BL Business Plan, be a transfer of Housing Development and Regeneration team staff to BL to facilitate the delivery of schemes as outlined above
 - d. A TUPE consultation process be undertaken in September in relation to those staff it is proposed be transferred to BL
3. Subject to registration of BLRP as an RP and approval of a revised BL Business Plan to reflect the recommended options for delivery of the Programme, delegates authority to Executive Director of Place (following consultation with the Chief Finance Officer and the Director of Legal & Democratic Services) to negotiate and authorise the Council to enter into

- e. Service level agreements for the Council to provide back office functions to BL and BLRP
 - f. A service level agreement for BL to provide development related functions to BL/BLRP
4. Agrees that future Council governance of the Programme and proposals for delivery by BL/BLRP shall be on the basis of the structures set out in the report including the setting up of a Housing Delivery Sub-Committee
 5. Recommend to full Council that a Housing Delivery Sub-Committee be established as a sub-committee of Cabinet
 6. Delegates authority to the Chief Executive (following consultation with the Chief Finance Officer and the Director of Legal & Democratic Services) to negotiate and authorise the Council to enter into a Shareholder Agreement or to approve amendments to BL's Articles of Association as appropriate to reflect the governance arrangements.
 7. Notes and agrees that each proposal to access the HRA capital funding allocation will require a financial review to assess financial viability and risk on scheme by scheme basis.
 8. Receives Bi-annual reports on the delivery of the HRA Business Plan, such reports to include details of how such schemes meet the Council's overall investment criteria.
 9. Notes and supports the draft BL Growth Strategy which is intended to inform a revised BL Business Plan which will be submitted for consideration and approval by Cabinet later this year

3.1.2. At its meeting of 10th December 2019 Cabinet approved a report entitled Housing Delivery Update at which the following recommendations were agreed:

1. Note the latest position on delivering the target of 2,500 genuinely affordable homes (GAH) and establishing a sustainable programme of GAH beyond 2022.
2. Note the progress to fully establish Broadway Living and its subsidiary (BLRP) as the Council's housing delivery vehicles and that a further report will be brought back to Cabinet for approval of the Broadway Living business plan, loan agreements, and service level agreements before BL becomes fully operational.

3.1.3. At its meeting on 16th July 2019 Cabinet approved a report entitled Setting up a Registered Provider of social housing to support the delivery of genuine affordable housing at which the following key recommendations were agreed:

1. Note the progress made on setting up a Registered Provider (RP) as a subsidiary of Broadway Living Ltd (BL).
2. Delegate authority to the Executive Director of Place, following consultation with the Chief Finance Officer and the Director of Legal and Democratic Services, to agree the business case and the business plan for the RP and make the stage 2 submission to the Housing Regulator.
3. Delegate authority to the Executive Director of Place, following consultation with the Chief Finance Officer and the Director of Legal and Democratic Services, to enter into all the necessary agreements including the Intragroup (Ringfencing) Agreement, the Service Level Agreement and the Housing Management Agreement that will regulate the delivery of services by the Council to the RP.

3.1.4. At its meeting of 18th June 2019 Cabinet approved a report entitled Housing Delivery Update at which the following recommendations were agreed:

1. To delegate authority to the Executive Director of Place to substitute new projects within the GLA funding programme as may be necessary, if any of the current projects do not proceed within the programme, subject to GLA agreement.
2. To delegate authority to the Executive Director of Place to make any necessary amendments to scheme tenure mix on existing Council schemes within Ealing Council's GLA funded housing delivery programme where there are no additional funding requirements.
3. To delegate authority to Executive Director of Place, following consultation with the Chief Finance Officer, to provide subsidy of up to £10m to HRA schemes that require an amendment to the tenure mix as indicated in recommendation should that be required to deliver more Genuine Affordable Homes.

3.1.5. At its meeting of 16th October 2018 Cabinet approved a report entitled Housing Delivery Update at which the following recommendations were agreed:

1. To delegate authority to the Executive Director of Place following consultation with Executive Director of Corporate Resources and Director of Legal and Democratic Services to take any necessary steps to secure GLA affordable housing grant including entering into any grant agreements necessary to secure the funding.
2. To delegate authority to the Executive Director of Place, following consultation with the Director of Legal and Democratic Services to draft and consult on an intermediate tenure allocations policy, setting out Ealing's priorities for allocation, in addition to the GLA's eligibility criteria to support Ealing households who aspire to buy within the next 5 years.

3. To note the council investment required (through the General Fund Account and Housing Revenue Account) alongside the GLA Affordable Housing Programme grant and HRA Borrowing funding to deliver Ealing's Affordable Homes delivery programme over the next 4 years.
4. To note that subsequent budget updates, via the council's annual GF and HRA Budget Reports, will seek approval from Cabinet to support financial resource allocation, in light of the MTFS position, to deliver the strategy for 2,500 Genuinely Affordable Homes.

3.2. Background

- 3.2.1 The lack of affordable homes in Ealing and wider London is a key factor affecting residents' quality of life and well-being. Homes to buy and rent in the open market are increasingly expensive and unaffordable to many households. Genuinely affordable homes, such as low-cost rent and intermediate rented homes, play an important role in supporting residents' needs and aspirations.
- 3.2.2 Ealing Council has an ambitious target to deliver 2,500 genuinely affordable homes by 2022, including both starts and completions, which is embedded in the Corporate Plan. "Genuinely" affordable homes are defined as those at Social Rent, London Affordable Rent or London Living Rent. Other intermediate housing to buy or rent may be included where housing costs take up no more than one third of gross household income (in line with the rent setting methodology for the GLA's London Living Rent product).
- 3.2.3 Achieving the target of providing 2,500 genuinely affordable homes by all parties means a substantial increase in housing delivery from recent building rates by all providers averaging 275 homes per year to 625 per year which we are now on track to achieve.
- 3.2.4 The principal rationale for the establishment of a housing development delivery model for the Council has already been agreed to facilitate the increase in the supply of new homes which enables the Council to have greater control over how sites for new homes and tenure types are developed.
- 3.2.5 Through Broadway Living, Members have agreed an alternative model to HRA housing development that delivers sustainable housing development and management for Ealing. The main driver for this was the lack of Housing Revenue Account (HRA) funding capacity. However, following the HRA self-financing exercise and lifting of HRA borrowing caps, the Council is able to refine its approach to funding the delivery of affordable housing and explore the addition of a registered provider Broadway Living RP (BLRP) to provide another platform to secure homes for Ealing residents to deliver affordable housing in parallel with HRA schemes.

3.3. The Council's commission to Broadway Living

- 3.3.1 For some housing sites the option to develop through BL's company structure is beneficial due to its ability to operate more commercially than the Council. BLRP could more easily adapt to build for market sale and market rent to cross subsidise the provision of additional affordable housing. Such activities would not normally fit so easily within the Council.
- 3.3.2 BL and its subsidiary BLRP have an alignment with the Council's objectives and offer the following:
- Greater freedom over assets
 - Mitigation of government policy risk
 - Freedom for more commercial activity
 - Opportunity for a more commercial, agile and creative culture
 - Attract and retain specialist staff
 - Provide added value of external board members experienced in housing development and management
 - Produce future flexibility for delivery
- 3.3.3 In summary and as reported in the July 2020 Housing Delivery Cabinet report, those schemes which involve the development of sites within the HRA will remain within the HRA (e.g. High Lane, Copley, Golf Links Estate) and the Council itself will be the landlord. Conversely, the starting point for schemes for sites that currently sit within the General Fund is that the sites for affordable housing units should be delivered by BL and that BLRP would be the landlord (e.g. Southall Market Car Park). However, some flexibility about where the asset sits will be retained so that decisions can be made on a case by case basis.
- 3.3.4 It is proposed that BL will also manage the Council's retained regeneration programmes, negotiating and monitoring the structure of contractual arrangements with private sector partners engaged in delivering the redevelopment of housing estates.
- 3.3.5 Staff currently working in the Council's Housing Development and Regeneration team will transfer to Broadway Living and provide housing development services back to the Council for its retained schemes and to BLRP for its schemes.
- 3.3.6 In terms of further housing delivery options, BLRP can also negotiate the purchase of homes through s106 planning opportunities or other opportunities presented by the private sector providing these are consistent with the development strategy of BLRP and the Council is willing to support the schemes by providing funding, for example the Westgate House scheme.

3.4. The Council as Strategic Client

- 3.4.1 Broadway Living and BLRP will be the delivery agents for both BLRP and HRA schemes. The Council will have an important and new role as the strategic

client and will need to be proactive, agile and enabling to ensure that BL and BLRP are meeting the strategic housing needs of the council with reference to its housing strategy and planning policy. Strategic alignment between LBE and BL will need to be maintained through a common thread of objectives and regular meetings at senior levels, including board meetings where the council is represented alongside independent board members.

- 3.4.2 The Client function will rest with the Director of Growth and Sustainability. It will be delivered by the Assistant Director Housing Development supported by the Strategic Housing Team including a specialist Housing Commissioning Manager.

Monitoring

- 3.4.3 It is proposed that as part of the commissioning process performance metrics will be developed that flow from the attached BLRP business plan across its operational activity. Service level agreements (SLAs) between the Council and BL companies will set out service expectations, which will be monitored. The SLAs will need to provide for both interim housing development services and 'back office' services including Finance, HR and Pay Roll to be provided by the Council to BL and BLRP. These will be in addition to the SLAs for the delivery of housing management services and customer satisfaction provided by the Council's Landlord services to BL and BLRP.
- 3.4.4 The Council will also have a distinct role to ensure that as lender, landowner and shareholder BL plays an active role in supporting BLRP to provide quality housing that meets statutory and regulatory standards including minimising fire risk alongside meeting the Council's ambitions around climate change moving toward providing zero carbon homes.
- 3.4.5 It is proposed that the Council will receive quarterly reports on the delivery of the BLRP business plan, such reports will include scheme by scheme details at a granular level and will take a proactive role to ensure that BLRP ensure meets the Council's overall investment criteria and objectives.

3.5. Broadway Living Business Plan

Broadway Living group vision, strategic objectives

- 3.5.1 The Broadway Living Business Plan is included at Appendix B (and its confidential appendices are included in Confidential Appendix C). The following sections provide a summary of the proposed Business Plan.
- 3.5.2 BL and BLRP's (BL group) key drivers are to work with the Council to re-establish housebuilding as a core Council activity, and to increase the provision of affordable homes. Council officers and the boards of BL and BLRP have held several workshops to discuss the Council's commission to BL, and to agree BL's vision and strategic objectives in response to the Council's commission.

3.5.3 BL group's vision is therefore to provide sustainable high-quality affordable homes for communities in Ealing. BL group's five main objectives to deliver this vision, are to:

- deliver the GLA grant programme, contributing to the 2,500 genuinely affordable homes target
- to secure a sustainable development programme in 2022/23 and beyond,
- to provide a development management service to the Council for its HRA development and regeneration activity,
- deliver homes and services that enhance the wellbeing of communities and minimise climate impacts
- become a centre of development expertise, innovation and advice

Plans for growth

3.5.4 Council officers have been working with Broadway Living RP Board to establish a strategy for growth. In headline, this strategy involves the transfer of land identified as suitable for redevelopment for housing in the Council's portfolio to Broadway Living RP, which will develop it predominantly for affordable housing.

3.5.5 The Council has identified a number of development opportunities across its land portfolio for inclusion in the GLA programme for delivery by BLRP. These are included in the BLRP Business Plan and are set out in the Appendix A to this report. A key element of the BLRP strategy for growth involves the transfer of GLA grant from the council to BLRP to fund homes in the GLA programme which will be developed and retained by BLRP.

3.5.6 Delivering all the schemes identified, along with the transfer of 42 homes currently held by BL for sub-market and market rent, will result in 1,513 homes completed BLRP within 8 years.

3.5.7 Registration of Broadway Living Registered Provider with the Regulator of Social Housing (RoSH), and then BLRP securing Investment Partner status with the GLA has been critical to delivery of these schemes by BLRP, so GLA grant can be received by BLRP and invested in new affordable homes.

3.5.8 It is also recognised that delivery of the programme will require the publication of eligibility criteria to enable both the Council and BLRP to make nominations across the whole range of affordable housing tenures. These will be brought to a future Cabinet for consideration and approval

Registration of BLRP

3.5.9 Cabinet approved the second stage submission for registration of BLRP with RoSH in July 2019, and the second stage application was made in November 2019.

- 3.5.10 The submission to RoSH for registration was on the basis of a business plan for 26 homes, being delivered at Westgate House, with completion now due Feb 2021 (delayed from Oct 2020 because of covid-19).
- 3.5.11 The homes at Westgate House are included in this new BLRP Business Plan and will be the first homes completed for BLRP under this new plan.
- 3.5.12 Registration of BLRP as a registered provider was confirmed by RoSH on 1st October 2020 – BLRP is now subject to the regulatory framework set out by RoSH.

GLA Investment Partner Status

- 3.5.13 Securing Investment Partner (IP) status with GLA will enable BLRP to agree a Grant Agreement with GLA and the transfer of grant from the Council's Grant Agreement (subject to approval under delegated authority of the Executive Director of Place if recommendation 1.14 is agreed) for delivery of schemes in the BLRP business plan.
- 3.5.14 A draft application for IP status has been submitted to GLA by BLRP. Finalising the draft application requires BLRP to demonstrate sufficient funding to deliver the grant to be included in the proposed Grant Agreement. The IP application can therefore be finalised on approval of the BLRP Business Plan and the lending required to deliver it as set out in this paper.
- 3.5.15 The GLA has advised that confirmation of IP status should be secured within 1 month of the final application, and the grant agreement should be concluded within 1 month of confirming IP status. It is therefore considered reasonable to assume BLRP will be able to begin accepting grant in February 2021.

Schemes included in the proposed BLRP Business Plan

- 3.5.16 A total of 23 schemes or phases across 18 sites will deliver a total of 1,471 new homes and form the basis of BLRP's new Business Plan. 42 existing homes will be transferred from BL producing a grand total of 1,513 homes.
- 3.5.17 Of the 18 sites involved, 14 will be directly developed by BLRP (of these, 12 are currently Council-owned, and two are on Council land plus adjoining private land), two are Council major projects (Perceval House and Gurnell Leisure Centre) where the affordable homes will be transferred to BLRP, one is a Council estate regeneration (Copley Close) where some homes will transfer to BLRP, and one is a S106 acquisition from a developer (Westgate House).
- 3.5.18 The programme is, by tenure, predominantly London Affordable Rent and London Living Rent (genuinely affordable homes), together with intermediate rent to provide a broader tenure offer, and a smaller proportion of shared ownership (SO), and private sales, to provide cross subsidy. The market rent homes are existing homes owned by Broadway Living, to be transferred to BLRP.

Tenure mix

London Affordable Rent	London Living Rent	Intermediate Rent	Shared Ownership	Market Rent	Private Sale	Total
963	45	178	184	10	133	1,513
63.6%	3.0%	11.8%	12.2%	0.6%	8.8%	

Governance

3.5.19 The Council and BL Boards have agreed a Scheme of Delegations setting out what is retained for approval by the Council as shareholder, and what sits within the competence of the BL and BLRP Boards. The Council's agreement is required to amend delegations of authority for BL or BLRP.

3.5.20 Key functions retained by the Council as shareholder is the appointment to, or removal of, directors on BL and BLRP's boards; and the approval of the Business Plan. Broadway Living is, with the Council as shareholder, in the process of agreeing a Shareholder Agreement.

3.5.21 The BLRP Board is required by the Regulator of Social Housing (RoSH) to demonstrate good governance in accordance with the principles set out in the regulator's economic and consumer standards, which include the Governance and Financial Viability Standard. The Boards will seek independent advice to support good governance and decision making.

3.5.22 The proposed BLRP Business Plan will be recommended to the BL and BLRP boards on 9th November. Once approved it will be reviewed at least annually.

3.5.23 Individual schemes within the BLRP business plan will be recommended to the BLRP board and Cabinet or the Housing Delivery Cabinet Committee for approval, cross-referencing scheme assumptions, costs and values to those in the approved business plan. Separate approvals will be required to commit to expenditure outside the limit of the delegated authority of BL and BLRP officers set out in the Financial Regulations for each company; to acquire land; and to enter into construction contracts.

Enabling activities

3.5.24 BL and BLRP are currently operating with resources provided by the Council under existing service level agreements.

3.5.25 It is proposed that BL will provide development management services to BLRP and to the Council to deliver the GLA grant programme and the Councils HRA and Regeneration schemes.

3.5.26 BL will need the appropriate resources to deliver this development management service. This includes resources with specialism in residential

development, finance, and in support services. Resources will be required sufficient to operate a multi-company structure, including a Regulated Provider of social housing, that will deliver a complex urban regeneration programme with significant capital budgets.

- 3.5.27 The BL Board approved a resource plan in August 2020, together with its employment policy framework, and the principle of transferring staff from the Council's Housing and Regeneration team under TUPE (Transfer of Undertakings (Protection of Employment Regulations)).
- 3.5.28 In order to implement its resource plan, BL will bring forward for approval by the Council a business plan, including operating budgets, on the basis its main activity will be the provision of a development management service to BLRP and the Council, with the appropriate fee income. Approval of the BL business plan will enable BL to implement its resource plan.
- 3.5.29 It is anticipated the BL business plan will be brought forward for approval in January 2021, with implementation of its resource plan from April 2021.
- 3.5.30 Service Level Agreements between BL and the Council and between BL and BLRP will be required for the provision of HR, IT, legal, finance, property management and tenancy management services. These are covered in the BLRP Business Plan.
- 3.5.31 BL is producing a Development Guide that will set standards for a new generation of homes in Ealing. It will combine the technical content of a traditional design guide with the latest research and best practice in creating healthy homes and resilient communities and is designed to support long-term health and well-being.
- 3.5.32 The Development Guide will contribute to delivering a range of social outcomes, including increased resident satisfaction with homes; improved health and welfare of residents; mitigating the impact on the climate emergency with reduced carbon footprint and dependency on fossil fuels; reduce fuel poverty of residents; safer and secure neighbourhoods; reduce car dependency with the promotion of active and sustainable transport.
- 3.5.33 Other activities include the preparation of a communications strategy, development of BL group's existing website and branding, establishment of appropriate insurances, professional, taxation and regulatory registrations, the development of a procurement policy and the development of a range of key agreements and contracts.

Risk management and mitigation

- 3.5.34 BL has a risk-mapping process which covers all BL group companies. This is routinely updated and reviewed by the boards of BL and BLRP.
- 3.5.35 BL Boards are individually and collectively required to maintain risk registers, to support them in monitoring and managing the risks associated with all

business activities proposed in the approved and the growth business plans. Risks are assessed in accordance with established Ealing Council risk management guidelines for capital projects, including the application of a pre- and post-mitigation risk score.

3.5.36 When recommending the growth business plan to the Council's Cabinet for approval, the BL Boards will bring to the Council's attention (as shareholder) the key, or headline risks associated with the plan. There are two main types of such risk:

- Risks that may impede delivery of the Business Plan and
- Risks to the shareholder arising from delivery of the Business Plan

The table below sets out the key risks together with mitigations in the BLRP business plan that the BLRP board wishes to bring to the Council's attention

Key strategic risk	Type of risk	Risk effect	Mitigation
Loan funding - future loan terms	Corporate	Increase in interest rates reduces business plan capacity and viability.	Treasury Strategy ensures sufficient funds on agreed terms to deliver development pipeline. Funding forecast refreshed annually.
Failure to implement the new company transition plan	Corporate	Risk to delivery of business plan.	Close senior level working between BL and the Council on structures; systems; processes and Governance identified in the plan. Regular oversight by Board.
Service failure – BL or Council	Corporate	Inability to achieve business plan.	Regular contract management of services with clear accountability and KPIs. Report by exception to Board on issues arising. Ability to terminate and procure services elsewhere.

Reduced grant levels/loss of GLA grant status.	Programme	Inability to achieve business plan	Grant assumed in business plan secured with GLA. Future additions to the development programme will be based on latest grant prospectus assumptions. Audit compliant systems in place.
Covid 19 risk - business continuity, income, service delivery, customers, Health and Safety, delays to development, future design.	Programme	Delays to development; loss of rental income, increased operational costs, design changes lead to increased build cost; reduced demand for apartments.	Delay risk to grant programme assessed and agreed with GLA. Development Guide designed to address Covid19 demand for homeworking/additional space/access to outside space etc. Regular review of Covid related risk with Boards.
Development risk - delay, quality, cost	Programme	Inability to deliver new homes and revenues.	New development control system and procedures to be implemented. Documentation to be agreed by Board e.g. Standard Employer Requirements. Use of procurement framework for contractors/consultants. Regular development report to Board.
Development and sales market risk	Programme	Loss of planned revenue income with financial impact and unsold stock. Inability to deliver business	No sales income forecast until 2022/23. Monitor cumulative impact of investment in schemes with sales as well as

		plan without financial support.	scheme by scheme. Cautious risk appetite for market sale in current climate.
Governance/Regulatory failure due to failure to embed new structure with Council, Boards and Leadership team.	Corporate	Downgrading of RP by Regulator for Social Housing, suspension or loss of grant programme.	Fully documented procedures. External Company Secretary arrangements. Governance framework to be embedded in BL/BLRP, Executive and Council as shareholder. Governance review commissioned and due to report to Boards December 2020.

4 Financial

- 4.1 The investment being made by the Council is the single largest financial commitment ever to be undertaken. It is based on an assessment of the BLRP Board approved business plan and has been assessed as viable based on the assumptions contained in the plan provided by BLRP. It should be openly recognised that such undertakings are complex and carry risk covering many different facets that should be understood and recognised as commensurate with such programmes involving housing development, asset sales and rental incomes.
- 4.2 The Council has prepared a comprehensive financial model using the business plan provided that combines individual scheme financial appraisals in a 50-year cashflow and a 50-year Net Present Value basis, to test the viability of the development programme as a whole.
- 4.3 Total acquisition and development costs of the growth plan are estimated at £475.951 million (excluding interest), with total GLA grant receivable of £102.712 million, and supported by open market and shared ownership sales receipts of £120.971 million (including £28.599 million of staircasing).
- 4.4 The grant at £102.712 million includes £84.944 million from the original GLA allocation of £99 million (with the remaining allocation taken up by HRA schemes), £13.600 million additional funding agreed with GLA for the balance

of additional delivery on agreed schemes, and £4.168 million additional funding from RTB receipts.

- 4.5 The business plan relies on the transfer of land from the council (subject to s123 of the Local Authority Act 1972).
- 4.6 The BLRP Business Plan requires a loan funding requirement of £388.368 million, which reflects the Councils overall financial commitment to support the BLRP Business Plan through loans, split £337.025m for development/investment loans relating to rent and shared ownership developments and £51.343 million market/commercial loans (£14.721 million development working capital loan and £36.622 million development loan) relating to market sale developments, with an additional £11.632 million providing capacity to respond to any variations during the development phase.
- 4.7 The current assumption is that the Council will provide 100% debt finance, to be fully repaid by year 50, and this is one of the key hurdles in financial modelling the business plan. Funding agreements for all schemes will be agreed between the Council as lender and BLRP pursuant to an overarching funding agreement.
- 4.8 The shared ownership and private sale elements of the programme will flow back to the Council to help manage the debt exposure. However, these tenures introduce sales risk into the programme, with the potential to impact viability and flow back to the Council.
- 4.9 Sales income assumes 35% initial sales equity for the shared ownership homes. Staircasing sales of further shares of equity have been assumed up to year 40 of the overall cashflow equivalent to sales at up to 60% of equity for individual homes. This is considered a reasonable assumption reflecting purchasers' desire to move to full home ownership, and, particularly as shared owners typically staircase to 100% in back to back sale of the whole property. Any staircasing above an average 60% would benefit the cashflow.
- 4.10 The BLRP Business Plan includes schemes agreed to form part of the GLA capital funding programme. The Council and BLRP will take a strategic approach to identifying additional Council land and other opportunities to deliver more affordable housing, to bring forward for approval to form a programme of future activity. This may include opportunities for BLRP to acquire homes being developed in the Council's estate regeneration programme. In addition, BLRP is not constrained to operate only on Council land and will explore market opportunities on a per case basis.
- 4.11 The Council intends to retain freehold ownership of land and grant 250 year leases to BLRP. The proposed Land transfer structures are being finalised have been assumed to minimise both VAT and SDLT charges. The schemes are designed to maximise the amount of affordable housing to be provided whilst maintaining viability. As a result, it is anticipated that although each land disposal will be subject to a valuation confirming 'best consideration', it is likely that there will be few if any land receipts payable to the Council

- 4.12 A set of scheme and programme assumptions and hurdles have been established. BL and BLRP will consider in detail the business plan including assumptions and hurdles used, the scenarios modelled, risks to programme and scheme delivery, for its new plan, when it considers whether to approve the new plan.
- 4.13 The key assumptions included within BLRP's model include:
- CPI at 2%
 - No build cost or house price inflation
 - Rents increase of 1% other than affordable rents increase of CPI + 1% in years 2021/22 – 2024/25
 - Voids and Bad Debts of 3% on affordable rents and 4% on London Living Rents and Discounted Market Rent
 - Corporation Tax at 19%
- 4.14 The Councils financial model, using the inputs from BLRP's submitted model, shows the overall scheme viability is positive, both in cash terms and NPV terms and repays all Council funding by year 46. This is subject to confirmation of state aid compliance for proposed land transfer arrangements, and for funding by the Council.
- 4.15 The financial model has also been tested across a number of different scenarios and outcomes to ensure the model stands up to stress testing and to determine the level of risk and exposure to the Council. These include an increase in build costs, a reduction in sales value, voids and arrears increase, reduced rental income, corporation tax increase, increased internal overheads, no staircasing and changes to the interest rate proposed to be charged for lending.

Base Model & Scenarios	Net Scheme Position £'000	Net Present Value £'000	Loan Drawdown £'000	Payback Period	TOTAL Peak Debt (excl. Grants & Sales) £'000
BASE MODEL	£96,324	£20,230	£388,368	46	£298,698
1. BUILD COST INCREASE OF 2%	£60,863	£13,175	£399,670	48	£305,636
2a. SALES VALUE DECREASE OF 5%	£73,970	£15,859	£388,386	48	£300,260
2b. SALES VALUE INCREASE OF 5%	£116,474	£24,771	£388,350	45	£297,134
3. VOIDS & BDP INCREASE OF 1%	£75,230	£15,977	£388,368	48	£299,034
4. GOVT RENTS FREEZE 4YRS (21/22 - 24/25)	£61,725	£13,322	£388,368	48	£299,328
5. INTEREST RATE INCREASE OF 0.25%	£55,513	£12,268	£388,368	49	£300,501
6. CORPORATION TAX INCREASE OF 2% TO 21%	£84,079	£17,701	£388,368	46	£299,009
7. OVERHEADS INCREASE FOR GROWTH FROM £150	£76,934	£16,283	£388,368	47	£299,476
8. NO STAIRCASING ON SO	£92,326	£19,143	£388,368	47	£298,802
9. BUILD COST INCREASE OF 2% & SALES VALUE	£37,966	£8,788	£399,687	50	£310,476

- 4.16 One of the most sensitive areas to consider carefully, is the exposure on the lenders side (the Council) during the development period. During this phase the Council, through providing its loans, will have the largest financial exposure as the income streams from rental will not be passing back to the Council via BLRP, as the assets will not be operational at this stage. It should also be recognised

that any scheme slippage has an adverse impact on the early years viability of the model, particularly through the development phase. As a whole this requires the Council to make available working capital to ensure BLRP is viable in this period.

- 4.17 Given the development exposure, it is vital that the oversight and reporting to the Council is regular and transparent so that any signs of difficulties can be accommodated by proactive decisions being made in dialogue with BLRP and mitigated as far as possible thus reducing the potential for financial pressures to manifest back to the Council as lender.
- 4.18 During the development period, sale receipts generated by BLRP will flow to the Council to allow management of the debt from the Councils side and reduce debt exposure. Focus by the BLRP board on the speed of asset disposals is key for effective management of this phase and will when undertaken successfully help to contain or avoid such risks manifesting as pressures.
- 4.19 The BLRP Business Plan has an overall capital requirement of £400 million, this is to be funded through loan finance and operational revenue requirements funded through working capital from the Council to BLRP. The loans will be structured between development/investment, market/commercial and operational working capital loans each with differing rates of interest to ensure compliance with state aid rules following independent legal and commercial advice received by the Council.
- 4.20 The Councils existing General Fund capital programme includes a funding allocation of £149.212 million for BL Capital Loans, an additional £250.788 million funding allocation is required to be incepted into the capital programme to fund BLRP overall capital requirement of £400 million. The loans will be financed through prudential borrowing, as such the Council will incur revenue interest and Minimum Revenue Provision (MRP) costs of borrowing, these revenue costs will be offset through interest and principal receipts from BLRP and therefore have a net nil impact on the Council revenue position.
- 4.21 The Council will provide an operational working capital facility to BLRP which will be provided from Council cash balances as part of Treasury operation of the daily cash flow planning and management, working capital will be provided on commercial terms with any interest received from BLRP being a benefit to the Council revenue position.
- 4.22 For existing Council sites included within BLRP Business Plan, following independent tax advice received by the Council, sites will transfer from the Council to BLRP at the optimal point to manage the tax position, as a result of the proposed deal structures the Council will incur pre-transfer costs and additionally were applicable the capital costs for the re-provision of existing council services.
- 4.23 The Councils existing General Fund capital programme includes a budget allocation of £4.875 million to ensure that the delivery of the GLA programme can be progressed, an additional £36.675 million budget allocation is required

to cover the pre-transfer costs of sites from the Council to BLRP and the re-provision of existing Council services. This is to be funded initially from prudential borrowing, with the associated interest costs being recovered from the overall interest receipts flowing back from BLRP to the Council and the capital costs incurred by the Council recovered from capital receipts received upon the transfer of the sites to BLRP.

- 4.24 Strong financial control and oversight is critical to the success of BLRP given the complexity and scale of its proposed activities. BL and BLRP Boards will approve financial regulations for implementing schemes that will establish financial controls, authorities and delegations commensurate with BLRP objectives and the regulatory context BLRP will operate within.
- 4.25 Growth and risk will need to be carefully managed. The basis of financial viability for each scheme will be agreed by BLRP Board prior to recommendation to the Housing Delivery Cabinet Committee for approval to the transfer of land and the drawdown of funds from the Council. Individual scheme and whole programme financial performance will be regularly monitored and will form part of the bi-annual review of the Business Plan by the Council.
- 4.26 The Regulator of Social Housing will, as regulator of BLRP, have an interest in the financial management of BLRP to ensure compliance with the Governance and Financial Viability Standards to ensure that affordable housing assets are not put at risk. The BLRP Board will oversee this compliance.
- 4.27 It is proposed that the Council will receive quarterly reports on the delivery of the Broadway Living Business Plan, such reports will include scheme by scheme details at a granular level and show how such schemes meet the Councils overall investment criteria.

5 Legal

- 5.1 External legal advice has been obtained as part of the finalisation of the proposed revised BLRP Business Plan with regard to state aid and other issues.
- 5.2 State aid arises where the state gives aid, the effect of which could distort cross border competition within the EU. In essence in this context it amounts to something which BL/RP could not receive in the ordinary course of business.
- 5.3 In particular, state aid could arise in the following 4 scenarios if the Council were to
- provide funding on terms which are effectively 'sub-market';
 - dispose of land or homes at less than the best consideration reasonably obtainable
 - provide guarantees of the obligations of BL/RP to third parties
 - provide services to, or permits the use of its assets by, BL/RP at a preferential or sub-market rate.
- 5.4 There are a number of exemptions and reliefs available including:

- (a) SGEI - the delivery of affordable housing is known as a Service of General Economic Interest (effectively a public good) and is excluded from the application of state aid law
- (b) MEIP - the Market Economy Investor Principle ("MEIP") can be relied upon where the Council acts just as a private investor would do, such that there has been no distortion of competition;
- (c) Best consideration – where the Council has complied with its duty to secure best consideration then the market cannot have been distorted.

5.5 The BLRP business plan proposed for approval has been finalised having regard to the state aid implications and exemptions and reliefs and a copy of the detailed advice is attached at Confidential Appendix D

5.6 The rule on the establishment of so called 'Teckal' companies enables the Council to procure services from and provide services to those entities without the need for undertaking a procurement process in compliance with the Regulations.

5.7 In order to qualify as a "Teckal" company the entity must satisfy the test in Regulation 12 (1)¹ of the Public Procurement Regulations. This states:

"A public contract awarded by a contracting authority to a legal person falls outside the scope of this Part where all of the following conditions are fulfilled:

- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;*
- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and*
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person."*

5.8 The proposed service agreements and proposed shareholder agreement will reflect the Council, BL and BLRP's status as Teckal companies.

6 Value for Money

6.1 Increasing the delivery of affordable homes will result in better outcomes for residents by providing more options to access housing and the associated benefits of having a secure home. This also helps to reduce the costs of other services which are dependent on the supply of good quality housing to make an impact on the services provided to their clients. Services such as; Adult Social Services, homelessness and temporary accommodation will all benefit from the substantial increase in housing delivery over the coming years

¹ Regulation 12 codifies a number of European judgements including the *Teckal* exemption.

7 Sustainability Impact Appraisal

7.1 The objective of this work programme is to increase the supply of new, good quality genuinely affordable homes, which are designed in compliance with current environmental and sustainability standards. The Council and BL's Development Guide and employers requirements are living documents which will help to ensure that high quality, sustainable homes and places are built and the journey towards zero carbon amongst other standards will be considered in each development by the Housing Delivery Cabinet Committee.

8 Risk Management

8.1 Potential risks to the Council are shown in Appendix E

9 Links to the 3 Key Priorities for the Borough

9.1 The pledge to deliver genuinely affordable homes is directly linked into outcome 5 "increasing supply of quality and affordable housing" in Ealing Council's Corporate "Future Ealing Programme." Improving the housing outcomes of residents in Ealing also contributes to a range of other important outcomes in the framework, such as increasing household incomes, improving educational attainment and reducing homelessness.

10 Equalities, Human Rights and Community Cohesion

10.1 The overall delivery plans are expected to have a positive impact on the borough by providing additional homes that are genuinely affordable. Detailed elements of these plans and approval for schemes will be taken to the Housing Delivery Cabinet Committee (or Cabinet) for decision on an individual basis and Equality Analysis Assessments (EAAs) are undertaken as part of this process.

11 Staffing/Workforce and Accommodation implications

11.1 The workforce that could transfer to Broadway Living is currently employed by Ealing Council. The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended will apply to relevant Council staff who are in scope to transfer to (and/or end up transferring to) Broadway Living, subject to (amongst other matters) the relevant 'commercial' activities effectively 'transferring' from Ealing Council to Broadway Living as set out in the report to Cabinet on 14th July 2020 and will be the subject of future reports to Cabinet.

12 Property and Assets

12.1 The delivery of the programme by BL as outlined in the BLRP business plan will require the transfer of land to BLRP. These will be the subject to

approval by the Housing Delivery Cabinet Committee (or Cabinet) on a scheme by scheme basis and will require valuations confirming best consideration.

13 Timetable for Implementation

- 13.1 The key milestones for each project being progressed through the BLRP Business Plan are set out in Appendix A.

14 Appendices

- 14.1 Appendix A – schemes included in the BLRP Business Plan
14.2 Appendix B – BLRP Business Plan
14.3 Confidential Appendix C – BLRP Business Plan’s confidential app 1
14.4 Confidential Appendix D – detailed advice on state aid implications, exemptions and reliefs
14.5 Appendix E – potential risks to the Council

15 Background Information

- 15.1 Cabinet report: Delivery Strategy for 2,500 Genuinely Affordable Homes, 16th October 2018
15.2 Cabinet report: Housing Delivery Update 18th June 2019
15.3 Cabinet report: Setting up a Registered Provider of social housing to support the delivery of genuine affordable housing 16th July 2019
15.4 Cabinet report: Housing Delivery Update 10th December 2019
15.5 Cabinet Report: Housing Delivery Update 19th May 2020
15.6 Cabinet Report: Housing Delivery Update 24th July 2020
15.7 Cabinet Report: Housing Delivery Update 15th September 2020

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Gary Alderson	Executive Director of Place	21/10/2020	23/10/2020	Throughout
Lucy Taylor	Director of Growth and Sustainability	21/10/2020	22/10/2020	Throughout
Jackie Adams	Head of Legal (Commercial)	08/10/2020	20/12/2020	Throughout
Ross Brown	Chief Finance Officer			Throughout
Simon Peet	Assistant Director Technical Finance	08/20/2020	23/10/2020	
Dipti Patel	Director of Place Delivery	08/10/2020	23/10/2020	Throughout
Cllr Julian Bell	Cabinet Member for: Housing, Planning and Transformation	21/10/2020	23/10/2020	Throughout

Report History

Decision type:	Urgency item?
Key decision	
Report no.:	Report author and contact for queries:
	Philip Browne – Director of Housing Development