1. **Details of Recommendations**

The Cabinet is asked to agrees:

1. Council, in its capacity of Corporate Trustee, clarifies and establishes the governance arrangements for the David Henry Waring Trust, including the formal appointment of a named Cabinet Member charged with the responsibilities of the Corporate Trustee and re-affirming the roles and responsibilities of the Corporate Trustee and those of the Trust Committee, at the DHW AGM on 18th July 2016.

2. Council, in its capacity as a registered provider of social housing, develop proposals for regenerating the DHW home in order to safeguard the objectives of the Trust in perpetuity. This would involve:
   a. transferring the site via lease agreement to the HRA;
   b. planning for regeneration of the DHW home under the umbrella of the HRA;
   c. putting in place plans for on-going maintenance via the HRA; and
   d. adopting future arrangements for the management of the home jointly involving the Council as Corporate Trustee and the Trust Committee.

3. Subject to agreement of recommendation (2) above, that the proposals are further elaborated and referred to the Corporate Trustee to consult with the Trust Committee, and seek the agreement of the Charities Commission.

4. A further report will be presented to Cabinet for approval for the final proposal including detailed regeneration plans and costs.
2. Report Summary

1. This report concerns the David Henry Waring Home in Bedfont. DHW is a charitable home for the ‘elderly and needy’ of which the Council is Corporate Trustee, and whose committee is made up of six acting Councillors and three local parishioners.

2. It recommends that having identified a suitable regeneration option the Council (a registered provider of housing) leases the whole site from the charity into the HRA for regeneration, to provide much needed affordable housing in the area and to secure the future of the Home.

3. These recommendations are being made because the Council as Corporate Trustee has the duty to hold and maintain the Home in perpetuity. The Home is currently operating at a significant deficit and some of its accommodation is substandard. Without intervention the charity will eventually be forced to cease operation.

4. If adopted, the key financial implications for the Council are investment that the HRA will need to make in the regeneration of the Home to maximise occupancy and rental income.

5. An additional point to note is that by leasing the site and transferring into the HRA, residents of the Home will be council tenants meeting the criteria of the charities purpose, rental income will be retained by the council and the future of the charity will be secured.

3. Reason for Decision and Options Considered

3.1 Background

3.1.1 The David Henry Waring Home is a registered charity with the Charities Commission under registration “209301” which was established as an unincorporated charitable trust in 1953. Further details are included in Appendix 1.

3.1.2 The Trust property (i.e. the Home) is held by the Council on a permanent endowment basis as set out in the Governing Documents. The Trust’s charitable purposes are to provide accommodation to “aged and needy” persons through use of a Grade II listed property, a separate accommodation block and gardens.

3.1.3 The Council as Corporate Trustee is the legal owner of the land and buildings, which cannot therefore be sold, leased or otherwise disposed of other than by the Council. As Corporate Trustee, the Council is bound to abide by and give effect to the existing trusts or take proper steps to alter them when this is necessary in the interest of the Trust. The Council has appointed the Lead Member for Housing to act as the Corporate Trustee.

3.1.4 A Trust Committee of Management is responsible for the day to day running of the Home. The Committee currently constitutes nine individuals, one third of whom are appointed by the Parochial Church Council of the Parish of St Mary
Bedfont with the remaining individuals appointed by the Council from local councillors at a Borough Council meeting. Each individual member of the Committee is a charity trustee in their own right.

3.1.5 The respective responsibilities of the Corporate Trustee and the Committee of management are set out in section one of Appendix 1.

3.1.6 For a number of years there has been a circular nature in addressing the financial predicament of the Trust through the Committee. Counsel advice has made clear that it is the Corporate Trustee’s responsibility to resolve the current issues and ensure the longevity of the Home. The Council proposes to work with the Corporate Trustee in proposing this lease arrangement so that the work now required to the Home can proceed and full occupancy achieved.

3.2 Current Position of the charity

3.2.1 The main building at the Home is Grade II listed. In the 1970’s, an additional block was constructed adjacent to the main building and connected to it by walkway. This block has bed-sits with shared bathroom facilities which is no longer considered an acceptable standard of accommodation. There is a need to either undertake extensive works within the block or demolish and redevelop it. The block is currently void.

3.2.2 The Home is operating at a significant loss due to longstanding under-occupation and has significant maintenance and resilience issues. The charity now finds itself in financial difficulty as bulleted below:

- 18 of the 26 units are void (70%), resulting in £101k per annum rental loss.
- Increasing operating deficit: £128k in 12/13; £156k for 15/16.
- Decreasing reserves: £2.325m in 12/13, estimated £2.065m for 15/16.
- High on-going maintenance liability for the Grade II listed house and gardens.

3.3 The Proposal

3.3.1 A four pronged approach to furthering the continued existence of the charity is proposed (please also see section 16: timeline for implementation):

1. The Charity establish clear unambiguous governance arrangements for the trust with the Corporate Trustee re-affirming the roles and responsibilities of the committee and Corporate Trustee, at the DHW AGM on 18th July 2016

2. The Council, as a registered provider of housing, plan to redevelop the home to safeguard its long term future:
   a. Transfer the site via lease agreement to the HRA
   b. Plan for regeneration under the umbrella of the HRA
   c. Put in place plans for ongoing maintenance via the HRA
   d. Propose the future arrangements for how the management of the home will be split between the Council as Corporate Trustee and the committee

As a trusted organisation with the resource and services available to it, the Council is best placed to be in a position to provide this.

3. The Council to engage with the Corporate Trustee on the outcomes of 2 (above)
4. Subject to the agreement of the Corporate Trustee and the Charities Commission, further details of the development proposals and transfer arrangements to be presented in a future Cabinet report.

3.3.2 The Council is a registered provider with the Homes and Communities Agency. The Council as Corporate Trustee will fulfil its role given to it, since it holds a viable approach to ensure the charity preserves its purpose and improves its financial footing. Whilst there are a range of alternative arrangements that the Council could pursue, and which it considers, the fact is the reality that the Council operates as a registered provider. It has the means to provide the much needed investment to revive the DHW Home, has the capacity to maintain it, and ensuring the continuance of the objects for which the DHW Home was set up in perpetuity.

3.3.3 The HRA exists to provide affordable, quality accommodation to people in need (which includes more than 750 homes for older people) and its purpose is therefore aligned with the charitable purpose of the DHW Trust. In addition, the Council is required by law to maintain a business plan for the HRA which ensures its financial health and stability over a 30 year period, and inclusion within the HRA financial envelope will ensure that the investment required in order to secure the longevity of the DHW Home is planned and budgeted for within the Business Plan.

3.3.4 By adopting this approach the Council can categorically ensure the safeguarding of the trust’s charitable purposes and the site in perpetuity so that it realises a sustainable financial position. By using the HRA the Council is also well placed to provide maintenance to the site through its extensive Housing maintenance services and sub-contractors.

3.3.5 Tenants of the Home would be council tenants who met the allocation requirements of the Trust, enjoying the same rights and securities as existing council sheltered housing tenants. Hounslow Housing would provide management and property maintenance functions as it does for other HRA homes. There would be no right to buy option for these tenants.

3.3.6 The Council as Corporate Trustee would remain the legal owner of the land and buildings and would consult with the Committee on the proposal. The charity would be retained with a budget allocated to the Committee in order to carry out day to day functions around service provision and its own governance. These could include:

- Input into activities for residents including the use of the Amenities Fund
- Ensuring the running of the home remains within the constraints of the governing documents
- High level scrutiny of the home through sight of performance data
- Sight of strategic documents specifically related to the home (e.g. maintaining the allocations policy in line with the original charity purpose)
- Internal governance of the group itself

3.4 Recent progress and next steps

3.4.1 The Charities Commission was approached in September 2014 by the Council acting in its role as Corporate Trustee, with proposals to ensure that the Trust’s charitable purposes are preserved. Their response of 10th October 2014 stated the Commission could offer assistance and enter into
correspondence regarding further legal documents if required once the defined method is presented.

3.4.2 The Council as Corporate Trustee has again contacted the Charities Commission to discuss its proposal and any further requirements the Charities Commission may have. The consent of the Charities Commission will be required before a lease arrangement could proceed. The investment requirement for the Home is significant and as such it will be necessary for the Corporate Trustee to also seek the Charity Commission’s consent to use a proportion of the available Trust reserve fund to contribute towards the cost of the works.

3.4.3 The Council has taken the step to name the Corporate Trustee. At the annual meeting of the Council (Borough Council, 24 May 2016), the Council agreed the appointments to outside bodies for the municipal year 2016/17 including Councillor Katherine Dunne as Corporate Trustee.

3.4.4 The DHW Trust Committee meets approximately every 3 months, with the next meeting scheduled on 18th July 2016. The Corporate Trustee is intending to attend this meeting to re-affirm the roles and responsibilities of the Corporate Trustee and that of the Committee. Furthermore the Corporate Trustee will continue to consult with the Committee as the proposal is developed. Appointment of the chair and vice chair will take place at this meeting.

3.4.5 Following this meeting and on the recommendation of the Corporate Trustee, the Council intends to progress the necessary survey and design work required to establish the most cost effective future option for the Home. A further report will then be presented to Cabinet to agree the terms of the lease and the budget allocation for the work to the Home.

4. **Key Implications**

4.1 Targets and measures to be explained here using either paragraphs or table below or both.
How is success to be measured?

<table>
<thead>
<tr>
<th>Defined Outcomes</th>
<th>Unmet</th>
<th>Met</th>
<th>Exceeded</th>
<th>Significantly Exceeded</th>
<th>Date they should be deliver by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease the site to the HRA</td>
<td>Lease is not achieved and financial position of the Home deteriorates further.</td>
<td>Lease achieved, enabling HRA investment.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provide costing for regeneration</td>
<td>No further information.</td>
<td>Investment requirement established</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. Financial Details

a) Financial Impact On The Budget (Mandatory)

5.1 A significant level of investment is required in order to enable the Home to be occupied at full capacity. With properties offered at low rents in line with the charitable purpose it will be some time before the home’s financial position recovers. It is for this reason the home will require the support of the HRA to achieve this. Current modelling suggests the level of refurbishment work required to the home is such that it will take more than 30 years to break-even at affordable rent level, before any surplus is achieved. A rebuild option is likely to cost more and may extend this break-even point further.

5.2 Currently £2.8m is identified in the 30 year HRA Business Plan for regeneration works at the home. The Corporate Trustee intends to apply to the Charities Commission for consent to use Trust reserve funds in order to produce a viable scheme. This could allow for a rebuild option or reduce the time to achieve a break-even point through a refurbishment. This is likely to be in the region of £1m. Once projected build costs are obtained, further to survey work and architectural drawings, this will be included in the refresh of the HRA 30 year business plan.

b) Financial Background (optional)

c) Comments of the Director – Finance and Corporate Services

This report seeks to set out an approach to securing the future of the David Henry Waring Charity site. It is acknowledged, and has been reported, that the Trust’s current resources are not sufficient to undertake refurbishment works without the assistance of another body. The report therefore recommends that the Council explore options to redevelop or refurbish the site, specifically with a view to the site being leased to the Council and the works subsequently being funded by the Council.

The report highlights that the Council will need to consider regeneration or refurbishment proposals and that these will be appropriately appraised. The
Results of this will identify a funding requirement from the Council’s HRA funds. This will require some revision of the HRA Business Plan, and potentially some re-profiling of long term investment works or new build delivery. This will be factored into the next revision of the HRA Business Plan that will be presented to Cabinet in the autumn.

6. **Legal (to be completed in conjunction with the Legal Department)**

   **a) Legal Details**

   The Trust is established under and governed by the following legal documents (the Trust’s “Governing Documents”):
   - a Court Order dated 20 July 1953;
   - a Charity Commission Scheme dated 31 March 1971;
   - a Charity Commission Scheme dated 20 June 1975.

   **b) Comments of the Head of Governance**

   In order to progress the proposals set out in this report, decisions will be required from both the Council, as housing authority, and from the Council as Corporate Trustee of the Trust. The recommendations in this report are made to the Council in its capacity as housing authority.

   As set out in the recommendations, further decisions will be required from the Council as housing authority, once the details of a preferred option have been drawn up. A decision to approve any proposal will also need to be taken by the Trust, through Councillor Katherine Dunne on behalf of the Council as Corporate Trustee. That decision will be the subject of a separate report, which will consider the proposals from the point of view of the Trust and its objects.

   As set out in the report, any proposal which involves the Council taking a lease of property from the Trust will require the approval of the Charity Commission.

   As the Council is both the Corporate Trustee by whom Trust property is held and the proposed lessee, and because the Council cannot grant a lease to itself, it may be necessary for the freehold interest in the Trust property to be vested in the Official Custodian of Charities, to allow the transaction to proceed. That will also require the approval of the Charity Commission, and will be discussed with the Commission in due course.

7. **Value For Money**

   A future report to Cabinet would set out the investment requirement for the Home and a value for money assessment would be included within this report.

8. **Sustainability Impact Appraisal**

   NA

9. **Risk Management**

   Not applicable at this stage – to be undertaken as part of future report seeking financial approvals.
10. **Links to Council Priorities**

Corporate Plan Objective 3: **Good quality homes and jobs** – making sure more good quality homes, including affordable homes, are provided or residents and tackling homelessness. Supporting economic growth and improving our town centres. And making the most of being close to Heathrow, central London to help people get and keep good quality jobs.

11. **Equalities, Human Rights and Community Cohesion**

NA

12. **Staffing/Workforce and Accommodation implications:**

None

13. **Property and Assets**

NA

14. **Any Other Implications**

NA

15. **Consultation**

The Corporate Trustee will consult with the trust Committee and the Charities Commission regarding these proposals. Residents of the Grade II listed house would be consulted once draft proposals for the Home had been prepared.

16. **Timetable for Implementation**

<table>
<thead>
<tr>
<th>Completed by date:</th>
<th>Activity:</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 May 2016</td>
<td>• Named Corporate Trustee appointed</td>
</tr>
<tr>
<td>18 July 2016</td>
<td>• DHW trust meeting:</td>
</tr>
<tr>
<td></td>
<td>• appoint chair\vice-chair; discuss this report</td>
</tr>
<tr>
<td>19 July 2016</td>
<td>• This report considered at Cabinet</td>
</tr>
<tr>
<td>1 August 2016</td>
<td>• Implementation of this report</td>
</tr>
<tr>
<td></td>
<td>• Contact Charities Commission to seek meeting</td>
</tr>
<tr>
<td></td>
<td>• Procure and commence surveys and investigations (i.e. structural report of 1970s block) to inform regeneration proposal</td>
</tr>
<tr>
<td>12 September 2016</td>
<td>• Procure and instruct design services for initial feasibility study (to include budget estimates)</td>
</tr>
<tr>
<td>19 October 2016</td>
<td>• DHW Trust meeting – update on progress</td>
</tr>
<tr>
<td>7 November 2016</td>
<td>• Factor costs in HRA Business Plan</td>
</tr>
<tr>
<td>30 November 2016</td>
<td>• Draft legal agreements including draft lease and proposal</td>
</tr>
<tr>
<td>8 Dec 2016</td>
<td>• DHW trust meeting:</td>
</tr>
<tr>
<td></td>
<td>• Tabling of full proposal ahead of submission to Charities Commission</td>
</tr>
<tr>
<td>Dec 16/Jan 17</td>
<td>• Seek Charity Commission consent of the proposal*</td>
</tr>
<tr>
<td>15 March 2017</td>
<td>• DHW trust meeting:</td>
</tr>
<tr>
<td></td>
<td>• Note Cabinet report</td>
</tr>
<tr>
<td>21 March 2017</td>
<td>• Cabinet report to approve proposal and transfer to HRA via lease agreement</td>
</tr>
</tbody>
</table>

*dependent of Charity Commission timeframe
17. **Appendices**

Appendix 1 – David Henry Waring Charity

18. **Background Information**

Submission to Charities Commission – September 2014.

REPORT ENDS