PART A

Report to:	Cabinet
Date of meeting:	18th January 2016
Report of:	Head of Community and Customer Services / Head of Development and Regeneration
Title:	Joint Venture Housing Company with Watford Community Housing Trust

1.0 SUMMARY

1.1 The financial environment in which both Local Authorities and Housing Association are now operating calls for innovative and collaborative methods of sustaining the services and activities to which they aspire, in the most efficient and effective way possible.

1.2 Watford Community Housing Trust (the Trust) has approached Watford Borough Council (WBC) to explore the possibility of establishing a joint-venture vehicle to generate additional income thereby maximising capacity for each to deliver its strategic aims.

1.3 WBC wishes to generate additional affordable housing in the Borough and increase revenue income to support its activities and services. The proposed national policy shift on Section 106 Planning Gain, currently a significant source of affordable housing at 35% of projects, will also impact on supply in the Borough, which will need to be replaced.

1.4 The Trust is seeking to generate capital or property to sustain its delivery of new rented and shared ownership homes and provide services for residents.

1.5 WBC has been considering development of market rent housing, alongside delivering a strategy to meet the homelessness demands it is facing. The Trust has been similarly investigating market rent and sale housing to fulfil its affordable housing ambitions through cross-subsidies generated.

1.6 Following discussion with the Mayor and the Housing Portfolio Holder when agreement in principle was given to the proposal, there has been joint officer working, together with legal and tax accountancy advice. On the basis of this it is believed that the proposal has merit and should move forward.

2.0 **Decisions Required**

2.1 To approve the formation of a Joint-Venture Housing Company with Watford Community Housing Trust

2.2 To approve the expenditure to establish the Company, currently estimated at £12,500, which is contained within existing budgets

2.3 To confirm the directors to be appointed as Joanne Wagstaffe, Director of Finance and Alan Gough, Head of Community & Customer Services

2.4 To approve that other projects may be brought forward which further the aims of the Joint-Venture

2.5 To approve that the Joint-Venture projects should be overseen by the WBC Property Investment Board and the Trust's Board of Management.

2.6 To note that the Joint Venture projects will also be reported to the Major Projects Board for wider review.

3.0 **Vires and Governance**

3.1 There are no legal or regulatory hurdles which would prevent such an enterprise being formed.

3.2 With the approval of the Head of Democracy and Governance, Anthony Collins Solicitors (ACS) has been appointed to advise both WBC and the Trust on the formation of entity. ACS has issued a client instruction letter which provides the necessary comfort that they would not have conflict of interest in so doing.

3.3 The recommended legal structure is a company limited by shares, jointly owned by WBC and the Trust. The structure is shown at Appendix 2. There is further explanation later in this paper and on a note from ACS at Appendix 1.

3.4 The Board should be kept to a minimum, ideally four with equal representation from each side. Board Members from both sides should have, or have access to, appropriate skills in the activities of the company. It suggested that WBC Board Members should be the Shared Director of Finance and the Head of Community and Customer Services, and it is proposed that the Property Investment Board has the primary oversight of the projects on behalf of WBC. The Trust would be represented by its Chief Executive and the Director of Resources, reporting to the Trust Board of Management.

3.5 Equality of representation, together with appreciation of the activities of the venture will also lead to decision making by consensus and conflict resolution will be addressed in the Shareholders Agreement when drafted; this, again is referenced in Appendix 1.

3.6 There is a clear understanding between WBC and the Trust that this venture would not limit either party to entering into agreements with others or proceeding unilaterally where circumstances or the business case justifies taking a different approach.

3.7 **Inputs**

3.8 To achieve maximum outcome, the contributions from each would be significant; however, the joint approach will enhance outputs for both – the “marriage value”. It has already been established that in more than one location Trust ownerships adjoin WBC assets which would provide excellent opportunities to explore the relationship meaningfully.

3.9 WBC has the ability to both invest Council assets and on-lend funds raised at preferential rates.

3.10 The Trust can invest assets and funding, although the latter not at equally competitive rates. It has the internal expertise for identification, appraisal, design evaluation, project management and overall delivery of new developments. On completion, where there is ongoing residential or commercial management required, whether rented or leasehold, the Trust has the necessary experience.

3.11 The Trust would also provide the necessary back-office functions in relation to company secretariat, financial management and transactional processing.

3.12 The regulations affecting both the Council and the Trust in these matters are discussed more fully in Appendix 1.

3.13 The Trust would need to recover a contribution to overheads in respect of both back office functions and project delivery for the joint venture, but not for Board participation. The detailed mechanism would be set out in a service level agreement. This model anticipates that WBC would not seek any overhead recovery.

3.14 In this way, WBC and the Trust would control any project from initiation to completion and ensure the ongoing quality of management and maintenance of any property held.

3.15 **Activities**

3.16 The purpose of the venture is to generate additional benefit in terms of capital, revenue or assets, which would not have been achieved otherwise. These benefits can then be utilised to further the social aims of both.

3.17 Therefore, the activities might not be restricted to those traditionally associated with either a local authority or housing association, but could be expanded to other development opportunities, provided they fitted with the wider ethics and skillsets of WBC and the Trust.

3.18 In addition to market sale housing for profit, this could include commercial and retail development which could create an ongoing revenue stream.

3.19 There would be an agreed matrix of performance hurdles which schemes would need to clear and a robust risk assessment, identifying mitigations; these would provide sufficient comfort to the J-V Board to allow a project to proceed. These tests would be developed once the company formation is agreed.

3.20 Geography need not be a constraint other than the practicality of management. The purpose of the venture is to be profitable and therefore by spreading the operating net wider, more opportunities would present themselves than if restricted to Watford. A radius of one hour's travel would be recommended in the first instance.

3.21 Every element of company structure and subsequent project delivery would be examined to maximise financial efficiency and probity. The structure proposed at Appendix 2 is intended to create maximum tax efficiency for both parties; the relevant tax flows are indicated at Appendix 3. JVCo 2 would only be required should the J-V decide that it wished to hold rented property as an investment and revenue generator. If the property were to be held in the primary JVCo it would impact on VAT recovery and reduce the tax efficiency of the entity.

3.22 **Distribution of Proceeds**

3.23 Both parties would need to be adequately compensated for their inputs.

3.24 The division of returns, whether capital, revenue or assets would be agreed on a project-by-project basis, to recognise the contributions of each.

3.25 In the early stages, there is the ability to use the resources of both to pump-prime the operation in the establishment phase. This would be examined at the outset to establish whether it might be necessary, appropriate and affordable.

3.26 **Timing**

3.27 The Trust's Board has considered and agreed the principle of a development joint-venture with WBC. A paper similar to this is being considered at its meeting on 25th January 2016 and is anticipated to receive approval.

3.28 An agreement to form the Company, would allow initial scheme identification to commence in parallel with establishing the detail of the joint-venture format.

3.29 The estimated cost of legal fees and associated costs to establish the Joint Venture is £25,000. It has been agreed that these costs would be shared equally and the Council can fund its £12,500 from within existing budgets

3.30 If approved, it is anticipated that the company would come into being on 1st April 2016 with project activity coming forward from July 2016. The financial implications would be reported and approval sought on a scheme-by-scheme basis.

4.0 **Implications**

4.1 **Financial implications**
The Shared Director of Finance comments that the costs contained in this report can be accommodated within existing budgets. As further proposals are developed and brought forward these will required separate approval which will be obtained at the appropriate time.

4.2 **Legal Implications**
The Head of Democracy and Governance comments that the legal implications are set out in appendix 1

4.3 **Equalities**
Formation of a company does not have any adverse equality impacts on existing housing related policies

4.4 **Potential risks**
The risks below are those related only to establishing the company itself as each project the company undertakes will need to an approved business case, which will include a risk analysis.

Potential Risk	**Likelihood**	**Impact**	**Overall score**
WCHT Board does not approve formation of the company	1	4	4
The company does not come into operation until after 01.04.16	1	1	1
Those risks scoring 9 or above are considered significant and will need specific attention in project management. They will also be added to the service's Risk Register. There are no risks scoring 9 or above			

4.5 **Staffing**
No specific staffing implications

4.6 **Sustainability**
Sustainability considerations will part of each project business case

Appendices

Appendix 1 Legal advice

Appendix 2 Proposed Structure

Appendix 3 Tax implications

Background Papers

No background papers were used

File Reference

- none