

CABINET

22 January 2019

Title: Update on the Reinvigoration of Barking and Dagenham Reside	
Report of the Cabinet Member for Regeneration and Social Housing	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Summary <p>By Minute 79 (23 January 2018), the Cabinet agreed to a number of measures which were intended to refresh the governance arrangements of Reside and to develop the brand as a professional social purpose municipal landlord. This update paper sets out the work undertaken over the past year to achieve this, including:</p> <ul style="list-style-type: none">• Strengthening the governance of Reside by reviewing the company structure and recruiting a new independent Chair and Board;• Putting in place a Shareholder Agreement (Appendix A) which sets out the legal basis for the relationship between the Council and Reside, including key elements of the policy framework within which Reside operates. <p>Over the next five years the Reside portfolio is expected to increase by approximately 3,000 properties. It is therefore imperative that work continues to ensure that the relationship between the Council and Reside is clarified in order to enable Reside to act as the Council's partner in delivering affordable homes in the borough. This includes on-going work on the governance of Reside such as a medium-term Business Plan for the company (which will come back to the Cabinet in the first half of 2019) and the setting out of a governance manual.</p> <p>Finally, in line with the grant funding sought from the GLA this report also seeks in principle Cabinet approval to consider the most effective mechanisms for setting up a Registered Provider arm as part of Reside in order to access alternative funds to increase housing delivery (and extend the options and opportunities available to the company).</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <p>(i) Approve the Shareholder Agreement between the Council and Barking and Dagenham Reside Regeneration Limited, as set out at Appendix A to the report;</p>	

- (ii) Approve in principle the creation of a new Reside Registered Provider company/entity;
- (iii) Delegate authority to the Director of Inclusive Growth, in consultation with the Chief Operating Officer, the Director of Law and Governance and the Cabinet Member for Finance, Performance and Core Services, to prepare an options appraisal and business case for the most effective mechanism or form of Registered Provider(s) to deliver the Council's objectives of increasing the supply of, access to and affordability of housing in the Borough;
- (iv) Agree that further work be undertaken, on the emergence of a preferred option and approval of a business case, to register any company/entity as Registered Provider(s) with the Regulator of Social Housing, and
- (v) Delegate authority to the Director of Law and Governance to prepare and execute any relevant articles of association, partnership agreements, loans or and any other relevant legal documents on behalf of the Council to implement the creation and registration of new Reside Registered Provider(s).

Reason(s)

The rationale for these proposals is in line with the Council's ambitions to improve access to affordable housing and encourage strong and resilient communities. The London Borough of Barking and Dagenham has great regeneration potential particularly in relation to housing provision. Through the Investment and Acquisition Strategy and the bid submitted to the GLA, the Council will be enabling the creation of significant numbers of new affordable homes to meet local housing need as well as providing a sustainable portfolio of assets. Reside is a key vehicle for the management and marketing of the Council's non-HRA properties.

1. Introduction and Background

- 1.1 At its meeting in January 2018 the Cabinet agreed an approach to reinvigorate the Reside brand in order to develop the strategic management of the Reside stock, and to ensure that the required investment returns were delivered.
- 1.2 The Reside portfolio currently consists of over 800 homes of which 80% are let to working households at intermediate rents and 20% to households on the Housing Register (at Council Comparative Rents). Over the next five years there is an opportunity to increase this by a further 3,000. The future increase in the portfolio will be dependent of the performance of Be First and the decisions of the Investment Panel. It should also be noted that by submitting a bid to the GLA for funding under the Mayor of London's Building Council Homes for Londoners fund, additional external requirements will be placed on future developments.
- 1.3 This report, therefore, updates the Cabinet as to the work undertaken since the January 2018 report and sets out a future direction of travel for Members to consider and agree.

2. Proposal and Issues

2.1 This report follows the structure of the agreed recommendations of the January 2018 report and both updates and raises new issues which the Cabinet will need to consider. The work completed to date includes:

- Review and implementation of changes to the Reside Structure and Articles;
- Creation of a Shareholder Agreement between the Council and Reside (Appendix A);
- Recruitment of a new Board and a Managing Director.

More detail on each of these pieces of work is set out within the report.

2.2 Work which is in progress, or which needs to be approved by Cabinet, includes:

- Appraising options and preparing a business case for the creation of a Registered Provider and the associated requirements within the Reside structure
- Drafting a commissioning mandate for Reside, setting out the outcomes that the Council is seeking from Reside (under the Shareholder Agreement)
- Supporting Reside to prepare a medium-term business plan, setting out how it will achieve its strategic objectives
- Clarifying the role of Reside in the development process, alongside the Council and Be First

2.3 Reside Structure

2.3.1 Although the January 2018 Cabinet report allowed for the possibility of creating a new Reside Management Company, investigation identified that there is an existing Reside company which is a member of the Reside Limited Liability Partnerships, which holds no properties and can be used as the group management company. It is proposed that the Reside Board and any staff will sit in this existing company (Barking and Dagenham Reside Regeneration Limited) and will be funded through the surplus on the stock holding vehicles. As this is an existing structure it does not impact on the tax efficiency of the existing vehicles.

2.3.2 In conjunction with the structural review, an internal legal review was carried out in relation to the existing articles of this and other Reside companies and limited liability partnerships (LLPs) to ensure that they are consistent with the Council's requirements as a shareholder, through a new shareholder's agreement between Reside Regeneration Ltd and the Council.

2.3.3 No changes were required to the articles for the LLPs, but slight changes have been required to the articles of Reside Regeneration Ltd. The changes arise from the fact that when the company was set up, the Shareholder Panel did not exist and the articles refer to the Council as a holding company, while no minimum number of directors was stipulated. The changes proposed are to rectify this and to set the minimum number of directors at five and the quorum at three. In terms of Council approval, these housekeeping changes to the articles were delegated in the January report to the Director of Law and Governance for final approval and the full Shareholder Agreement is presented at Appendix A for the Cabinet's approval.

2.3.4 Within the group structure (shown at Appendix B) there is a Limited Liability Partnership (LLP) where the ownership is split with a charity (Barking and Dagenham Renew). This structure was set up in order to utilise capital receipts to finance new affordable housing through an entity which is not controlled by LBBD and will remain in place as part of the new structure.

2.3.5 It should also be noted that the 477 properties at Willian Street Quarter and Eastern End Thames View (WSQ and EETV) which were financed through a debenture with an external funder are not part of this structure. The covenants which LBBD entered into as part of this funding agreement are such that the addition of this vehicle into a holding company would present a risk in terms of the way in which an external party could exercise control over the other vehicles in the Reside group.

2.4 Shareholder Agreement

2.4.1 To date no Shareholder Agreement has existed between any of the Reside vehicles and the Council. The debenture which the Council agreed in relation to WSQ and EETV cannot be included in the new Shareholder Agreement as a detailed suite of legal documents already exist between the Council and the funder in relation to the management and treatment of these properties. Effectively the Reside function in respect of these properties is tightly controlled through the debenture and cannot be changed without the agreement of the funders.

2.4.2 The form of the Shareholder Agreement for the new Reside structure follows that used for other Council companies such as Be First. The draft agreement attached as Appendix A is based on the following principles, that Council members will be satisfied that Reside:

- complies with all the shareholder's requirements as set out in the consents
- delivers the Council's strategic objectives
- acts in accordance with the Council's specified performance standards
- operates effectively and efficiently in the delivery of its business

2.4.3 In essence the Shareholder Agreement restricts the changes in strategic and operational management which Reside can undertake without the approval of the Council. The key restrictions relate to the ability of the company to take on additional debt, make changes to the Rent Policy in relation to the rent increases applied, and board and staff payments and dismissal, all of which need Council approval.

2.4.4 It should be noted that the allocations policy is not covered in the Shareholder Agreement. This is because each of the legal arrangements for the special purpose vehicles contains a tenancy policy which covers the allocations policy on the respective properties. As these form part of the transfer/sale documents they do not need to be replicated in the Shareholder Agreement.

2.4.5 Elsewhere on the Cabinet's agenda, the Housing Allocations Policy paper deals with proposed changes to the way in which residents are assessed for and allocated Reside properties.

2.4.6 In respect of tenure mix, this is set as part of the funding arrangements, if there was a requirement to change the tenure mix once the schemes are transferred to Reside

this would require changes to the financial arrangements and would be dealt with through the loan agreements and leases and not the Shareholder Agreement.

2.4.7 In order to be clear as to where any decisions are made the table below sets out the policy process:

Decision	Description	Control
Rent Policy	This sets out the policy by which future rent increases will be made	Changes in Rent Policy must be agreed through the Shareholder Agreement
Debt Arrangements	Reside's ability to increase its debt levels	Changes in debt and refinancing must be agreed through the Shareholder Agreement
Staff and Board	Payments to staff and board members and any potential dismissal	Any changes in either the remuneration policy of Reside or the dismissal of senior board or staff members must be agreed through the Shareholder Agreement
Allocations Policy	The way in which Reside properties are let	This is part of all of the legal transfer arrangements for all individual developments (and stipulates that Reside must abide by the Council's published allocations policy)
Service Provision	Who Reside uses to provide the services to residents	Management agreements are in place for existing schemes and the Shareholder Agreement sets out the expectation for these to continue with reviews being brought back for discussion with the Council

2.4.8 In conjunction with the Shareholder Agreement, a commissioning mandate is being drafted to set out the outcomes that the Council is seeking from Reside, consistent with the shareholder agreement and the company's strategic objectives. This will create the framework for Reside to then prepare a medium-term business plan with the Council. The business plan will translate strategic objectives and outcomes in the Borough Manifesto and Corporate Plan into specifications for delivery by Reside. It is expected that a Reside Business Plan will be ready for agreement by the Council in first half of 2019 and will contain a Medium Term Financial Strategy (MTFS) as well as a response to the Council's objectives.

2.4.9 Under the terms of the delegation agreed in January 2018 at Cabinet, any necessary amendments to the Shareholder Agreement and the final form of the Commissioning Mandate will be agreed by the Director of Law and Governance.

2.5 Recruitment

2.5.1 A successful recruitment process has taken place to appoint a new independent Chair of Reside and three new independent non-executive directors. been undertaken and an offer of appointment made to the proposed Chair for the revised Reside brand which has been accepted with the new Chair taking over at the AGM.

- 2.5.2 The recruitment of a Managing Director to drive the business forward is in progress, with a postholder expected to be in place by April 2019.
- 2.5.3 A draft forward plan for Reside has been created in conjunction with the new Chair. This plan incorporates the creation of a Business Plan for Reside and the creation of a MTFS. Due to the way in which Reside was structured the original board were provided with annual cashflows for each entity, rather than an overall financial plan for Reside which made it harder to manage the company on a proactive, long term basis.
- 2.5.4 The work to create this financial plan has already started and will become imperative if it is agreed to create a registered provider arm due to the requirements of the regulator. Although the creation of a paid board and staff will lead to additional costs, this will be offset by the existing costs, both staff and other costs, which are already committed, but which are not currently shown as a cost to Reside and remain on the Council's accounts.

2.6 Registered Provider Status

- 2.6.1 Previous discussions in respect of Reside raised the possibility of a Registered Provider (RP) arm being created within the new Reside structure, especially in line with the Mayor of London grant opportunity Building Council Homes for Londoners fund.
- 2.6.2 At the end of September 2018 a bid of £29.3m was made to support the building of 293 new Council Comparative Rent (CCR) homes. Of this bid LBB was awarded a total of £25.338m. However, in order to secure the grant, the funded properties have to be held by a Registered Provider.
- 2.6.3 The schemes which the bid was comprised of are not expected to be completed until after April 2020 which gives the Council a short space of time to consider whether to create a Reside registered provider entity and whether that entity must be a not-for profit entity or whether more than one entity is, in fact, required for different schemes depending on funding sources and financial viability. The creation of an RP will take the minimum of a year to complete and the decision to do so would require the approval of Cabinet as it will be a new company within the structure.
- 2.6.4 Cabinet is therefore requested to agree to the creation of a Registered Provider arm in principle as part of the Reside structure. This would allow officers to consider the detailed options and business case for the form of RP, bringing a decision for final approval back to Cabinet. Cabinet is also requested to delegate authority to the Director of Law and Governance to prepare and execute articles of association or partnership agreements and any relevant legal agreements or documents on behalf of the Council to implement the creation of new Reside Registered Provider/s in line with the GLA bid and the Council's strategic objectives to increase supply of housing.

2.7 Reside Partnership with Be First

- 2.7.1 As part of the project to reinvigorate Reside, greater clarity is needed in its relationship with other Council services and entities. Although the way in which

Reside has been set up means that they have to take the properties which have been built by Be First unless they are not financially viable, there are no formal mechanisms for Reside to be involved in the development process. At present the Council commissions Be First to build and then finances Reside to take over the stock through either loans or leases.

- 2.7.2 Given that the new Reside Board will be independent of the Council, it is proposed that the relationship with Be First and the Council is worked up as part of the Reside Business Plan for agreement with the Council. The ongoing relationship can then be managed through both commissioning mandates and reciprocal consultation on each other's business plans as they are reviewed annually.

3. Options Appraisal

- 3.1 The alternative option would be to continue with the current management arrangements, with staff capacity for Reside provided by Council staff. However, with the growth in the number of properties within the portfolio, this is not a sustainable approach. Furthermore, it gives rise to state aid risks. To fully realise the potential of Reside and deliver the required improvement in the commissioning and contract management a more formally constituted management company is required.
- 3.2 In respect of the creation of any registered provider, the properties which formed the bid to the GLA could be put into the Council's HRA given that this is also a registered provider. However, this would not be in line with the strategy to build affordable homes through the Reside model and would mean that the Reside portfolio would not grow until after all of these properties were completed, ie until after 2022 which would in the short term undermine the impetus behind board creation and recruitment.

4. Consultation

- 4.1 Officers from Inclusive Growth have produced this report and included findings and feedback from officers across the Council and Members. The report has been discussed at officer level in line with the agreed governance arrangements.

5. Financial Implications

Implications completed by: Sandra Gray, Commercial Accountant

- 5.1 At the time of the original cabinet report in January 2017 it was proposed that any staffing and board costs would be kept to a minimum and that they would eventually become self-financing. Since this time a new independent Board has been recruited and an employment offer has been made to a Managing Director. Although some costs have been recharged to Reside in the past, this does not reflect the actual costs the Council incurs, therefore the additional cost to the General Fund will be in the region of an additional £150,000 per annum until the management costs of the structure can be built in to each of the pipeline investment schemes, making the overall structure self-financing.
- 5.2 IT set up costs will also need to be incurred, to enable B&D Reside Regeneration Ltd to have its own Oracle entity. Estimated one-off costs are £50,000.

- 5.3 The pipeline of properties agreed as part of the Investment Strategy in September 2017 has not changed, only the proposed method of funding, with the use of borrowing and capital receipts being reduced as it is replaced by grant. As part of the grant conditions these properties have to be held by a non-profit registered provider (which could include the Council's HRA, although that would make them subject to Right to Buy).
- 5.4 Now that a Registered Provider is required in order to meet the GLA grant conditions it is likely that management costs will increase in order to meet the additional regulatory requirements of the regulator. Additional resources will also be required in order to ensure that any new or existing entity can achieve registration before the properties being built with grant are completed.
- 5.5 The proposed placement of the existing pipeline schemes in a registered provider will have an impact on the Councils assumed £5.125m return from the investment strategy. This would arise as the surplus from each scheme would not flow back to the Council as it currently does from the properties held in the existing Reside Limited Liability Partnerships. All of the schemes are currently being reworked to revise the cashflow assumptions based on both the grant and the type of vehicle holding the properties. The outcome of this work will be reported back to Cabinet.
- 5.6 As with the previous Cabinet report, if more recruitment takes place and there are existing staff who may qualify for TUPE to Reside, consideration needs to be given to Pension matters and approval sought from the Pension Panel before admission to the LB Barking and Dagenham fund.

6. Legal Implications

Implications completed by: Suzan Yildiz, Deputy Head of Legal (Commercial)

- 6.1 The report provides an update on progress to date on a review of the Reside management arrangements and retention of board members, which was approved by Cabinet in January 2018 and sets out the direction of travel towards creating Registered Provider arm of Reside. The latter is in principle considered appropriate to enable the schemes to benefit from existing and future funding streams from the GLA. The implications below set out the relevant considerations towards this and the work that needs to be done to facilitate the creation of a registered provider.
- 6.2 The "general power of competence" under Section 1 of the Localism Act 2011, which gives the local authority the power "...to do anything that individuals generally may do" would enable the creation and operation of companies such as Reside or a new Registered Provider. The power is not limited either by the need to evidence a benefit accruing to the local authority's area, or in geographical scope. However, existing and future restrictions contained in the legislation continue to apply.

Revisions to Reside's Governance

- 6.3 Whilst Reside differs from the Council's other wholly owned companies, in that it has been extant and operational for some years, for reasons of simplicity, transparency and sound management, revisions made to the governance arrangements through a new Shareholder Agreement and revisions to the articles of

Reside designed to broadly conform with the arrangements for other wholly owned companies such as Be First. The suite of contractual and governance documents including the Shareholder Agreement regulate the relationship between the Reside Group and the Council and seek to ensure that the group's strategic direction and activities accord with the Council's corporate objectives for growth and regeneration. The report at paragraph 2.4.7 details how and where these controls will be exercised. The Shareholder Agreement accompanying this report will be both part of Reside's governance arrangements and a legally binding contract between the Council and Reside, which the company and its subsidiaries are obliged to follow. As a governance document, it ensures there is no ambiguity about decision making and objectives and provides additional checks and balances on the use of public funds. It is also likely to provide evidence of the Reside company being Teckal compliant, i.e. an entity primarily controlled by and fulfilling at least 80% of functions for the Council, which is relevant for procurement purposes. It enables Reside to commission work from the Council and its other wholly owned companies such as Be First.

- 6.4 The Commissioning Mandate sets out the vision and operational parameters for Reside outlining expected key success factors and outcomes to ensure the Reside group of companies are aligned with the Council's objectives.

Registered Provider Proposals

- 6.5 The report also seeks in principle approval for the creation of a Registered Provider arm within the Reside structure, which is deemed appropriate to facilitate the pipeline of development, access to funding streams and the preparation of a new Reside Business Plan to optimise the housing offer in the borough.
- 6.6 The Housing and Regeneration Act 2008 (HRA 2008) established the regulator of social housing (i.e. Homes England since January 2018) and the statutory framework which enables the regulator to register and regulate providers of social housing, known as registered providers. There are various types of registered provider including for profit, non-profit or charitable entities. Registration is voluntary for new entrants to the social housing sector. However, it is compulsory for those entities which have access to financial assistance from Homes England or the GLA. Section 31 of the HRA 2008 requires that when Homes England and GLA provide financial grants they must impose conditions that a registered provider is the landlord of the accommodation when it is let. Hence, in so far as any of the schemes delivered by the Council benefit from such financial assistance, the accommodation needs to be let/managed through the HRA or a registered provider, although there is no requirement that the registered provider should exist at the time of applications.
- 6.7 Whilst the report seeks approval in principle to pursue a registered provider, the options around the form of that provider and the business case supporting it need to be further developed. This work is significant as the type of entity the Council settles upon, will influence the eligibility criteria and registration requirements under Section 112, HRA 2008 and the regulatory standards the new registered provider will need to comply with. These include requirements around financial viability, governance, management and (for non-profit entities) having as an object the provision of social housing. It is, therefore, recommended to carry out further work on the options, business case and the type of entity required to meet the Council's objectives

before approval of a preferred option and ultimately registration with Homes England. Work towards options, business case and registration can progress to some extent in tandem. Hence, subject to a final preferred option for the registered provider, a delegation is included for the Director of Law and Governance to undertake the necessary steps to prepare, execute or amend relevant legal agreements or documents on behalf of the Council to implement the creation of the new Reside Registered Provider. But is unlikely that the Director of Law can or would exercise these delegations without a clear way forward on the options and business case which set out the financial case and form of RP to suit the Council's socio-economic, regeneration and housing objectives, as well as Reside's future business plan.

- 6.8 The proposals for a registered provider are also impacted by the Regulation of Social Housing (Influence of Local Authorities) (England) Regs 2017, which are designed to limit the level of local authority influence over private registered providers such that their board membership does not exceed 24% of local authority nominated officers. The only exception to application of the Regulations is for entities which are wholly owned/controlled by the local authority and a non-profit organisation as defined by the Housing and Regeneration Act 2008. Such arrangements are possible to achieve, but further work is required to carry out financial viability / options appraisal for the best form of vehicle to meet the Council's requirements circumstances. Authorities such as Westminster Council, for example, have taken steps to re-constitute the boards and governance arrangements of their affordable housing provider entities to ensure they fall outside the Regulations.
- 6.9 Furthermore, it should be noted that whilst a range of powers including the Local Government Act 2003 enable the Council to provide financial assistance to Reside and development projects, this is subject to the Reside group being compliant with Treasury guidance and State Aid rules. Further financial work needs to be done, in tandem with the proposals for a registered provider and the preparation of a Reside business plan, to ensure that Reside delivers the Council's objectives but operates at arm's length and without access to state aid. At the time of this report insufficient information is available to consider those issues fully. Hence, a future Cabinet report addressing these issues will be imperative.

7. Other Implications

- 7.1 **Risk Management** – A risk management section will be included in the Business Plan.
- 7.2 **Contractual Issues** – These have been addressed in the body of the report
- 7.3 **Staffing Issues** – None at this stage but, subject to further activities, TUPE may be a relevant issue for which any affected staff will be consulted.
- 7.4 **Corporate Policy and Customer Impact** – Providing good customer services to Reside Tenants is a key theme of the Business Plan, but no specific changes are being recommended at this stage.

7.5 **Property / Asset Issues** – Reside is a holding and management property company. Key issues are addressed in the Business Plan and any decisions will be taken following the Council’s governance arrangements.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix A:** Draft Shareholder Agreement
- **Appendix B:** Reside Group Structure