

Report to: **Executive**  
Date: **14 October 2008**  
Report of: **Executive Member for Housing**  
Subject: **Review of East Durham Homes Articles of Association**  
Ward: **All**

## **1.0 Purpose of the Report**

1.1 This report is intended to provide Members with information relating to amendments to East Durham Homes (EDH) Articles of Association and recommends that Members of the Executive approve the amended Articles as set out in Appendix 2 to the report.

## **2.0 Consultation**

2.1 The proposed amendments have been developed by the EDH Board, Governance Senior Management Team and Governance Officer with support from the Council's Monitoring Officer and Head of Housing. The amendments have been developed in line with the Management Agreements of two other regional Arms Length Management Organisations: Dale and Valley Homes and Blyth Valley Housing.

## **3.0 Background**

3.1 Since the established of EDH as an Arms Length Management Company (ALMO) for the Council's housing stock by the Council in 2004 there have been a number of developments in the ALMO sector as well as operational issues relating to the Governance of the EDH Board which have necessitated a review of the Company's Articles of Association to bring them in line with current best practice and ensure that the Governance arrangements for the Company are as robust as possible.

3.2 In order to progress this matter the EDH Board established a review working group consisting of 3 Board Members, the EDH Director of Finance & Support Services and Governance Officer. This working group has developed the proposed amendments which are summarised in Appendix 1 to this report and provided in full in Appendix 2. These amendments have been made in consultation with the Council's Monitoring Officer and Head of Housing.

## **4.0 Amendments to the Company Articles of Association**

4.1 The following elements of the Articles were included in the review:

- appointment and retirement of tenant board members;
- appointment and retirement of independent board members;
- rotation and selection of Council Board Members;
- proportion of tenants/independent board members retiring;
- Proportion of tenant/independent/Council Board members
- Impact of Local Government Reorganisation

- 4.2 Copies of the articles of association of Dale & Valley Homes (D&V) and Blyth Valley Housing ALMOs were used for comparison purposes and the D&V articles were reviewed by the Council's Monitoring Officer. The EDH Working Group reviewed the feedback from the Monitoring Officer and subsequently produced a number of amendments which are highlighted in the amended Articles attached as Appendix 1 (summary) and Appendix 2 (detail) to this report.
- 4.3 In essence, the amendments are intended to improve the governance of the Company by formally recognising the right of tenants/members of the public to speak at general meetings, allow the possibility of two Council or Independent Members to be tenants, reinforce the obligations of Board Members and the process for the appointment of tenant and independent members, and reduce the number of members required for quorum from six to five.
- 4.4 In terms of Local Government Review, the working group has proposed that arrangements be made to ensure that future Council Board Member nominations were drawn from Members who lived within the geographical area of operation of the Company, as opposed to from elsewhere in County Durham. However it was recognised that this matter would require further discussion with the new Authority and no amendments to the current wording of the Articles are proposed at this stage.

## **5. Implications**

### **5.1 Policy Implications**

There are no policy implications.

### **5.2 Legal Implications**

The Memorandum and Articles of Association are legal documents required under the Companies Act 1985. The Council's Monitoring Officer has been involved in the development of the amendments detailed in Appendix 2 to this report.

### **5.3 Financial Implications**

There are no financial implications.

### **5.4 Risk Implications**

A risk assessment was completed by the EDH working group and the relevant actions put in place.

### **5.4 Communications**

EDH Board Members and Tenants were informed of the outcome of the review and the resulting amendments to the company's Articles at the Company's Annual General Meeting on 26 September 2008.

## **6. Corporate Implications**

### **6.1 Corporate Plan & Priorities**

The amendments to the Articles of Association are in line with the Transitional Plan priority of continued support for East Durham Homes towards a 2 star inspection.

### **6.2 Equality & Diversity**

There are no implications.

### **6.3 E-Governance**

There are no implications

### **6.4 Procurement**

There are no implications.

### **6.5 Performance Management & Scrutiny**

There are no implications.

### **6.4 Sustainability**

There are no implications.

### **6.5 Well-being**

There are no implications.

### **6.6 Crime & Disorder**

There are no implications.

### **6.7 Human Rights**

There are no implications.

### **6.10 Social Inclusion**

There are no implications.

### **6.11 Local Government Review**

The issue of future arrangements for nomination of Council Board Members to EDH Board will be raised through the Housing and Legal workstreams and are not dealt with in the amendments proposed in this report.

## 8. Recommendations

Members are recommended to note the contents of the report and approve the amended Articles of Association for East Durham Homes as included in Appendix 2 to this report

### Background Papers

Report to District Council 11 December 2003 to agree current Articles of Association  
Blyth Valley Housing and Dale & Valley Homes Articles of Association

## Summary of Proposed Amendments to EDH Articles of Association

Article	Amendment	Purpose
1.	Definition of “Tenants Forum” updated	Replaces previous reference to District of Easington Tenants & Residents Forum
10.	(2) & (3) Addition of right of Tenant and Board Members to attend and speak, but not vote, at General Meetings. Addition of right of members of the public to speak with the permission of the chair.	Clarification of role of Board Members and Public at Annual General Meetings
13.	(5) & (6) Addition of clauses to (i) enable no more than seven Board Members to be tenants, and (ii) no more than five Board Members to be Local Authority Persons (iii) Local Authority Persons shall not be a Tenant Board Member	Clarification of distinctions between Council, Tenant and Board Members
14 -18	New Articles regarding Obligations of Board Members and Functions of the Board.	Introduces a set of obligations which every Board Member must declare, sign and deliver to the Board. Clarifies the function of the Board in the delivery of the Company’s Objects.
20	(1) Amendment to clause regarding retirement of Tenant Board Members (3) Insertion of clause regarding process for the nomination, seconding, selection and appointment of Tenant Board Members.	Clarification of the process for the retirement and appointment of Tenant Board Members.
21	(1) Amendment to clause regarding retirement of Independent Board Members	Clarification of the process for the retirement of Independent Board Members
23	(5) & (12) insertion of additional clauses for the disqualification and removal of Board Members	Clarification of governance arrangements of the Board

**THE COMPANIES ACT 1985**

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**COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL**

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**MEMORANDUM OF ASSOCIATION**

**-of-**

**EAST DURHAM HOMES LIMITED**

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1. **NAME**

The name of the company is **EAST DURHAM HOMES LIMITED**<sup>1</sup> ("the Organisation").

2. **REGISTERED OFFICE**

The Organisation's registered office is to be located in England.

3. **OBJECTS**<sup>2</sup>

The objects of the Organisation shall be in the areas where District of Easington Council own or manage housing stock<sup>3</sup> to:

- (1) provide, manage, maintain, improve, demolish or convert the housing stock owned or managed by District of Easington Council from time to time together with any other amenities or facilities for the benefit of

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<sup>1</sup> There is no requirement to include "Company" in the name. The provisions of the Business Names Act 1985 must be complied with, together with the need to identify the ALMO as being a controlled company.

<sup>2</sup> These objects have been drafted to enable the ALMO to undertake more than management of the stock. They are, however, limited to a broad housing remit. Broader powers are set out in *italics*. The DTLR Section 27 consent will only cover housing management. See Annex 3 to the Model Agreement. DTLR have emphasised the need for authorities to satisfy themselves that they have power for non-Section 27 activities, including those in square brackets and *italics*.

<sup>3</sup> This allows for situations where the Council may own stock outside its administrative area.

residents of such housing stock either exclusively or together with persons who are not residents of such housing stock;

- (2) provide amenities and services of any description for residents of housing stock owned or managed by District of Easington Council from time to time either exclusively or together with persons who are not residents of such housing stock;
- (3) provide advice and assistance to all tenants, leaseholders, and licensees, of District of Easington Council and applicants for housing and applicants for housing advice;
- (4) carry out any activity which contributes to the regeneration or development in the area of the District of Easington (within the meaning of Section 126 of the Housing Grants Construction and Regeneration Act 1996) including but not limited to:-
  - (a) securing that land and buildings are brought into effective use;
  - (b) contributing to or encouraging economic development;
  - (c) creating an attractive and safe environment;
  - (d) preventing crime or reducing the fear of crime;
  - (e) providing or improving housing or social and recreational facilities for the purpose of encouraging people to live or work in the said area or for the purpose of benefiting people who live there;
  - (f) providing employment for local people;
  - (g) providing or improving training, educational facilities or health services for local people;
  - (h) assisting local people to make use of opportunities for education, training or employment;
  - (i) meeting the special needs of local people which arise because of disability or because of their sex or the racial group to which they belong.
- (5) provide, construct, improve or manage housing to be kept available for letting or hostels;
- (6) provide, manage, maintain or improve accommodation required from time to time for the benefit of persons who require temporary accommodation;

- (7) provide services of any description for District of Easington Council;
- (8) assess applicants for housing assistance<sup>1</sup>;
- (9) assess applications by residents of housing stock owned or managed by District of Easington Council to exercise the right to buy under Part V of the Housing Act 1985;
- (10) enabling or assisting any residents of the housing stock owned or managed by either District of Easington Council or the Organisation to acquire, or to acquire and enter into occupation of, houses.

#### 4. **POWERS**

Subject to Clause 6 the Organisation shall have power to do any thing that a natural or corporate person can lawfully do which is necessary or expedient in furtherance of its objects unless prohibited by this Memorandum

5. Subject to Clause 6 and without limiting the powers described in Clause 4 the Organisation shall have power to:
  - (1) carry out works to land, buildings or other property;
  - (2) contract with the Council Member<sup>1</sup> in furtherance of its objects;
  - (3) subject to the prior written consent of the Council Member<sup>2</sup> and to such consents as may be required by law to borrow money, issue loan stock or raise money in such manner as the Organisation shall think fit and to secure the repayment of any money borrowed raised or owing by such security as the Organisation shall see fit (including by way of floating charge) upon the whole or any part of the Organisation's property or assets (whether present or future) and also by giving similar security to secure and guarantee the performance by the Organisation of any obligation or liability it may undertake or which may become binding on it;
  - (4) insure and arrange insurance cover for the Organisation from and against all such risks as the Board may think fit and to pay any premium in respect of such insurance;
  - (5) insure and arrange insurance cover for and to indemnify its employees and voluntary workers and the Council Member from and against all

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<sup>1</sup> This allows for the Organisation to assess homeless determinations.

<sup>1</sup> The Council Member is the Council in its capacity as guarantor (that is 'owner') of the ALMO

<sup>2</sup> Borrowing is drafted to be subject to Council approval. Other strategic issues could also be subject to Council approval.



such risks incurred in the proper performance of their duties as it shall consider appropriate and to pay any premium in relation to indemnity insurance in respect of liabilities of its Board Members or any of them which would otherwise attach to them in respect of any negligence, default, breach of duty or breach of trust of which they may be guilty in respect of the Organisation PROVIDED THAT such insurance shall not extend to any liability in respect of an act or omission which such Board Member or Board Members knew or ought reasonably to have known was a breach of duty or trust or which was committed by such Board Member or Board Members recklessly without due regard as to whether such act or omission might be a breach of duty or trust;

- (6) invest any monies of the Organisation not immediately required for the furtherance of its objects as it determines and as permitted by law;
- (7) subject to such consents as may be required by law and compliance with all formal guidance issued by the Organisation's regulators (if any) to purchase or otherwise acquire or to encourage or promote and in any way support or aid the establishment and development of any subsidiary, or any other body established for the purposes of carrying on any trade or business either for the purpose of raising funds for the Organisation or for the furtherance of the objects of the Organisation;
- (8) subject to the prior written consent of the Council Member<sup>1</sup>, make donations, grants or loans or provide services or assistance to such persons and Organisations and on such terms as the Organisation shall think fit to further the objects of the Organisation

PROVIDED THAT in case the Organisation shall take or hold any property which may be subject to any trusts, the Organisation shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts.

6. The Organisation shall not, without the prior written consent of the Council Member<sup>2</sup>, have the power to:
  - (1) receive a sum which, if it were a local authority, would be a capital receipt;

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<sup>1</sup> See footnote to Clause 5(3). This is less problematic than borrowing but substantial donations etc could have a significant adverse effect. "Prior written consent" could involve parameters to give the ALMO operational flexibility.

<sup>2</sup> These activities have been defined as requiring Council approval because the ALMO will be a controlled company as defined in the Local Government & Housing Act 1989.

- (2) receive consideration to which, if it were a local authority, Section 61 of the 1989 Act would apply;
- (3) receive a sum by way of grant from a European Union institution to which, if it were a local authority, Section 63(4) of the 1989 Act would apply;
- (4) enter into a credit transaction (as defined by Article 12(2) of the Order);
- (5) with respect to a credit transaction agree to a variation of terms which, if it were a local authority, would be a variation within the meaning of Section 51(1) of the 1989 Act;
- (6) incur additional liabilities within the meaning of Article 16 of the Order;  
or
- (7) reduce its liabilities within the meaning of Article 16 of the Order.

## 7. **APPLICATION OF INCOME AND PROPERTY**

The income and property of the Organisation shall be applied solely towards the promotion of its objects as set forth in the Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly, save as provided below by way of dividend, bonus or otherwise howsoever by way of profit, to the Council Member and no Board Member shall be appointed to any office of the Organisation paid by salary or fees or receive any remuneration or other benefit or money or money's worth from the Organisation<sup>1</sup> PROVIDED THAT nothing herein shall prevent any payment in good faith by the Organisation:-

- (1) Of reasonable and proper remuneration (including pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities) to any officer or employee of the Organisation (not being a Board Member) in return for any services rendered to the Organisation;
- (2) Of fees, remuneration or other benefit in money or money's worth to a company of which a Board Member may be a member holding not more than 2% of the share capital of the company;
- (3) To any Board Member of reasonable out-of pocket expenses and such other sums as may be determined by the Council Member PROVIDED THAT no sum shall be paid to a Board Member in excess of that which would be permitted to be paid to a board member of a social landlord

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<sup>1</sup> This reflects paragraph 2.7 of the DTLR guidance.

registered under the Housing Act 1996 and PROVIDED FURTHER THAT no sum shall be paid to a Board Member who is an elected member of the Council Member in excess of that permitted by the Order;<sup>2</sup>

- (4) Of reasonable and proper remuneration to the Council Member or employees thereof (not being Board Members) in return for any services rendered to the Organisation;
- (5) Of reasonable and proper rent for premises demised or let by the Council Member;
- (6) Of reasonable and proper interest on money lent by the Council Member

PROVIDED FURTHER THAT nothing shall prevent the Organisation from managing a property in accordance with its objects (including the full range of activities it may undertake) notwithstanding the fact that the tenant, lessee or licensee (or prospective tenant, lessee or licensee) of such property may be a Board Member SUBJECT TO the proviso that any Board Member who is a beneficiary of the Organisation shall not be entitled to speak in any debate or cast his/her vote in respect of any matter relating solely to the property of which he is lessee, tenant or licensee and shall absent himself/herself from such proceedings but such Board Member shall be entitled to speak and vote in respect of matters which relate not only to such property but also to other properties managed by the Organisation.

8. **EQUAL OPPORTUNITIES**

The Organisation shall at all times take into consideration the principles of equality of opportunity irrespective of age, gender, race, nationality, ethnic origin, religion, sexual orientation or disability.

9. **LIMITED LIABILITY**

The liability of the Council Member is limited.

10. **MEMBERS GUARANTEE**

The Council Member undertakes to contribute to the assets of the Organisation, in the event of the same being wound up while they are a member of the Organisation, or within one year after they cease to be a member of the Organisation, for payment of the debts and liabilities of the

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<sup>2</sup> Paid Board Members do not appear to be anticipated by the DTLR and are the subject of debate by the RSL movement. We have cross-referred to the rules applicable to Board Members of RSLs as this would seem an objective comparator; but Councils must decide whether this is appropriate.

Organisation contracted before they cease to be a member of the Organisation, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one pound.

11. **WINDING UP**

If, upon the winding up or dissolution of the Organisation, there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall be paid or transferred to the Housing Revenue Account (as defined in the 1989 Act) of the Council Member.

12. **DEFINITIONS**

- (a) "Order" shall mean the Local Authorities (Companies) Order 1995 as amended or re-enacted from time to time;
- (b) "the 1989 Act" shall mean the Local Government and Housing Act 1989 as amended or re-enacted from time to time;
- (c) terms defined in the Articles of Association of the Organisation shall have the same meaning in this Memorandum of Association.

I the person whose name and address are subscribed, am desirous of being formed into a company in pursuance of this Memorandum of Association.

**THE COMMON SEAL of DISTRICT** )  
**OF EASINGTON COUNCIL** )  
was hereunto affixed in the presence of:- )

DATED

WITNESS to the above:-

NAME  
Address

THE COMPANIES ACT 1985

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COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

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ARTICLES OF ASSOCIATION  
OF  
EAST DURHAM HOMES LIMITED

**DEFINITIONS AND INTERPRETATION**

1. In the Articles unless the context otherwise requires:

"the Act"	Means the Companies Act 1985 (as amended by the Companies Act 1989) and any statutory modification or re-enactment thereof for the time being in force.
"the Articles"	Means these Articles of Association as originally adopted or as altered from time to time.
"Board"	Means the Board of Directors of the Organisation from time to time.
"Board Members"	Means the directors for the time being of the Organisation.
"Chairman"	Means the Chairman of the Organisation appointed pursuant to Article 36(1) or in his absence any vice or deputy chairman appointed pursuant to Article 36(3).
"clear days"	In relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.
"Council Board Member"	Means a Board Member appointed by the

	Council Member pursuant to Article 19.
"Council Member"	Means District of Easington Council or any successor body thereto who shall be the sole member of the Organisation.
"executed"	Means in relation to any contract, agreement or other document consent thereto and includes any mode of execution.
"Independent Board Member"	Means a Board Member appointed pursuant to Article 21.
"Local Authority Person"	Means any person: <ul style="list-style-type: none"> <li>(i) who is a member of the Council Member; or</li> <li>(ii) who is an officer of the Council Member (which for these purposes shall not include employees with non-managerial posts apart from housing employees)<sup>1</sup>.</li> </ul>
"Office"	Means the registered office of the Organisation.
"the seal"	Means the common seal of the Organisation.
"Secretary"	Means the secretary of the Organisation or any other person appointed to perform the duties of the secretary of the Organisation, including a joint, assistant or deputy secretary.
"Tenant"	Means an individual who holds a secure tenancy or lease of a residential property from and occupies a property belonging to the Council Member <sup>2</sup> .
"Tenant Board Member"	Means a Board Member appointed pursuant to Article 20.
"Tenants Forum"	Means District of Easington Housing Partnership or any successor body thereto or such other body as the Board shall from time

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<sup>1</sup> This definition is considerably narrower than that provided in the constitution of stock transfer RSLs. Consideration needs to be given as to whether the definition secures the impartiality of the Independent Board Members.

<sup>2</sup> This definition extends to leaseholders (but not to introductory tenants or licensees etc.). This allows leaseholders to stand as a Tenant Board Member (and to vote in elections for Tenant Board Members). Some Councils may wish to provide for a 'ring fenced' position on the Board for a leaseholder representative.

to time resolve to be representative of the tenants of District of Easington Council and other residents living within the District of Easington whose dwellings are managed by the Organisation.

"the United Kingdom" Means Great Britain and Northern Ireland.

2. (1) Unless the context otherwise requires, words or expressions contained in these regulations bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the Organisation.
- (2) In these Articles words importing individuals shall, unless the context otherwise require, include corporations and words importing the singular number shall include the plural, and vice versa and words importing the masculine gender shall include the feminine gender.

### **ADMISSION OF MEMBERS**

3. No person other than the Council Member shall be admitted to membership of the Organisation.
4. The Council Member shall nominate a person (being an Officer of the Council) to act as its representative in the manner provided in Section 375 of the Act. Such representative shall have the right on behalf of the Council Member to attend meetings of the Organisation and vote thereat, and generally exercise all rights of membership on behalf of the Council Member. The Council Member may from time to time revoke the nomination of such representative, and nominate another representative in his place. All such nominations and revocations shall be in writing.
5. The rights of the Council Member shall be personal and shall not be transferable.

### **GENERAL MEETINGS AND RESOLUTIONS**

6. All general meetings other than annual general meetings shall be called extraordinary general meetings.
7. The Board Members may call general meetings and, on the requisition of the Council Member pursuant to the provisions of the Act, shall forthwith proceed to convene an extraordinary general meeting for a date not later than eight weeks after receipt of the requisition. If there are not within the United Kingdom sufficient Board Members to call a general meeting, any Board Member or the Council Member may call a general meeting.



8. (1) An Annual General Meeting and an Extraordinary General Meeting not called on the requisition of the Council Member pursuant to Article 7 shall be called by at least twenty-one clear days' notice or by shorter notice if it is so agreed by the Council Member.
- (2) The notice shall specify the time and place of the Meeting and, in the case of an Annual General Meeting, shall specify the Meeting as such.
- (3) The notice shall be given to the Council Member and to the Board Members and auditors.
9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
10. (1) No business shall be transacted at any general meeting unless a quorum is present. The presence of a duly authorised representative of the Council Member shall be a quorum.
- (2) Tenants and Board Members may attend and may speak but may not vote.
- (3) Any member of the public may attend a general meeting but may not speak without the permission of the Chair.
11. If the Council Member makes a decision which is required to be taken in a general meeting or by means of a written resolution, that decision shall be valid and effectual as if agreed by the Company in general meeting. Any decision taken by the Council Member pursuant to this Article 11 shall be recorded in writing and delivered by the Council Member to the Company for entry in the Company's minute book.
12. An entry stating that a resolution has been carried or lost in the minutes of any meeting shall be conclusive evidence of the fact.

### **NUMBER OF BOARD MEMBERS**

13. (1) The number of Board Members shall be fifteen.<sup>1</sup>
- (2) Five Board Members shall be Council Board Members.
- (3) Five Board Members shall be Tenant Board Members.
- (4) Five Board Members shall be Independent Board Members.

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<sup>1</sup> This Article provides for a conventional 5/5/5 split while allowing for some flexibility (e.g. situations where a Council Board Member or Independent Board Member is a Tenant) Paragraph 2.5 of the Guidance would allow other permutations. Some Councils may wish to provide for a 'ring fenced' position for a leaseholder representative.

- (5) No more than seven Board Members shall be tenants.
- (6) No more than five Board Members shall be Local Authority Persons and no Local Authority Person shall be a Tenant Board Member. A Local Authority Employee may be a Tenant Board Member.
- (7) In the event that the number of Board Members shall be less than the numbers specified in this Article 13 the remaining Board Members shall use reasonable endeavours to appoint further Board Members and may act notwithstanding this Article.
- (8) The First Board Members shall be those persons named in the statement delivered pursuant to Section 10(2) of the Act who shall be deemed to have been appointed under the Articles. Future Board Members shall be appointed as provided in the Articles.

### **OBLIGATIONS OF BOARD MEMBERS**

14. The Board must set out the obligations of every Board Member to the Board and to the Organisation in writing. The Board must review and may amend the statement of the Board Members' obligations from time to time.
15. The statement of the Board Members to the Organisation must include:
  - (1) a commitment to its values and objectives (including its Equality obligations);
  - (2) an obligation to contribute to and share responsibility for the Board's decisions;
  - (3) an obligation to read Board papers, attend meetings and develop their skills and expertise by attending training sessions and other relevant events;
  - (4) an obligation to declare relevant interests;
  - (5) a commitment to equal opportunities;
  - (6) an obligation (subject to any overriding legally binding requirement to the contrary) to keep confidential the affairs of the Board;
  - (7) an obligation to understand the requirements of the regulatory framework applicable to the Organisation and the steps being taken by the Organisation to meet and exceed those requirements;

- (8) an obligation to satisfy themselves that all the risks associated with the Organisation's business plans are identified and appropriately managed; and
  - (9) a reference to their obligations under the general law.
16. Every Board Member must sign and deliver to the Board a statement confirming he/she will meet his/her obligations to the Board and to the Organisation within one month of his/her appointment or election.

### **FUNCTIONS OF THE BOARD**

17. The Board must direct the Organisation's affairs in such a way as to promote its Objects. Its functions include:
- (1) defining and ensuring compliance with the values and objectives of the Organisation;
  - (2) establishing policies and plans to achieve those objectives;
  - (3) approving each year's budget and accounts before publication
  - (4) establishing and overseeing a framework of delegation of its powers to committees and employees with proper systems of control;
  - (5) taking control on all matters which will or might create significant financial or other risk to the Organisation or which affect material issues of principle;
  - (6) monitoring the Organisation's performance in relation to its plans, budget controls and decisions;
  - (7) appointing and (if necessary) removing the Chief Executive of the Organisation;
  - (8) satisfying itself that the Organisation's affairs are conducted in accordance with generally accepted standards of performance and propriety; and
  - (9) ensuring appropriate advice is taken on the items listed in Articles 17(1) to (8) and in particular on matters of legal compliance and financial viability
18. None of the functions in Article 17 may be delegated.

### **APPOINTMENT OF COUNCIL BOARD MEMBERS BY THE COUNCIL MEMBER**

19. (1) Subject to Article 13 the Council Member shall from time to time appoint five persons as Council Board Members and shall have the power to remove from office any such Board Member.
- (2) Appointment or removal pursuant to Article 19(1) shall be effected by an instrument in writing signed by the Council Member and shall take effect upon lodgement at the registered office of the Organisation or such date later than such lodgement as may be specified in the instrument.
- (3) Notwithstanding any other provisions in these Articles the Council Member shall have power at any time by notice in writing to the Secretary to appoint and remove any Board Member.<sup>1</sup>

### **RETIREMENT AND ELECTION OF TENANT BOARD MEMBERS**

20. (1) At the 2008 Annual General Meeting two Tenant Board Members shall retire from Office. At the 2009 Annual General Meeting, one Tenant Board Member shall retire from office. At the 2010 Annual General Meeting, two Tenant Board Members shall retire from office. In each subsequent year the number of Tenant Board Members to retire shall be determined in a rotation which follows this three year pattern.
- (2) The Tenant Board Members to retire at any such subsequent annual general meeting shall be those who have been longest in office since they last became Tenant Board Members, but as between persons who became Board Members on the same day those to retire shall be chosen by lot PROVIDED THAT where a Tenant Board Member is appointed as a consequence of the death or retirement (other than by operation of this sub-paragraph) of another Tenant Board Member ("the Predecessor"), the period of time for which the Tenant Board Member shall have held office shall, for the purposes only of this Article 20(2) be deemed to include the period since the last election or appointment of the Predecessor.
- (3) Prior to every annual general meeting tenants are entitled to nominate themselves to stand for election to the Board as a Tenant Board Member. Each nomination must be signed by a minimum of two seconders. The Board shall appoint a Selection Panel to assess whether the nominees meet the competencies necessary to be appointed to the Board. All nominees satisfying this requirement shall

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<sup>1</sup> See Clause 65.7 of the Agreement for the circumstances in which this power would be used, i.e. only if and so long as it is necessary to ensure proper delivery of the Services.

be eligible to stand for election. The election will be conducted in such manner as the Board may from time to time agree and the Company Secretary shall announce the results of the elections at each relevant annual general meeting and the Tenants so elected shall be duly appointed as Tenant Board Members.

## **RETIREMENT AND ELECTION OF INDEPENDENT BOARD MEMBERS<sup>2</sup>**

21. (1) At the 2008 Annual General Meeting, two Independent Board members shall retire from office. At the 2009 Annual General Meeting, one Independent Board Member shall retire from office. At the 2010 Annual General Meeting, two Independent Board Members shall retire from office. In each subsequent year the number of Independent Board Members to retire shall be determined in a rotation which follows this three year pattern.
- (2) The Independent Board Members to retire at any such subsequent annual general meeting shall be those who have been longest in office since they last became Independent Board Members but as between persons who became Board Members on the same day those to retire shall be chosen by lot PROVIDED THAT where an Independent Board Member is appointed as a consequence of the death or retirement (other than by operation of this sub-paragraph) of another Independent Board Member (“the Predecessor”), the period of time for which the Independent Board Member shall have held office shall, for the purposes only of this Article 21(2) be deemed to include the period since the last election or appointment of the Predecessor.
- (3) If, at the meeting at which a Board Member retires in accordance with Article 21(1), there are no other candidates to fill the post the retiring Board Member shall, if willing to act, be deemed to have been re-appointed unless a resolution not to reappoint the Board Member is passed by the meeting.
- (4) No person other than an Independent Board Member retiring by rotation shall be appointed as an Independent Board Member at any general meeting unless he is recommended by the Board.
- (5) Subject to Articles 6(1) – (4) the Council Member may by Ordinary Resolution in General Meeting appoint any eligible person who is willing to act as an Independent Board Member.

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<sup>2</sup> This mechanism gives Independent Board Members a fixed 3 year term in office and ensures that their replacement has to be recommended by the remaining Board Members before the appointment is made by the Council at the Annual General Meeting. An alternative mechanism is direct appointment and removal by the Council. The rotation is the ‘reverse’ of that applying to Tenant Board Members.

- (6) Subject to Articles 13, 21 and 23 the Organisation may by Ordinary Resolution in general meeting appoint any person who is willing to act as a Board Member to fill a vacancy.
- (7) Subject to Articles 13, 21 and 23 the Board may appoint any person who is willing to act as an Independent Board Member to fill a vacancy until the next Annual General Meeting.
- (8) Not less than seven nor more than twenty-eight clear days before the date appointed for holding a general meeting notice shall be given to the Council Member of any person (other than a Board Member retiring by rotation at the meeting) who is recommended by the Board for appointment or reappointment as an Independent Board Member at the meeting. The notice shall give the particulars of that person which would, if he were so appointed or re-appointed, be required to be included in the Organisation's register of Board Members.

### **CASUAL VACANCIES**

21. Subject to Article 13 the Board may appoint a person who is willing to act to be a Board Member to fill a vacancy. The Board may only fill vacancies occurring among Council Board Members where the Council Member shall have failed within three months of a written request by the Organisation to make the appropriate appointments pursuant to Article 19(1). The Board may only fill vacancies occurring among Tenant Board Members where the Tenants' Federation shall have failed within three months of a written request by the Organisation to make a nomination to fill such vacancy<sup>1</sup>. A Board Member appointed under this Article 22 shall hold office only until the next following annual general meeting. If not re-appointed at such annual general meeting he shall vacate office at the conclusion thereof.

### **DISQUALIFICATION AND REMOVAL OF BOARD MEMBERS**

22. A person shall be ineligible for appointment to the Board and if already appointed shall immediately cease to be a Board Member if the relevant individual:-
  - (1) ceases to be a Board Member by virtue of any provision of the Act or becomes prohibited by law from being a company director; or

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<sup>1</sup> This allows the Tenants' Federation (or other similar body) to nominate replacement Tenant Board Members on a temporary basis.

- (2) is or becomes a person disqualified from elected membership of a local authority<sup>1</sup>; or
- (3) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (4) is, or may be, suffering from mental disorder and either:-
  - (a) is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; or
  - (b) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his/her detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
- (5) resigns his office by notice to the Organisation (provided that resignation does not render a person ineligible for subsequent reappointment to the Board) or
- (6) is removed from office by a resolution (or written notice signed by) at least three quarters of all the other Board Members from time to time; or
- (7) shall for more than six consecutive months have been absent without permission of the Board from meetings of the Board held during that period and the Board resolves that his office be vacated; or
- (8) in any period of 12 months, he shall have been absent (without the permission of the Board Members) from at least 50% of the meetings of Board Members held during that period and the Board Members resolve that his office be vacated; or
- (9) in the case of a Tenant Board Member he ceases to be a Tenant of the Council Member PROVIDED THAT this Article 23(9) shall not apply in respect of a Tenant Board Member temporarily ceasing to be a Tenant as a result of the demolition of or works carried out to that Tenant Board Member's home; or

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<sup>1</sup> Pursuant to S5(2) Local Authorities (Companies) Order 1995.

- (10) is a Tenant Board Member and is (in the reasonable opinion of a majority of Board Members) in serious breach of their obligations as a Tenant<sup>2</sup>; or
- (11) is a Tenant Board Member and is or becomes a Local Authority Person;
- (12) is an Independent Board Member and is or becomes a Local Authority Person or if there are already 7 tenants on the Board he becomes a tenant;
- (13) is removed by resolution of the Council Member pursuant to Article 19.

### **POWERS OF THE BOARD**

- 23. Subject to the provisions of the Act, directions of the Council Member in general meeting and the Memorandum and the Articles, the business of the Organisation shall be managed by the Board who may exercise all the powers of the Organisation. No alteration of the Memorandum or Articles or directions of the Council Member shall invalidate any prior act of the Board which would have been valid if that alteration had not been made. The powers given by this Article shall not be limited by any special power given to the Board by the Articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.
- 24. The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Organisation for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

### **BORROWING POWERS**

- 25. Subject to Clause 6 of the Memorandum the Board may exercise all the powers of the Organisation to borrow money without limit as to amount and upon such terms and in such manner as they think fit, and to grant any mortgage, charge or other security over its undertaking and property, or any part thereof, and to issue any debenture, whether outright or as security for any debt, liability or obligation of the Organisation or of any third party.

### **DELEGATION OF BOARD MEMBERS' POWERS**

- 26. **Subject to Article 18** the Board may delegate any of their powers to any committee consisting of two or more Board Members together with such other persons as the Board sees fit (but so that Board Members shall constitute a majority). They may also delegate to the Chairman/or any vice or deputy

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<sup>2</sup> Optional text.



Chairman or to any executive officer such of their powers as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the Board may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the Articles regulating the proceedings of the Board so far as they are capable of applying.

### **ALTERNATE BOARD MEMBERS**

27. No Board Member shall be entitled to appoint any person as an alternate Board Member.

### **BOARD MEMBERS' EXPENSES**

28. The Board Members may be paid all travelling, hotel, and other expenses reasonably and properly incurred by them in connection with their attendance at meetings of the Board or committees of the Board or general meetings or otherwise in connection with the discharge of their duties and such other sums as may be determined by the Council Member PROVIDED THAT no sum shall be paid to a Board Member in excess of that which would be permitted to be paid to a board member of a social landlord registered under the Housing Act 1996 and PROVIDED FURTHER THAT no sum shall be paid to a Board Member who is an elected member of the Council Member in excess of that permitted by the Order.<sup>1</sup>

### **BOARD MEMBERS' APPOINTMENTS AND INTERESTS**

29. A Board Member may not have any financial interest personally or as a member of a firm or as a director or senior employee (being an employee with managerial status) or in any contract or other transaction of the Organisation unless it is permitted by these Articles and is not prohibited by Clause 6 of the Memorandum.
30. Each Board Member shall ensure that the Secretary has at all times an up to date list of:-
- (1) all bodies trading in which he or she has an interest as:
    - (a) a director or senior employee,
    - (b) a member of a firm,
    - (c) the owner or controller of more than 2% of the issued share capital in a company,

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<sup>1</sup> See footnote to Clause 7 of the Memorandum.

- (2) all interests as an official or elected member of any statutory body;
- (3) all interests as the occupier of any property owned or managed by the Organisation;
- (4) any other significant or material interest.

## **PROCEEDINGS OF BOARD MEETINGS**

31. (1) Subject to any regulations established from time to time by the Organisation in general meeting and compliance with Section 10(1) of the Local Authorities (Companies Order) 1995 the Board may regulate their proceedings as they think fit and the quorum for the transaction of the business of the Board at the time when the meeting proceeds to business shall be **five** comprising no fewer than **one** Council Board Member, **one** Tenant Board Member, **and one** Independent Board Member.
  - (2)  $33\frac{1}{3}$  percent of the total number of Board Members (or such whole number of Board Members nearest to  $33\frac{1}{3}$  percent) may call a meeting of the Board. It shall not be necessary to give notice of a meeting to a Board Member who is absent from the United Kingdom.
  - (3) If a quorum is not present within half an hour from the time appointed for a Board Meeting the Board Meeting shall, if requested by a majority of those Board Members present, be adjourned for one hour or to such other day and such time and place as the Board Members present may determine.
  - (4) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting then notwithstanding Article **36(1)** the Board Members present shall constitute a quorum.
32. Questions arising at a Board Meeting shall be decided by a majority of votes and each Board Member present in person shall be entitled to one vote. In the case of an equality of votes, the Chairman shall have a second or casting vote<sup>2</sup>.
33. (1) Any Board Member having an interest in any arrangement between the Organisation and another person or body shall disclose that interest to the meeting before the matter is discussed by the Board or committee of the Board. Unless the interest is of the type specified in Articles **34(2)** or **34(3)** the Board Member concerned shall not remain present during the discussion of that item unless requested to do so by the remaining members of the Board or committee of the Board. Unless permitted by Articles **34(2)** or **34(3)** the Board Member concerned may

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<sup>2</sup> It may be preferred not to allow the Chairman to have a casting vote.

not vote on the matter in question, but no decision of the Board or any committee of the Board shall be invalidated by the subsequent discovery of an interest which should have been declared.

(2) Provided the interest has been properly disclosed pursuant to Article 34(1) a Board Member may remain present during the discussion and may vote on the matter under discussion where the interest arises because:

- (a) the Board Member is a Tenant so long as the matter in question affects all or a substantial group of Tenants; or
- (b) the Board Member is a director or other officer of a company or body which is a parent, subsidiary or associate of the Organisation; or
- (c) the Board Member is an official or elected member of any statutory body.

(3) A Board Member shall not be treated as having an interest:

- (a) of which the Board Member has no knowledge and of which it is unreasonable to expect him to have knowledge;
- (b) in the establishment of a policy in respect of Board Member expenses payable pursuant to Article 29.

34. If a question arises at a meeting of the Board or of a committee of the Board as to the right of a Board Member to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any Board Member other than himself shall be final and conclusive.

35. (1) At the first Board Meeting following each annual general meeting the Board Members shall appoint one of their number to be the chairman of the Board who unless the same is unwilling to act shall be either a Tenant Board Member or an Independent Board Member to hold office until the next annual general meeting and may at any time remove him from that office.

(2) Unless he is unwilling to do so, the Board Member so appointed shall preside at every meeting of the Board at which he is present. But if there is no Board Member holding that office, or if the Board Member holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Board Members present may appoint one of their number to be chairman of the meeting.

(3) The Board may appoint a vice or deputy chairman to act in the absence

of the Chairman on such terms as the Board shall think fit<sup>1</sup>.

36. All acts done by a meeting of the Board, or of a committee of the Board or by a person acting as a Board Member shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Board Member or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Board Member and had been entitled to vote.

### **WRITTEN RESOLUTION**

37. A resolution in writing signed by:
- (1) three quarters of all the Board Members entitled to receive notice of a meeting of the Board or of a committee of the Board; and
  - (2) the Chairman of the Organisation or of the relevant committee; and

which satisfies the quorum requirements of Article 32(1) shall be as valid and effectual as if it had been passed at a meeting of the Board or (as the case may be) a committee of the Board duly convened and held and may consist of several documents in the like form each signed by one or more Board Members.

### **SECRETARY**

38. Subject to the provisions of the Act, the Secretary and any deputy or alternate Secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.

### **MINUTES**

39. The Board shall cause minutes to be made in books kept for the purpose:-
- (1) of all appointments of officers made by the Board Members; and
  - (2) of all proceedings at meetings of the Organisation and of the Board, and of committees of the Board and of the Council Member in its capacity as the sole member of the Organisation, including the names of the Board Members present at each such meeting.

### **RECORDS ACCOUNTS AND RETURNS**

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<sup>1</sup> This could be made mandatory; but this could be regarded as forcing Board Members to give special status to a particular category/constituency of Board Membership.

40. The Organisation shall comply with the provisions of Part VII of the Act in respect of:-
- (1) the keeping and auditing of accounting records;
  - (2) the provision of accounts and annual reports of the directors; and
  - (3) in making an annual return.

### **THE SEAL**

41. (1) If the Organisation has a seal it shall only be used with the specific or general authority of the Board or of a committee of the Board. The Board may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Board Member and by the Secretary or a second Board Member.
- (2) The Organisation may exercise the powers conferred by Section 39 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the Board Members.

### **NOTICES**

42. Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Board or of a committee of the Board need not be in writing.
43. The Organisation may give any notice to the Council Member either personally or by sending it by post in a prepaid envelope addressed to the Council Member at their registered address or by leaving it at that address.
44. The Council Member present by duly authorised representative at any meeting of the Organisation shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
45. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

### **INDEMNITY**

46. (1) Every Board Member or other officer of the Organisation shall be indemnified out of the assets of the Organisation against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal,

in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 727 of the Act in which relief is granted to him and no Board Member or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Organisation in the execution of the duties of his office or in relation thereto PROVIDED THAT this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.

- (2) The Board shall have power to purchase and maintain for any Board Member or officer of the Organisation insurance against any such liability as is referred to in Section 310(1) of the Act.

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**NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBER**

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**THE COMMON SEAL** of )  
**DISTRICT OF EASINGTON COUNCIL** )  
was hereunto affixed in the presence of:- )

DATED

WITNESS to the above:-

NAME  
Address

**MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**EAST DURHAM HOMES LIMITED**

**Date of Incorporation: [ ]**

**Registration Number: [ ]**

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**MODEL CONSTITUTION**

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Produced by the Social Policy Legal Unit  
(SoPLU)

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