1. SUMMARY
1.1 This report explains the proposed changes to the Deferred Payment Policy brought about by the Care Act 2014 and seeks Cabinet approval of the proposed Deferred Payment Policy to be implemented from 1st April 2015 and agreement to exercise the discretion to apply interest at the nationally set maximum compound interest rates and administrative costs.

2. RECOMMENDATIONS
2.1 Cabinet is recommended to:
2.1.1 Approve the new Deferred Payment Policy.
2.1.2 Agree that the Council will charge compound interest on the deferred payment amounts and an administrative charges as set out in the scheme. The interest rate chargeable will be the nationally set maximum interest rates plus 0.15% as permitted under the regulations. This will be updated every six months in line with National publications.
2.1.3 Delegate authority to the Deputy Chief Executive for Families to amend the scheme in line with changes made by statutory provisions (such as, for example, any change in the upper capital threshold limit).

3. PROPOSALS
3.1 Clients who enter Residential care may be eligible to enter into a deferred payment agreement with the Council rather than sell their property. A deferred payment scheme allows the clients to defer from paying the council for sums due until the proceeds of the sale of their house are realised, securing the Council’s interest with a charge on the property. The intention
of the legislation is to make it possible for people going into care to defer selling their homes in order to pay for their care. The power to enter into deferred payment agreements came into force in October 2001. Councils are expected to offer deferred payment agreements in appropriate cases and to draw deferred payments arrangements to the attention of prospective residents.

3.2 Cabinet approved the current Deferred Payments policy on 21st February 2012. The care act 2014 associated regulations have changed a number of the existing provisions that require councils to operate deferred payments.

3.3 The Council has discretion to exercise in favour of an application for a Deferred Payment Agreement in certain circumstances outside the standard obligations but will make its decision based on the circumstances of individual cases. This includes where a person is eligible for residential care and enters a sheltered Housing/supported living scheme. Another example might be where a person has slightly more than the current threshold limit of £23,250 but is expected to deplete their assets to below that level in the near future.

3.4 Where a resident has been refused a deferred payment agreement, the reason will be put in writing to them by the Council, along with advice on how to appeal against the decision should they disagree with it.

3.5 Where a resident lacks capacity to enter into a deferred payment agreement the agreement will be between the Council and the resident’s Financial Deputy where appointed under the provisions of the Mental Capacity Act 2005, or the Attorney where a valid Power of Attorney has been made.

3.6 The proposed Deferred Payment Scheme is in Appendix 1. The outline eligibility criteria for the scheme is set out below:

The resident will be able to apply to defer their residential charges under the new scheme if all of the criteria set out below are met: -

- The resident has been assessed and it is agreed that their care and support needs are to be met by residential care either provided by the Local Authority directly or via contracted provision
- The resident has been financially assessed under the Assessment of Resources Regulations and accompanying guidance
- The resident does not have other income or savings over the upper capital limit (currently £23,250) other than the value of their home.
- They are the owner of the property and formerly occupied as their main or only home
- There is no outstanding mortgage on the property or where there is a mortgage, there is sufficient money left from the proceeds of the sale after redemption of the outstanding balance to meet the assessed contributions payable by the resident for their care costs.

3.7 The financial details regarding the proposed scheme are as follows:

- The costs to set up and enter into a deferred payment agreement include property valuation, drawing up the legal agreement, placing a charge on the
property and other administrative costs. These can be added to the deferred payment if desired.

- The amount the resident can defer will be to a maximum of 90% of the value of the property (less the cost of any residual mortgage) and the minimum capital limit (currently £14,250). The deferred payment can include the set up costs and the interest payments (these can be paid separately if desired).

- The deferred sum will be subject to an interest charge based on a Government-set calculation under section 4(3) of the Budget Responsibility and National Audit Act 2011. This is based on government borrowing rates on financial instruments (15-year gilt-edged securities) plus 0.15%. Thus, if the specified figure (the two rates are January to June and July to December) is 2.6%, the composite rate would be 2.75%. The government has set an indicative maximum of 5%.

3.8 The Council’s duties and responsibilities under the scheme:

- The Council has a duty to advise the resident what the costs of set up and maintaining the deferred payments will be, so that the resident can make an informed choice before they enter into the Contract. It will be a part of the process that the resident will be advised to seek independent financial advice prior to signing anything.

- If the agreement is signed, the Council has a duty to monitor the progress of the loan and to inform the resident when the deferred amount gets close to the agreed limit.

3.7 The resident’s responsibilities under the scheme:

- The resident must undertake to keep the property in a reasonable state of repair and must insure it against known risks

- The resident agrees that a legal charge will be secured against their property giving the Council the right to reclaim the charges against the eventual sale.

- The money owed must be repaid when the property has been sold, when the resident terminates the agreement (and pays the debt owing) or on the death of the resident.

- It is expected that the resident will have taken appropriate legal/financial advice (independent from the Council) before entering into any contractual relationship

4. OPTIONS & ALTERNATIVES CONSIDERED

4.1 The Council has discretion whether or not to charge interest within their deferred payment schemes. If they do, the interest rate must not exceed the rates as set out in the statutory provisions as outlined within this report. The Council may also charge a fee for the setting up of the arrangements. This is to cover the costs the Council incurs and not to make a profit. This is the recommended option in order to recoup the costs incurred as
permitted by the legislative provisions, and is in line with the Council’s financial strategy regarding fees and charges.

4.2 The Council could make a decision not to charge interest or administrative costs, however, this if not recommended as it would result in a financial cost to the Council of operating the scheme.

5. SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)
5.1 The recommendations follow the requirements on the Care Act 2014.

6. CONSULTATION
6.1 The national scheme has been consulted on by the Government. The local implementation will be communicated to residents as part of a wider explanation of how the Care Act affects the Community.

7. IMPLICATIONS
7.1 Financial
7.1.1 The proposals in this report will meet government legislative requirements. Financial and demand modelling carried out to date using government models has given us a working estimate of 1099 self-funders across the Borough of which 181 are in residential care. It is difficult to estimate how many residents will be eligible under the new scheme.

7.1.2 The Department of Health has given Waltham Forest an additional £286k to support with the implementation of the deferred payment scheme. The council will monitor the initial uptake and make required changes to the forecast as needed; this will be reported through budget monitoring.

7.1.3 There are 11 clients with monies owing of £192k in respect of which charges have been registered under the existing scheme. These charges may be eligible to be converted to charges under a deferred payment agreement. Each case will have to be assessed to ensure that they meet the criteria. Guidance indicates that there is no need to convert from existing arrangements.

7.1.4 The money received from the setting up of the scheme will be used to reduce the overall outstanding balance of all deferred payments arrangements. Charges levied by the Council will be based on a cost recovery basis. Residents may, if they wish, obtain their own property valuation and compare it with the Council valuation. The final agreed valuation will then be agreed by negotiation, if the two valuations differ significantly.

7.1.5 Interest receivable from this scheme is based on Government guidelines, and currently limited to a maximum of 5%. The indicative rate is nearer 3% at present.

7.1.6 The Council must be satisfied that there is sufficient security to cover the deferred payment (either in the value of the property or other agreed assets), and can refuse to fund charges above the agreed maximum amount agreed.
7.2. Legal

7.2.1 Sections 34 to 36 of the Care Act 2014 provided for regulations to be made specifying the conditions requiring or permitting the local authority to enter into a deferred payment agreement with an adult in respect of sums due for the provision of care and support. The legislation which comes into force on 1st April 2015 requires councils to offer and operate a deferred payments Scheme. It replaces previous schemes under section 22 of HASSASSA and section 55 of the Health and Social Care Act 2001. Local Authority Circular LAC (DH) (2001) 25 introduced deferred payments for residents with property who do not wish to sell their homes, or cannot do so, in order to meet their care costs.

7.2.2 The Care and Support (Deferred Payment) Regulations 2014 issued under the Care Act 2014 set out in Regulation 2 that where an adult’s need for care and support are to be met by the provision of accommodation in a care home, subject to certain conditions being met, the Council is required to enter into a deferred payment agreement. Regulation 3 permits the Council to enter into a deferred payment agreement, subject to certain other conditions being met, where the adult needs are met by the provision of a care home or supported living accommodation. The regulations set the equity limit at 90% of the value of the asset which the authority obtains as security less £14,250 and the amount of existing secured encumbrances upon that asset.

7.2.3 The Council is required to obtain adequate security for the payment of the deferred amount, either by way of a charge capable of being registered as a first legal charge in favour of the Council on the Land Registry, or other security which the Council considers is sufficient to secure payment of the deferred amount plus any interest and administration costs.

7.2.4 The draft Scheme Cabinet is being asked to approve complies with the legislative provisions as set out in this report. The Council has discretion under the legislation to charge compound interest and administrative charges. Interest rates if charged cannot exceed the amount set by government and regulation. Any administrative charges applicable can only recover costs incurred.

7.2.5 The Council must comply with its Public Sector Equality Duty (PSED) under Section 149 of the Equality Act 2010. Members are referred to Appendix 2, the Equality Impact Assessment, which sets out the full details of the nature of the duty. The duty to have “due regard” means that the duty must be properly taken into account but it does not mean that a decision that may have an adverse effect on those with a protected characteristic cannot be made.

7.3. Equalities and Diversity

7.3.1 The Deferred Payment scheme is open to all residents regardless of any protected characteristics which they may have. Due to the nature of residential care following publication of the scheme any impact will most likely be upon those who are disabled and elderly. The Equality Impact
Assessment is at Appendix 2. The impacts identified in relation to the proposed scheme is that it will enable some residents to enter into agreements that will mean they are not required to sell their property, this is a positive impact upon those who may otherwise have to sell their property. The proposal to charge interest and administrative costs is justified as this is to protect the Council’s financial interests in relation to the outlay it will make in operating the scheme.

7.4. **Sustainability (including climate change, health, crime and disorder)**

7.4.1 There are no implications

7.5. **Council Infrastructure (e.g. Human Resources, Accommodation or IT issues)**

7.5.1 There are no direct council infrastructure implications.

**BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)**

**Approval by the Portfolio Holder**