

 EXECUTIVE 11th March 2015		Agenda Item No. 11
Title	Warwick District Council/Waterloo Housing Group Joint Venture (W2) State Aid Review	
For further information about this report please contact	Andrew Jones (01926) 456830 Andrew.jones@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	Executive Meeting 2 nd July 2014	
Background Papers	See above	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	Yes
Equality & Sustainability Impact Assessment Undertaken	No
These will be undertaken at project level rather than programme level.	

Officer/Councillor Approval	Date	Name
Chief Executive/Deputy Chief Executive	16 th February 2015	Chris Elliott
CMT	16 th February 2015	Chris Elliott, Bill Hunt, Andrew Jones
Section 151 Officer	16 th February 2015	Mike Snow
Monitoring Officer	5 th February 2015	Author
Portfolio Holder(s)	17 th February 2015	Cllr Vincett
Consultation & Community Engagement		
N/A		
Final Decision?		Yes

1 SUMMARY

- 1.1 This report updates Executive on the due diligence undertaken following the previous Executive report of 2nd July 2014 where it was noted that the Council's existing partnership with Waterloo Housing Group, known as W2, was being assessed by the Council's officers to ensure its compliance with state aid law.
- 1.2 Following expert legal advice it has been possible for Council officers to satisfy themselves that the existing arrangements with Waterloo Housing Group can be considered compatible with state aid law, and advisors have recommended additional processes and documentation be put in place to ensure that any financial assistance from the Council to Waterloo remains within the permissible legal framework.

2 RECOMMENDATIONS

- 2.1 That Executive notes the outcome of the due diligence work outlined in section 3 of the report and authorises the Deputy Chief Executive (AJ) in consultation with the Head of Finance and legal advisers to enter into all agreements necessary to give effect to the continued operation of the W2 joint venture in compliance with relevant law.

3 REASONS FOR THE RECOMMENDATIONS

- 3.1 Executive will recall that the Council entered into a joint venture agreement with Waterloo Housing Group in November 2011. The joint venture agreement is a partnership intended to bring forward affordable housing schemes within the District where it is in both parties' interests to do so. The success of the "W2" joint venture to date was documented in the previous Executive report of 2nd July 2014.
- 3.2 One of the central features of the joint venture is that the Council will offer financial assistance to Waterloo where it is necessary in order to make a proposed affordable housing project viable. The financial assistance from the Council on any project takes the form of one or several of the following: the opportunity for Waterloo to defer payment of the purchase price of land acquired from the Council; underwriting by the Council of certain costs and risks on site; and grants towards project costs (which have to date been funded by the Council's New Homes Bonus and S106 commuted sums).
- 3.3 The giving of financial assistance from a local authority to a third party organisation potentially engages the legal rules relating to state aid. State aid is regulated by EU law and the essential principle is that it is unlawful to give public funding to an economically active organisation in such a way as to potentially distort competition amongst the market. The law is complex and is only summarised here. A potential breach of state aid rules is liable to investigation by the EC Commission who has the power to require all sums to be repaid.
- 3.4 The Council's officers identified recently that, because of the nature of the function which was being supported by the financial assistance (social housing) it should be possible for the giving of financial assistance to Waterloo to fall within a specific legal exemption which the EC Commission had established. This exemption effectively acts as a "safe harbour" from the state aid rules: provided all the tests set out in the exemption can be met, then any financial assistance will be lawful.

- 3.5 Because of the complexity of the legal position and the significant funding implications for the Council and Waterloo, the Council sought advice from James Goudie QC, a leading public law barrister. Mr Goudie's advice confirmed the steps that needed to be taken to establish that the Council's financial assistance could fall within the relevant state aid exemption. Again, the law is complex but the main steps can be summarised as follows: (1) establish legally binding agreements which entrust Waterloo with the Council's social housing function on a particular project; (2) establish that the financial assistance for that particular project does not over-compensate Waterloo; and (3) establish a transparent methodology by which compensation (i.e. financial assistance) can be calculated.
- 3.6 Guided by Counsel's advice the Council and Waterloo have worked together to develop appropriate legal and financial documentation for each project where financial assistance is given by the Council. On each project the parties will enter into a grant and nominations agreement, once they have satisfied themselves through a careful and documented appraisal of the project finances that the level of financial assistance from the Council does not amount to over-compensation.
- 3.7 On all the projects where financial assistance has already been given by the Council, the Council's officers (Deputy Chief Executive (AJ), Head of Finance and legal adviser) have satisfied themselves that there has been no over-compensation, and the relevant binding agreements are now being put into place.
- 3.8 The EC Commission requires that the use of this exemption is actively monitored by the public authority which is seeking to rely on it. Therefore the Council's officers need to be vigilant to the need to stay within the terms of the exemption for as long as the W2 joint venture operates.

4 POLICY FRAMEWORK

- 4.1 The Council's Housing Strategy has as one of its key aims "Meeting the need for housing across the district". The W2 initiative is making a positive contribution to this aim and so supports the Housing Theme as detailed in the Council's Sustainable Community Strategy.

5 BUDGETARY FRAMEWORK

- 5.1 The Council's contribution to the project is through a deferred capital receipt (should WDC land be sold), the New Homes Bonus monies received by the Council attributable for specific W2 schemes being used towards funding those schemes and commuted sums contributions where a scheme may have viability issues. These contributions are in accordance with the Council's budget for any particular year. Where the contribution is not immediately available, reports have been submitted to Executive seeking its approval for the funding.

6 RISKS

- 6.1 The risks of non-compliance with state aid rules were outlined earlier in this report. The Council could face investigation from the EC Commission as well as by local auditors in the event that there was a suggestion that the Council's financial assistance to Waterloo was not compatible with state aid law.

This would in turn lead to significant service delivery and financial risks for both Waterloo and the Council: if funds were required to be clawed back from Waterloo it could create serious financial risks for both parties, as well as disruption or discontinuance of some or all of the projects underway in the District. Therefore it is important that the parties work together to minimise the risk of a state aid challenge as far as possible by seeking to remain within the permissible legal framework.

7 ALTERNATIVE OPTIONS CONSIDERED

- 7.1 The only alternative option would be to discontinue the W2 joint venture altogether, or to withdraw all of the Council's financial assistance given to date. This option has been discounted as being a disproportionate response to a risk which can be managed with appropriate safeguards being in place.