1. **SUMMARY**

1.1 The Council is obligated to return monies received from the sale of Council Housing stock, known as 141 right to buy (RTB) receipts, back to the Government with interest if it is not able to utilise these monies within a 3 year period. Receipts must be 70% match funded.

1.2 The Housing Revenue Account (HRA) now has no development “headroom” for any further new build projects and is therefore not able to utilise RTB receipts for new affordable homes because it is unable to provide the 70% match funding.

1.3 This report proposes both a short and medium/long term solution for the Council that will enable RTB receipts to be utilised to build new homes and to maximise the efficiencies of the Council’s current company structuring and tax position.

2. **RECOMMENDATIONS**

2.1 For the reasons set out in this report Cabinet is recommended to:

2.1.1 Approve the establishment of a Community Benefits Society (CBS) charitable entity, for the objects and purposes set out in this report.

2.1.2 Delegate authority to the Director of Housing in consultation with the Director of Finance to:
(a) Appoint professional consultants to provide financial, commercial and legal advice as required.
(b) Take all necessary actions and agree all appropriate documents to establish and incorporate a Community Benefits Society (CBS) charitable entity.

3. PROPOSALS

Background and Purpose

3.1 Right to buy (RTB) legislation allows council tenants and housing association tenants who transferred with their homes from council landlords to buy their home at a discount.

3.2 Under the previous legislation, the council could retain administrative costs of the sale and any costs incurred on improving the dwelling in the previous three years. After those costs have been taken into account, the council would retain 25% of the receipt balance, with 75% being pooled to the government.

3.3 The government announced significant changes to the Right to buy legislation from April 2012. The key changes included:

1. Increasing the caps on discount from £38,000 in London, to £75,000. This has since been raised to £104,900 and increases in line with CPI each year. There would be some protection for councils through a minimum cost floor, which meant that the sale price had to be at least the cost of build if the property was built in last fifteen years. In addition, the number of years required for a tenant to qualify increased to five years.

2. The commitment to replace each additional home sold under RTB with a new home at ‘affordable rent’, and that the additional receipts from sales will go towards the cost of replacement. This would be through a 141 agreement to be signed by each authority to spend the retained amount within three years of the sale; otherwise this has to be returned along with interest calculated at 4% cumulative plus base rate. In particular, the RTB receipt can only form up to 30% of the scheme, with the remaining 70% to be funded from HRA resources or borrowing against the new rental streams (Greater London Authority or other government grants are not allowed to be included). The receipts can also be used to part fund social rent schemes by other providers, such as housing associations, providing they are willing to provide funding for the other 70% of the cost without any further Government subsidy. Cabinet agreed an “Affordable Housing Grant” programme to use the receipts in this way on 17 November 2015.
3.4 **Impact to Waltham Forest**

3.4.1 The first key change had the impact of re-invigorating the number of RTB sales each year. In Waltham Forest, the number of sales went from a low of 4 per annum in 2010, to a peak 137 in 2014:

<table>
<thead>
<tr>
<th>Year</th>
<th>Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010/11</td>
<td>10</td>
</tr>
<tr>
<td>2011/12</td>
<td>4</td>
</tr>
<tr>
<td>2012/13</td>
<td>34</td>
</tr>
<tr>
<td>2013/14</td>
<td>137</td>
</tr>
<tr>
<td>2014/15</td>
<td>130</td>
</tr>
<tr>
<td>2015/16</td>
<td>88</td>
</tr>
<tr>
<td>2016/17</td>
<td>95</td>
</tr>
</tbody>
</table>

3.4.2 As an authority, the council is losing 1% of its social housing stock each year which reduces its capacity to house those on the waiting list and there is subsequent pressure on the homelessness budget as well.

3.4.3 In addition, there is direct loss of rental income from those dwellings, which in reality is not correlated by a reduction in management and maintenance costs. This creates financial pressure on the Housing Revenue Account.

3.4.4 Waltham Forest is committed to replacing sold properties with new affordable homes and entered into an agreement with the Secretary of State under section 11(6) of the Local Government Act 2003 (as substituted by section 174 of the Localism Act 2011) as agreed by Cabinet on 19 June 2012. However, there are restrictions on how much money is available within the HRA as well as how much it is allowed to borrow in order to match fund the remaining 70% on eligible schemes.

3.4.5 Retained receipts can be used to construct new housing or to purchase housing from the private sector. The property does not need to be in the authority’s area. There are a number of criteria in terms of how the 30% retained receipt can be spent, which are:

- Rents must be “affordable, i.e. no more than 80% of market rents, but may be lower
- The Council cannot use receipts to support schemes by wholly owned subsidiaries
- The schemes must not be supported by other government grants or other capital receipts
- Spending must take place within 3 years of the receipt

3.4.5 Waltham Forest has prioritised spending its RTB allocation for the purposes of new builds, although it has invested £27m in the last few years including grants to Housing Associations, Alms houses and the purchase of street properties. The target spend based on the receipts to date are tabled below. Targets are applied quarterly but annual totals are shown below for clarity. The repayment to DCLG is 30% of any cumulative shortfall of expenditure plus interest at 4% over base rate compounded quarterly.
3.4.6

<table>
<thead>
<tr>
<th>Date of Receipt</th>
<th>Amount Retained by council £</th>
<th>Required total expenditure £</th>
<th>Deadline for spend</th>
<th>Planned Spend £</th>
<th>Shortfall £</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014/15</td>
<td>9,301,959</td>
<td>31,006,530</td>
<td>March 2018</td>
<td>25,875,000</td>
<td>5,131,530</td>
</tr>
<tr>
<td>2015/16</td>
<td>7,204,178</td>
<td>24,013,926</td>
<td>March 2019</td>
<td>14,914,000</td>
<td>9,099,926</td>
</tr>
<tr>
<td>2016/17</td>
<td>11,044,326</td>
<td>36,814,420</td>
<td>March 2020</td>
<td>3,951,000</td>
<td>32,863,420</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>27,550,463</strong></td>
<td><strong>91,834,876</strong></td>
<td></td>
<td><strong>44,740,000</strong></td>
<td><strong>47,094,876</strong></td>
</tr>
</tbody>
</table>

3.4.7 In summary, the total receipts retained by LBWF relating to next three years total £27.5m, which has to be match funded by a further £64m to deliver new build spend of £91.8m by March 2020.

3.4.8 In the absence of available funding and restricted by the borrowing cap, there is a gap of £47m over the 3 years 2017/18 to 2019/20 (against the £91m target), which will result in repayment of capital receipts of £14m and an estimate interest cost of £2m from the housing budget.

3.4.9 The HRA Medium Term Financial Strategy which is approved each year factors in the current expected shortfall. (Please note: There will be a revised HRA Medium Term Financial Plan paper tabled as a separate agenda item which may provide some variation in estimates which is due to the timing of the production of the reports.)

<table>
<thead>
<tr>
<th>Interest on repayment of retained RTB receipts</th>
<th>2015/16 £’000</th>
<th>2016/17 £’000</th>
<th>2017/18 £’000</th>
<th>2018/19 £’000</th>
<th>2019/20 £’000</th>
</tr>
</thead>
<tbody>
<tr>
<td>n/a</td>
<td>98</td>
<td>223</td>
<td>392</td>
<td>500</td>
<td></td>
</tr>
</tbody>
</table>

3.4.10 The Council new build programme is scheduled to complete by 2020, at which point the council has limited resources and will struggle to identify £30m (current average) worth of eligible spend within existing schemes.

3.4.11 New initiatives are required imminently to avoid making further repayments.

3.5 Options – Short term (2017-2020)

3.5.1 Funding the Councils new build programme on garage sites: this will provide 200 new homes with a spend budget of about £34m. However due to the HRA cap, we cannot progress any further schemes this way.

3.5.2 Supporting housing association developments: this has included 1C The Drive (with Walthamstow and Chingford Almshouse Charity),
Stonelea and Thornbury (with Family Mosaic), Hoe Street (with New Islington and Hackney) and others in the pipeline. The housing associations provide the additional 70% of funding to make the scheme stack up (total scheme costs approx. £24.8m, using RTB of £7.5m).

3.5.3 **An initiative with Heylo Housing, Let's Share**: allows Local Authorities to buy a share of an existing home and then sub-let the property to a tenant, reducing the amount of capital investment required, and increasing the availability of properties for rent. This initiative is currently being progressed with Heylo Housing and will be piloted with 20 properties with a target spend of £6m.

3.5.4 An agreement with **Local Space** is being finalised to purchase up to 50 properties for £20m of eligible expenditure, as well as ensuring nomination rights for temporary accommodation housing.

3.6 **Options – Medium/Long term**

3.6.1 The Council has the option to take no action, the do nothing option. However, as indicated earlier, this would result in the Council having to pay back the Right to Buy (RTB) receipt funding to the Treasury with base rate plus 4% compound interest. There would also be minimal provision of new affordable homes because of the issues previously outlined. The interest cost could be substantially reduced by repaying early any receipts which it was clear could not be used. Cabinet approved delegated powers on 8th November 2016 to the Director of Finance to make early repayments if this is financially prudent.

3.6.2 Many local authorities are now addressing this common problem by establishing either a joint venture (JV) partnership or an independent charitable entity through which these RTB receipts can be utilised for new affordable homes.

3.6.3 The Council is unable to use these RTB receipts for new homes in any wholly owned or Council controlled entity (such as Waltham Forest Developments Limited - WFD) directly which is why a non-controlled JV or Independent Charitable entity is required.

3.6.4 The key considerations under this model are the ability for the council to pass RTB retention monies to the new entity; and the ability to pass land to the new entity in order to enable it to develop.

3.6.5 A JV Partnership ties the Council in with one provider partner unless the Council chooses to establish a number of different JV partnerships. Establishing a number of partnerships would not be ideal adding to costs and placing undue administrative, management, and reporting burdens upon the Council.

3.6.6 Establishing a Charitable entity such as a Community Benefits Society (CBS) as opposed to a JV partnership has tax advantages and the
CBS can choose whom it collaborates with for which development in which area. It is not tied to any particular JV partner provider. As a result, many Councils are now choosing a CBS model as their preferred option.

3.6.7 Both are tried and tested solutions used by many Councils up and down the country. The Council has the legal powers to establish and operate either model. Neither the JV partnership or the Charity can be controlled by the Council, they must be seen as independent bodies to qualify and receive the RTB funds for affordable homes.

3.6.8 Establishing a JV Partnership or CBS solution will enable the Council to make best use of the substantial RTB receipts and avoid returning the funds to the Treasury together with interest payments on the money.

**Corporate structure**

3.6.9 Under the provisions of the retention agreement it is, therefore, open to the Council to establish a new corporate entity to receive retention monies, provided that the Council does not hold a controlling interest in that entity.

3.6.10 It would, therefore, be envisaged that at both a board and a shareholding level, the Council would have a minority interest (say 2 out of 5 board members) with each board member also holding a nominal share in the new entity. The remainder of the board/shareholders would be individuals identified (and trusted) by the Council, but would not be formally nominated by the Council, but would be appointed in accordance with the rules of the charity.

3.6.11 On the basis that the new entity would be providing predominantly social or at least sub-market housing, the legal advice sought to date indicates that it would be capable of being a charitable entity. This would bring with it a number of taxation advantages both in terms of Stamp Duty Land Tax (SDLT) relief on land acquisitions (charity relief) and corporation tax relief on profits derived from its charitable activities. As such, the two broad choices available would be to register it as an "exempt charity" or as a Community Benefit Society registered with the Financial Conduct Authority (FCA); this is the corporate form most traditionally used in the Social Housing sector and is the corporate form adopted by most Registered Providers.

3.6.12 Registration with the FCA should be relatively straightforward provided the society is established with entirely charitable objectives. Although it would be exempt from registration with the Charity Commission, it would need to obtain charity tax clearance from the government’s Tax Agency (HMRC).
The alternative would be a registered charity incorporated as a Company limited by Guarantee with Companies House and subsequently registered and regulated by the Charity Commission. Charity Commission registration, however, is not as straightforward as with FCA registration.

The decision between different types of corporate bodies is a finely balanced one, but, on balance, it is likely to be more efficient and quicker to establish a charitable Community Benefit Society (CBS). It is on this basis that members are recommended to approve the establishment of a CBS for the continued long term use of 141 RTB receipts to enable the building of much needed affordable homes in the borough.

The Council and the charity could enter into a deed of covenant which could require that the rules of the charity not to be changed without the Council’s consent. The Council would have no other control mechanisms over decision-making by the CBS as the charity must be legally independent from the State (in the form of the Council in this instance), but the Council could impose controls through covenants and conditions on any land transfer, grant or loan facilities to the charity.

Implementation

The Council has already engaged the legal services of Trowers and Hamlyn (TH) and the financial tax advice from Grant Thornton (GT) to collectively advise the Council upon the powers, benefits, implications, costs, and timeframes involved of both establishing and operating a JV partnership or a Charitable entity which are outlined and form the basis of this report recommendation. The costs of this initial advice is being funded from existing HRA budgets because it is the HRA budget that would be impacted by the loss of 141 RTB receipts and the resulting compound interest at base rate plus 4% on the returned receipts.

The typical costs involved in establishing either of these solutions is approximately £95,000 and can take between 6 to 10 months depending upon the stages and approvals process, although as stated earlier, a CBS is generally a faster and more efficient option. Following a decision by members, the implementation and ongoing costs would need to be funded from existing Housing budgets.

Once a preferred option is chosen an implementation plan will be produced and the work will be managed as part of the further development of Waltham Forest Developments Limited (WFDL) to ensure the tax and affordable homes benefits can be maximised for the Council. We will look to have a preferred solution in place from July 2018.
3.6.19 Establishing a CBS offers the opportunity for WFDL to develop sites utilising Council RTB receipts for affordable homes on behalf of the CBS. Once built, the homes would be owned by the CBS; but could be let and managed in a similar manner to all other WFDL properties by the Council Development Company. This approach maximises existing delivery structures and minimises replication of delivery and administrative overheads.

4 SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)

4.1 The Council has ambitious targets for regeneration set out in a suite of documents under the Creating a better place: Waltham Forest 2014-18 umbrella including Better Housing. As part of this regeneration programme, the Council is looking to facilitate and enable the delivery of 12,000 new homes of all tenures.

4.2 The housing development programme will contribute to meeting this new homes target. There will also be opportunities for providing construction training, apprenticeships, and jobs through the building of these new homes.

5 CONSULTATION

5.1 No specific consultation is required for the decisions set out in this report. However, consultation will take place on an individual site basis as proposals are developed and submitted for planning and this will include statutory consultation of neighbours and any other identified special interest groups.

5.2 In addition to this statutory consultation, neighbours of each of the sites, ward councillors and special interest groups, including tenants and residents associations, will be consulted on the development proposals prior to designs being finalised for planning applications.

6 IMPLICATIONS

6.1 Finance, Value for Money and Risk

6.1.1 Section 3 details the current spending shortfall based on existing schemes, where the council would be expected to have repaid £14m by March 2020, with interest costs of £2m.

6.1.2 There are a number of mitigating schemes which are being pursued to address this financial pressure, and some estimated spend figures are provided in 3.5.

6.1.3 The provision of new housing through the new build schemes will increase the council’s tax base (if delivered in borough). There is also
the potential to deliver savings to the General Fund homelessness budget if nomination rights are secured in the new homes.

6.1.4 The option to set up a CBS is likely to require set up costs in the region of £95k and annual running costs of £50k. There would need to be a loan or grant to cover set up and running costs until the CBS is fully operational.

6.1.5 Typical schemes in the CBS that deliver affordable housing would be funded 30% from the RTB receipts, with the balance of 70% from borrowings the CBS would have to source either from the private market or from the council’s general fund at an appropriate commercial rate. There was an agreement in October 2016 Cabinet to approve up to £100m loan for Waltham forest developments. The borrowing requirement of the CBS would also need to be considered from this funding arrangement.

6.2 Legal

6.2.1 Under the terms of the model Right to Buy Retention Agreement entered into between the Council and DCLG, the Agreement assumes that monies retained by the Council from Right to Buy sales will be utilised either via the Council (through its Housing Revenue Account) or via grant funding to a third party provider of Social Housing (typically a Registered Provider or Housing Association).

6.2.2 From the perspective of the model RTB retention agreement, the critical provision is that contained in part 5 iii which states that "the amount spent on the provision of social housing is the amount spent by the authority or by a body to which the authority has paid some or all of the retained amounts (such body may not be a body in which the authority holds a controlling interest). This paragraph therefore precludes the use of a wholly owned subsidiary such as WFDL, and therefore, an alternative delivery model must be devised, but one that minimises further administrative costs and maximises existing established structures.

6.2.3 In addition, under the terms of the retention agreement, the Council must ensure that "[the monies retained under the agreement] must be used for the provision of social housing for the benefit of the authority" where, "for the benefit of the authority" means that (under paragraph v) the housing must be sited "in the area of the authority or where the authority has nomination rights in respect of the social housing".

6.2.4 Monies retained under the agreement can be spent for either acquisition of dwellings or for development costs associated with the acquisition of land for dwellings or for the construction of dwellings.
6.2.5 A Community Benefits Society is established and regulated under the Cooperative and Community Benefits Society Act 2014 (the 2014 Act). Under section 2 of the 2014 Act a CBS must conduct its business for the benefit of the community and have at least 3 members.

6.2.6 Section 14 of the 2014 Act sets out the minimum requirements for the rules governing any CBS. This includes that the rules must deal with the borrowing powers of the CBS.

6.2.7 Under section 26 of the 2014 Act a CBS may own, purchase or take a lease of land in its own name and construct, alter or demolish buildings on the land.

6.2.8 As set out in paragraph 3.6.11 a CBS is registered with and regulated by the FCA.

6.2.9 As set out in paragraphs 3.6.9, 3.6.10 and 3.6.15 the proposed CBS cannot be controlled by the Council through its membership. Limited controls may be put in place through other means where the Council enters into agreements with the CBS.

6.3 **Equalities and Diversity**

6.3.1 An initial screening exercise of the equality impact of this decision was undertaken and determined there was no negative impact on the Council's equality duty.

6.3.2 The developments that the Company undertakes will contribute positively to age and disability equalities through providing housing to Lifetime Homes and wheelchair housing standards.

The Screening Assessment is provided in Appendix 1.

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

6.4.1 Proposals for developments will be developed in accordance with national, regional and local standards for sustainable development and opportunities to exceed these will be explored. All homes and commercial property will be designed to meet the Council's requirement to reduce carbon emissions.

6.4.2 All new homes will be designed to meet the energy aspects of Code for Sustainable Homes level 4 as a minimum requirement, and the contract will specify the climate change impact mitigation measures required in the construction of the new homes, according to local, regional, and national standards.
6.4.3 Commercial space will be designed to achieve a BREEAM (environmental) rating of ‘Very Good’ for remodelled/refurbished areas, and new build areas will be designed to achieve a BREEAM rating of ‘Excellent’.

6.4.4 Proposals will meet 35% reduction against 2013 Building Regulations for CO2 reduction to mitigate climate change and carbon emissions through promoting resource efficiency and high environmental standards.

6.5 Council Infrastructure

6.5.1 The approach to the establishment of the RTB Vehicle is set out in this report with funding from the existing housing budgets. Once established the CBS would be financed from the 141 RTB receipts and the existing housing budgetst in accordance with any land and funding agreements with the Council. The CBS would be a standalone independent Company and run as such with its own business plan, governance, finances and accountability as set out in this report.

6.5.2 Ahead of Cabinet and Council approval, the Council is currently resourcing the project using staff from with the Families and Homes and Finance directorates. Once the CBS is established, new staff will be appointed by the Trustees.

7. BACKGROUND INFORMATION

7.1 None.