

**Report for:**  
**ACTION**

**Item Number:**

<b>Contains Confidential or Exempt Information</b>	Yes – Appendix B is exempt from disclosure by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972
<b>Title</b>	Broadway Living Ltd Business Plan
<b>Responsible Officer(s)</b>	Gary Alderson, Executive Director of Place
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<b>Portfolio(s)</b>	Cllr Mik Sabiers
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	9 <sup>th</sup> February 2021
<b>Implementation Date if Not Called In</b>	22 <sup>nd</sup> February 2021
<b>Affected Wards</b>	All
<b>Keywords/Index</b>	Housing, homes, delivery, affordable, development, GLA, Broadway Living, BLRP, registered provider

**Purpose of Report:**

Following the successful registration with the Regulator of Social Housing of Broadway Living Registered Provider (BLRP) and Cabinet’s approval of the BLRP Business Plan, this report presents Broadway Living Ltd.’s (BL Ltd) draft business plan and operational budgets for 2020/21 and 2021/22 for approval.

## 1. Recommendations

It is recommended that Cabinet

- 1.1. Notes and approves the draft BL Ltd Business Plan which will be considered for approval by the BL Board on 8 February (at Appendix A and Confidential Appendix B) and summarised in section 3.5 below
- 1.2. Notes that the Council will receive regular reports on the delivery of Broadway Living Ltd.’s Business Plan at relevant times.
- 1.3. Notes that the Chief Finance Officer as approved via the Councils Treasury Management Strategy has delegated authority to provide BL Ltd with working capital loan funding to enable BL Ltd to implement its approved Business Plan.

- 1.4. Notes and agrees in principle that, subject to the outcome of a staff consultation which started on 25 January 2021 there should be a transfer of Council staff to BL Ltd as set out in paragraph 11 below to enable it to deliver services to the Council and BLRP

## **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 Ltd, 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 Ltd).
- 2.3. In November 2020 the Cabinet approved proposals that the Council (as shareholder, landowner and funder) will commission BL Ltd and BLRP to deliver a programme of housing as set out in the approved 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.
- 2.4. It was also noted at the November Cabinet report that a further report would be brought to a later Cabinet for approval of the Broadway Living Ltd Operational Business Plan and associated proposed staff transfers.
- 2.5. The attached Business Plan in appendix A (and its confidential appendix B) sets out the objectives, activities, services to be provided to the Council and BLRP, staffing and resourcing, funding, governance and the commissioning of Broadway Living Limited (BL Ltd). The plan also forecasts its financial performance to 2025 and provides an insight into work beyond that date.

## **3. Key Implications**

### **3.1. Relevant previous recommendations approved by Cabinet**

#### **3.1.1. At its meeting of 10<sup>th</sup> November 2020 Cabinet approved a report entitled Broadway Living Registered Provider (BLRP) Business Plan at which the following recommendations were agreed:**

1. 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.

2. 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.
3. Notes the existing 2020/21 budget allocation within the Council's 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.
4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. Notes that establishment of a Housing Delivery Cabinet Committee approved by Cabinet in July 2020 was approved by full Council on 21 July 2020.
10. 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.
11. 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.
12. 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

**3.1.2. At its meeting of 14<sup>th</sup> 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

**3.1.3. 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.

**3.1.4. 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.

**3.1.5. 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.

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

2. 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.

3. 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.
4. 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.
5. 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 additional model to HRA housing development that also delivers sustainable housing development and management for Ealing. The main driver for this was originally the lack of Housing Revenue Account (HRA) funding capacity. However, following the HRA self-financing exercise and lifting of HRA borrowing caps, the Council was 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 Ltd**

3.3.1 The Council's commission to BL group, including BL Ltd and its subsidiary BLRP, is driven by the primary objective to make building affordable housing a core activity of Ealing Council once more, so that the housing crisis that affects Ealing residents (like the rest of London) can be tackled more effectively.

3.3.2 The Council is commissioning BL Ltd and BLRP to deliver a programme of new affordable homes funded by GLA grant and Council lending. These homes will be environmentally sustainable and contribute to creating better places for Ealing communities to live.

3.3.3 To do this effectively, the Council needs an entity like BL Ltd to act as a centre of development expertise that can help it manage commercial relationships with development partners on its behalf and provide expert advice to the Council and BLRP. To do this well, BL Ltd needs to project the values and ethos of Ealing Council.

3.3.4 The BL Ltd and BLRP Boards and six senior council officers discussed the Council's commission to BL Ltd group in two workshops in November 2019 and January 2020 and as a result, the Council refreshed its commission to the BL group as follows:

- Develop a sustainable and long-term pipeline of genuinely affordable homes, starting with GLA programme of c.1,100 units
- Re-establish housing development as part of the Council's core business
- Build homes that meet the needs of the climate emergency and enhance the health and wellbeing of communities
- Manage the commercial relationships with development partners on behalf of the Council
- Act as a centre of expertise, advice and innovation for the Council

3.3.5 The establishment and commissioning of BL Ltd with appropriate Governance and decision making by the Council at both member and officer level, in the manner described in the attached business plan, will ensure these objectives are delivered.

### **3.4. The Council as Strategic Client**

3.4.1 It is proposed that Broadway Living Ltd will be the delivery agent 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 Ltd and BLRP are meeting the strategic housing needs of the Council consistent with its housing strategy and planning policy. Strategic alignment between LBE and BL Ltd 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 Commissioner 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 approved 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 Ltd 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 In November 2020 Cabinet agreed that the Council should 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 Ltd Business Plan**

### **Broadway Living group vision, strategic objectives**

- 3.5.1 The Broadway Living Ltd Business Plan is included at Appendix A (and its confidential appendix is included in Confidential Appendix B). The following sections provide a summary of the proposed Business Plan.
- 3.5.2 BL and BLRP's (the BL group of companies) 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, that delivers value for money
- deliver homes and services that enhance the safety, health and wellbeing of communities and minimise climate impacts
- become a centre of development expertise, innovation and advice

### **Plans for growth, Registration of BLRP and GLA Investment Partner Status**

- 3.5.4 At its meeting in November 2020, Cabinet approved the BLRP Business Plan which included the strategy for growth and confirmed the transfer of some of the Council's GLA grant allocation from the Council to BLRP to fund homes in the GLA programme which will be developed and retained by BLRP.
- 3.5.5 In autumn 2020 the Regulator of Social Housing (RoSH) approved the registration of BLRP as a Registered Provider. In addition, the GLA has indicated that BLRP has passed its technical assessment to secure Investment Partner status, and it will issue BLRP's grant agreement for signing. These two milestones will ensure that delivery of the schemes in the BLRP Business Plan can proceed in a timely manner by BLRP using GLA grant to invest in new affordable homes.

### **BL Ltd Business Model**

- 3.5.6 BL Ltd is a professional services company intended to provide development management and sales management services to the Council for its HRA newbuild and regeneration programmes as well as development and sales management and other services to BLRP. Its strategic objectives, set out above, are reviewed annually by the Council through its commissioning role.
- 3.5.7 The staffing structure has been proposed to meet the objectives for BL Ltd and the currently approved development programme contained in the BLRP business plan and the HRA business plan approved by Cabinet in November 2020 and January 2021 respectively. BL Ltd will earn fee income from managing and delivering schemes sufficient to support this structure. The staff resources required will need to be adjusted to match future demands as these programmes vary.
- 3.5.8 BL Ltd will also receive 'back office' support services from the Council and enter into Service Level Agreements (SLAs) as follows:
- BL Ltd/BLRP: Development and sales services; governance and operational support

- BL Ltd/Council: Development, sales, and regeneration development management services; office premises and ICT systems

3.5.9 The BL Ltd Business Plan is attached at appendix A with confidential appendix at appendix B

### **Resourcing**

3.5.10 The BL Ltd Board approved its resourcing model at its meeting in August 2020. External assurances as to the level of staffing required to deliver the scale of the programme proposed and already being undertaken, were provided by Savills and Forrest HR, and these were also benchmarked against other local housing companies.

3.5.11 The proposed structure and posts produce a total 32 staff which are split between New Business, Development, Regeneration and Business Management. A more detailed explanation is included in the BL Ltd Business Plan attached at appendix A

3.5.12 Up to half the roles in this structure are likely to be filled by existing staff in the Council's Housing and Regeneration team, though this is subject to TUPE consultation which began on 25<sup>th</sup> January and final approval of the consultation outcome by both the Council and BL Ltd.

3.5.13 Remaining roles will be recruited externally. BL Ltd.'s implementation plan proposes that the managing director and the four directors will be in post on day one, through TUPE and transfer of existing interim staff. Recruitment of external staff, with further roles to be recruited over year 1 and 2 as required.

3.5.14 The fee income to BL Ltd for managing schemes in the BLRP and Council HRA programmes, together with an additional charge for the management of regeneration schemes by third parties, will support the proposed level of staffing based on an average turnover on development. These fees are included in the BLRP and HRA Business Plans approved by Cabinet in November 2020 and January 2021 respectively.

3.5.15 The Director of Growth and Sustainability, in her role as commissioner of housing development services and the work of BL Ltd and BLRP has satisfied herself that the resourcing proposals are appropriate, reasonable and represent value for money for the Council. In consultation with LBE HR colleagues the proposals set out in Confidential Appendix B for the number and structure of staff have been reviewed in detail and are considered to represent value for money for the Council. The Director of Growth and Sustainability has also confirmed that she has been involved throughout the consideration and process of developing the structure and has reviewed in detail the independent work carried out by industry experts to benchmark the proposed staffing and structures against other Registered Providers. She also notes that industry expert BL Board members have been involved and commented on the proposed structure. Comparison to the staffing structures

of similar developing council companies has also been undertaken taking account of the size of the Council's housing development programme.

3.5.16 The Director of Place Delivery, as custodian of the HRA budget, has considered the charging structure to the HRA for HRA regeneration and development works and found it to be reasonable and offering value for money for the Council.

### **Governance**

3.5.17 As BL Ltd (and BLRP) are now moving into an ambitious development phase the Council is reviewing its governance arrangements and proposes a new structure to ensure there is strong oversight while enabling key decisions to be made as required to approve individual schemes.

3.5.18 The new governance will be achieved through the use of a Commissioning Function - the Council will take responsibility to set the long-term housing strategy and act as corporate client. It will monitor performance of BL Ltd (and BLRP) and coordinate its governance and decision making for their activities.

3.5.19 The role of the Council's commissioning function will be to guide and govern:

- Strategic functions – setting the strategic housing strategy, working with BL and BLRP to develop annual business plans and support the shareholder representative
- Governance and decision making – to create a streamlined and clear oversight and governance of the companies ensuring delivery of development and financial metrics
- Monitoring and accountability – regular monitoring of business plans and SLAs, corporate council position where there may be conflicts on development proposals
- Operational and delivery – clear commissioning briefs for BL Ltd services, through SLAs and via Asset Board, lead on grant agreement

3.5.20 As sole shareholder, decisions on the activities of BL Ltd (and BLRP) require the Council's approval. This is achieved through:

- Full Council
- Cabinet and the Housing Delivery Cabinet Committee
- Scrutiny Committee
- Officer delegations

### **Enabling activities**

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

3.5.22 Service Level Agreements between BL Ltd and the Council and between BL Ltd and BLRP are being agreed for the provision of HR, IT, legal, finance, property management and tenancy management services, and for development and sales management services. These are covered in the BLRP Business Plan.

3.5.23 BL Ltd and BLRP are together 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.

3.5.24 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.

3.5.25 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**

3.5.26 BL Ltd has adopted a risk management policy and process which requires risk to be actively managed and updated no less than four times a year

3.5.27 BL Ltd Board is required to maintain risk registers, to support them in monitoring and managing the risks associated with all business activities proposed in the Business Plan. Risks are assessed in accordance with established Ealing Council risk management guidelines, including the application of a pre- and post-mitigation risk score.

3.5.28 When recommending this Business Plan to the Council's Cabinet for approval, the BL Ltd Board will bring to the Council's attention (as BL Ltd shareholder) the key, or headline risks associated with this plan. BL Ltd Board will also work closely with the BLRP Board and the Council's Housing Commissioning Unit to ensure BL Ltd is providing the necessary risk management assurance.

3.5.29 The risks set out in the extract from BL Ltd.'s Risk Register (below) are the main corporate risks, with potential mitigation strategies, identified by the BL Ltd Board.

<b>Key strategic risk</b>	<b>Type of risk</b>	<b>Risk effect</b>	<b>Mitigation</b>
<b>Governance failure due to failure to embed new structure with Council,</b>	Corporate	Loss of Council support. Possible Regulatory impact on BLRP.	Fully documented procedures. External Company Secretary arrangements. Governance framework to be embedded

<b>Boards and Leadership team.</b>			in BL/BLRP, Executive and Council as shareholder. Refreshed governance arrangements through the Council commissioning function
<b>Reduction/delay to fee income from BLRP and/or the Council due to risks to delivery or viability of their development programmes.</b>	Financial	Reduction in fee income reduces viability of financial plan. Need for Council financial support, as shareholder.	Close oversight of BLRP business and financial plan, and BLRP's management of its risk register. Regular reporting on HRA business plan performance and risk register. Fee income target to achieve annual surplus provides cushion against in year variance.
<b>Cost of "back office" service delivery exceeds financial plan provision.</b>	Financial	Increased cost reduces viability of the plan. BL unable to meet its staff and other costs. Need for Council Financial support.	Fees and services detailed in SLAs and contracts actively managed. Payroll and Council fees payable in arrears to optimise BL cashflows. Early warning of potential cost increases through monthly Management Accounts; business plan reviews and financial forecasts.
<b>Inability to attract and retain sufficient staff to provide services to BLRP and the Council.</b>	Corporate	BL unable to provide services to BLRP or the Council within budget. Potential additional cost to plan. Potential breach of SLAs. Need for Council Financial support. Possible failure of the business.	Resource plan created with industry benchmarking of roles and terms. External assurance that resource plan enables scale of service delivery. Annual review of salaries and terms by BL Board to ensure on-going competitiveness. Budget provision for use of interims in recruitment period.
<b>Development service failure by BL.</b>	Corporate	Termination of SLA by BLRP and/or Council. Loss of fee income. Need for Council	Service standards and KPIs clearly set out in SLAs, and review arrangements agreed with Council and contract manager in BL. Quality Management System being developed in BL, including

		support/wind up of Company.	detailed procedures. Experienced senior staff and expert Board oversight.
<b>Landlord function risk crystallises.</b>	Management delivery	Loss of rental income/H&S event/Managing Agent service failure/unplanned stock investment impact on financial performance of the business; reputation; and service to customers. Need for Council financial support.	BL business plan assumes transfer of existing assets to BLRP in year 2, so this is a year one risk. Monthly reports from BL's agent (Council's landlord services); oversight by Board; internal audit of function to be included in audit plan. HM Contract includes clear KPIs for performance on key indicators.
<b>Non-compliant cladding</b>	Financial	Where identified, this will need to be removed and replaced, with cost risk.	May impact BL budget for 2021/22
<b>Covid 19 risk - business continuity, income, service delivery, Health and Safety, delays to development</b>	Corporate	Council revenue funding shortfall could lead to reduction in BL activity and budget cuts. Covid 19 involves BL in increased costs in addressing new operational requirements. Staff resource reduced due to health risks.	Separate Covid 19 risk plan/business continuity plan in place. Regular financial budget review of programme and costs with Council finance team prior to commitment. Service in place to support and protect staff.

## 4 Financial

### BL Limited Budget and Five-Year Forecast

4.1 The Proposed BL Budget and first five years' operating account are shown below (all figures in £,000s):

Budget:	2021.22 Yr. 1	2022.23 Yr. 2	2023.24 Yr. 3	2024.25 Yr. 4	2025.26 Yr. 5	Total Total
<b>Income</b>						
<b>BLRP Fees chargeable</b>	£2,021	£2,726	£2,599	£1,494	£2,267	<b>£11,107</b>
<b>HRA Fees chargeable</b>	£1,365	£772	£969	£1,862	£1,156	<b>£6,123</b>
<b>Total fees</b>	<b>£3,386</b>	<b>£3,497</b>	<b>£3,567</b>	<b>£3,356</b>	<b>£3,423</b>	<b>£17,230</b>
<b>Expenditure</b>						
Employees	(£2,432)	(£2,750)	(£2,805)	(£2,606)	(£2,658)	(£13,250)
Overheads	(£230)	(£131)	(£134)	(£137)	(£139)	(£771)
Professional Services	(£73)	(£17)	(£17)	(£18)	(£18)	(£143)
LBE SLA Recharges	(£313)	(£250)	(£255)	(£260)	(£265)	(£1,342)
<b>Total Operating Costs</b>	<b>(£3,048)</b>	<b>(£3,148)</b>	<b>(£3,211)</b>	<b>(£3,020)</b>	<b>(£3,081)</b>	<b>£(15,507)</b>
<b>Net profit/(loss) before tax</b>	<b>£339</b>	<b>£350</b>	<b>£357</b>	<b>£336</b>	<b>£342</b>	<b>£1,723</b>
<b>Corporation Tax at 19%</b>	<b>(£64)</b>	<b>(£66)</b>	<b>(£68)</b>	<b>(£64)</b>	<b>(£65)</b>	<b>(£327)</b>
<b>Net profit/(loss) after tax</b>	<b>£274</b>	<b>£283</b>	<b>£289</b>	<b>£272</b>	<b>£277</b>	<b>£1,396</b>

4.2 BL Limited's forecasted income shown above is from fees earned from development management services to the BLRP and HRA Development programmes. The BLRP Development Programme had its capital funding approved by the Council via the Cabinet decision "Broadway Living Registered Provider (BLRP) Business Plan", approved on 10 November 2020. The latest HRA Development Programme was approved by Cabinet on 19 January 2021 as part of the wider long term HRA Business Plan. The income shown above and in the financial modelling that underpins the BL Ltd Business Plan tie back to the development management fee expenditure approved in both of these reports.

4.3 The table above shows the development allowance expenditure incurred by BL Ltd as the development manager of its clients, i.e. Council and BLRP. Other scheme specific expenditure (e.g. architects, planning fee, works contractors)



are to be paid directly via the client with budget allowances made in their aforementioned Business Plans with BL Ltd managing contracts and along with the Ealing Finance Team payments to consultants/contractors.

- 4.4 This forecast shows that BLL has a sustainable Business Plan for five years. The financial modelling that underpins the BLL Business Plan indicates that the income from the BLRP and HRA programmes (up to £23.1m) will sustain BL Limited for 6-7 years based on the programmes proceeding in full. Should any individual scheme not proceed then there is a risk that some of this income will not be realised.
- 4.5 A detailed breakdown of the BLL budget, five-year forecast including assumptions behind the costings and a breakdown of the proposed employee remuneration can be seen in the Broadway Living Business Plan which is enclosed as an appendix to this report.

### **Proposed BL Limited Fee Levels**

- 4.6 As a professional services company, BL Limited will cover its overheads, including resources costs, by charging fees for the services it provides.
- 4.7 The level of development management fee BL Limited will charge, in line with industry standard rates, is capped at between 3 to 5% of total scheme costs for BLRP schemes, depending on the size of individual schemes, with the fee capitalised by BLRP. Larger schemes will attract the lower figure of 3%, smaller schemes the higher figure of up to 5%. The Business Plan has assumed 3.5% for all BLRP development schemes (in line with the BLRP Business Plan) and 1.5% – 3.5% for the HRA Regeneration schemes (in line with the HRA Business Plan).
- 4.8 A 3.5% fee is consistent with the assumption of other Registered Provider business plans, which range from 3 – 5%, sometimes varied depending on the complexity and duration of the scheme. It is also consistent with development management charges seen in the private sector. In practice the fees will likely need to vary within the 3-5% range depending on the size and complexity of schemes and the resource required to deliver that scheme.
- 4.9 Resources required to deliver a scheme are mainly driven by its complexity rather than size and smaller and/or more complex schemes usually require more resource to manage relative to the overall scheme value. Therefore, smaller schemes can reasonably expect higher management fees (in % terms) and for BL Limited to be able to sustainably deliver those the Council or BLRP may need to account for a higher fee when establishing viability and capital budgets for such schemes. Where the proposed fee for individual schemes will exceed that of the approved budget/business plan budgeted assumptions the schemes funding and viability will be reviewed.
- 4.10 The development management fee will cover the costs of the development operation and its overheads plus a margin of 10%. It is proposed that the billing profile to BLRP and the HRA is on this cost-plus structure. This is the preferred

approach as it provides BL Limited with a predictable income and cashflow that covers expenditure and provides a buffer for some of the financial uncertainties around creating a new business whilst minimising reliance on working capital from the Council.

- 4.11 BL Limited will need to resource speculative work on new schemes which will be needed for the long-term sustainability of BL Limited. These schemes will be charged at an agreed fixed fee at that stage and BL will need to secure enough schemes to support its staffing and overheads cost and meet its income margin target.
- 4.12 In order to sustain the levels of income currently forecasted beyond the first six years of the Business Plan new schemes will need to be secured from 22/23 onwards. This will have resource implications for both BL Limited and the Council (if further Regeneration schemes are identified) and depending on the volume of new schemes BL's staffing budgets and resources may need to change to a level appropriate to the volume of schemes it manages. A review of BL Limited's and the HRA's capacity to deliver this speculative work will be done ahead of next year's business plans for BL Limited and the HRA.

### **Operating Costs**

- 4.13 The finance appendix has a full breakdown of operating budgets and the assumptions behind the budget costing.
- 4.14 The biggest category of spend is employee costs. The budget in year one is less than year two reflecting vacancies but assumes that all posts are recruited to by the end of the year. In years 1 to 3 there is an allowance for additional agency staff to help manage the early years of the business which coincides with the forecasted peak of the BLRP and HRA Development Programmes. The finance appendix includes a table setting out post remuneration and the number of posts within each salary range.
- 4.15 Expenditure on service level agreements with the Council make up the second largest category of spend followed by overhead and professional services. A breakdown of these are within the finance appendix.

### **Budget Monitoring and Reporting**

- 4.16 The shareholder agreement between BL Limited and the Council as funder will set out the Council's requirements and BL Limited's obligations in terms of financial monitoring and reporting. The frequency of reporting will be quarterly. It will be overseen by the Housing Commissioner and the process managed by BL Limited and through the Finance SLA. The shareholder agreement will set out the detailed requirements.

### **BLL Financial controls**

- 4.17 BL Limited will ensure it has robust financial controls. The financial controls will be set out in a Financial Management Policy for BL, the Council and BLRP and

are reviewed regularly. These will be approved by both BL and BLRP Boards, and the Council. They include:

- Maintaining sufficient liquidity
- Clear SLAs and charging for services between BL Limited and the Council, and between BL Limited and BLRP
- BL Limited and BLRP will adopt financial regulations and contract procedures with clear levels and limits of delegated authority
- There will be sufficient segregation of duties on payment authorisations
- Adherence to all HMRC and Companies House financial reporting requirements.

### **Tax Implications**

- 4.18 The Councils tax advisors have considered and are providing ongoing advice on how BL Limited's tax position and how this effects the Councils tax position.

### **Existing BL Limited Budget**

- 4.19 BL Limited has existing income realised from its current landlord function for 42 rented homes. The budget for 2020/21 was a surplus of £368,000 net rents (before interest). This however does not form part of the long-term financial plan and as such is not factored into the financial implications and figures above. The BLRP business plan includes funding to transfer these properties from BL Limited at the end of 2020/21. This timing is looking unlikely given the practical obstacles to achieve the required undertakings to get the properties transferred such as valuing occupied, tenanted properties.
- 4.20 Therefore, due to this delay this budget will carry into 2021/22 and enhance the income position in this year. An adjustment will take place when the property transfers are completed .

### **Impact on Broadway Living RP Business Plan**

- 4.21 In putting together the BL Limited Financial Plan consideration has been taken on the impact of the non-Development SLAs, BLRP will have with the Council and BL Limited. These include support for regulatory requirements and company services such financial, legal and secretarial. These will have an effect on BLRPs operating budget requirements, the effect of which will be confirmed once the timing of the property transfers from BL Limited is concluded. Any delay to the property transfers will reduce the net rental income for BLRP in 2021/22 and as such it may require working capital to support it in the period leading up to the transfer.

## **5 Legal**

5.1 By virtue of the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 the state aid rules no longer apply as they did before 1<sup>st</sup> January 2021. They are to be replaced by what is now referred to as public subsidy control following the EU UK Trade and Co-operation Agreement which was agreed by the UK government and EU Commission on the 24th December 2020 .However in the absence of any specific details of the new provisions the BL Ltd Business Plan proposed for approval has been finalised having regard to 'state aid' principles and implications. The Plan will be reviewed once details of the new public subsidy control requirement have been published.

5.2 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.

5.3 In order to qualify as a "Teckal" company the entity must satisfy the test in Regulation 12 (1)<sup>1</sup>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."*

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

5.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') may apply to the transfer of relevant activities from the Council to BL.

5.6 If the transfer of the relevant activities from the Council to BL amounts to a "relevant transfer" for the purposes of TUPE, then the aforementioned Regulations apply.

5.7 The TUPE Regulations would (amongst other matters) require the Council to:

- inform (and where relevant consult with) the trade union/s it recognises in good time before any transfer about (at the very least): (a) the reasons for the transfer; (b) the legal, economic and social implications of the transfer of the

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<sup>1</sup> Regulation 12 codifies a number of European judgements including the *Teckal* exemption.

affected employees; (c) any 'measures' BL proposes to take in respect of the staff 'in scope' to transfer; and (d) relevant information about agency workers; and

- provide BL with certain 'employee liability' information for each transferring (or potentially transferring) Council employee no less than 28 days before the relevant transfer.

5.8 TUPE itself does not give transferring Council employees the right to remain in the same pension scheme. However, as a result of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (the "Pensions Direction") transferring Council employees who are members of the Local Government Pension Scheme ('LGPS') are entitled to remain, whilst employed by BL, either members of the LGPS or a broadly comparable scheme. To comply with the requirements of the Pensions Direction the Council will need to ensure the appropriate clauses in the relevant agreement/s with BL are in place.

## **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

## **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 3.5.26 to 3.5.29

## **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 likely apply to relevant Council staff who are in scope to transfer to (and/or end up transferring to) Broadway Living Ltd, subject to (amongst other matters) the relevant 'commercial' activities (and/or, as the case may be, the relevant part of the Council's 'economic entity') effectively 'transferring' from Ealing Council to Broadway Living.

## **12 Property and Assets**

- 12.1 The delivery of the programme by BL Ltd 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 At the end of TUPE consultation the outcome will be considered by BL Ltd board on 8th March with intention to implement on 1st April

## **14 Appendices**

- 14.1 Appendix A – Broadway Living Ltd Business Plan  
14.2 Confidential Appendix B – Broadway Living Business Plan Confidential appendix

## **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 15<sup>th</sup> September 2020
- 15.8 Cabinet Report: Broadway Living Registered Provider (BLRP) Business Plan  
10<sup>th</sup> November 2020

## Consultation

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent to consultee</b>	<b>Date response received</b>	<b>Comments appear in paragraph:</b>
<b>Internal</b>				
Gary Alderson	Executive Director of Place	19.01.21	20.01.21	Throughout
Lucy Taylor	Director of Growth and Sustainability	08.01.21	22.01.21	Throughout
Jackie Adams	Head of Legal (Commercial)	08.01.21	14.01.21	Throughout
Shahzad Ayub	Senior Lawyer (Employment)	18.1.21	20.1.21	1, 5 and 11
Ross Brown	Chief Finance Officer			
Simon Peet	Assistant Director Technical Finance	08.01.21	18.01.21	Throughout
Firas Al-Sheikh				
Dipti Patel	Director of Place Delivery	19.01.21		
Cllr Mik Sabiers	Cabinet Member for: Housing, Planning and Transformation			

## Report History

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