



# **The Gateshead Housing Company Board of Directors Special Meeting**

Wednesday, 29 January 2014 at 11am  
To be held in the Board Room at Keelman House, Fifth Avenue  
Business Park, Team Valley, Gateshead

## *Agenda*

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Item	Business
1.	<b>Apologies for Absence</b>
2.	<b>Keelman Homes</b> Report of Managing Director

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Report to the Board

29 January 2014



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**Title:** Keelman Homes

**Report of:** Managing Director

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**Purpose of report**

1. To agree proposed changes to the governance structure of Keelman Homes in order to increase the potential supply of affordable homes in Gateshead.

**Background**

2. Keelman Homes is a charity established by The Gateshead Housing Company ("TGHC") which is itself a company controlled by Gateshead Council as its sole member. Keelman Homes is a charity that has a Board of trustees: two representing the Council, one representing TGHC and four independent trustees.
3. To date Keelman Homes has successfully delivered the regeneration scheme at Kibblesworth and is currently developing new build schemes in partnership with Galliford Try and the Esh Group.
4. The grant funding for Kibblesworth from the HCA was received directly by Keelman Homes, as part of the Homes and Communities Agency ("HCA") 2008-11 programme. The rules around the HCA's 2011-14 programme changed clearly stating that this funding is not available to Councils, ALMO's or wholly owned subsidiaries of ALMOs (ie Keelman Homes).
5. Keelman Homes therefore had to rely on utilising grant monies made available from Esh and Galliford Try to deliver the current new build schemes. This meant that Keelman Homes had no ability to decide who it would choose as its development partner.
6. There is also an expectation that any future affordable housing programmes funded by the HCA would put similar restrictions on Councils/ALMO's or their wholly owned subsidiaries being eligible to apply for funding.
7. The articles of association and membership of Keelman Homes' could be amended to enable Keelman Homes to access this type of funding and deliver a more comprehensive new build programme. This would help to meet some of the objectives set out in the new Council's Housing Strategy, potentially without requiring the use of prudential borrowing from the Council.

8. Whilst the Housing Revenue Account (“HRA”) could in theory allow the Council to directly build new homes itself, the reality is that there is little headroom within the resources available to carry out anything other than the existing capital programme.
9. To date the Government have declined suggestions on increasing the HRA debt cap for authorities that have no or little headroom to give them the ability to build new affordable Council homes within the HRA. In addition to this any new build within the HRA would be subject to right to buy (as compared to new build by Keelman Homes that is generally only subject to the right to acquire).
10. There is an opportunity for Keelman Homes to deliver new build Council houses for the Council in the future. By changing the ownership of Keelman Homes there is the potential to increase the amount of new affordable homes, by using new funding resources from the HCA and/or private sector.
11. The proposed changes to Keelman Homes complement the Council’s other housing initiatives. Keelman Homes are likely to continue to develop small to medium size sites often on Council owned land in or near current Council housing estates.
12. Keelman Homes will continue to provide homes at affordable rents. This will help the Council replace Council stock which has been demolished, and regenerate Council estates. This in turn adds to the Council’s on-going investment in the Housing Capital Programme.
13. This complements other housing initiatives such as:
  - The Gateshead Regeneration Partnership, which will develop on a larger scale than Keelman Homes and include homes for sale on designated sites over an extended period
  - The Local Plan which covers affordable housing but has more significant implications for house building for sale and housing growth
  - The Council’s Housing Strategy which identifies small to medium sized affordable housing developments
  - Work with housing associations that are often unable to build because of existing financial commitments.
14. This proposal is another way of attracting inward investment and delivering new affordable housing within Gateshead.

## **Proposal**

15. Changing the governance structure of Keelman Homes from the existing arrangements to one in which the current Trustees of Keelman Homes also become Members of the charity would:
  - enable Keelman Homes to apply for funding from the HCA as part of the HCA’s affordable homes guarantee programme;
  - help reduce Keelman Homes’ reliance on borrowing from the Council in order to finance development activities;
  - ensure that any private sector borrowing Keelman is able to secure does not contribute to the overall public sector debt.

16. The proposed change in structure should not make any material difference to Keelman Homes' operational arrangements, and will not change Keelman's primary objective of providing homes and other accommodation for those in need.
17. Keelman Homes would continue to be regulated by the Charities Commission and the HCA. As now any surpluses would be applied to Keelman Homes' charitable objectives. There would be no change to the current position whereby Keelman Homes' Board determine rent levels and other operating policies.
18. The housing company will continue to work closely with Keelman Homes in order to help increase the supply of quality affordable housing within Gateshead.
19. In order to effect the proposed change in structure, some amendments will be required to Keelman's articles of association. The changes required are mainly focused on adjusting the membership of Keelman Homes.
20. At present Keelman Homes are required to give the Council's prior notice of any proposed amendments to their articles of association. Keelman are also obliged to give due consideration to any representations about the proposals which the Council may subsequently make.
21. The proposed change in membership structure will however ultimately need to be formally effected by the current Trustees of Keelman Homes. It will also require the approval of this Board (as the current sole member of the company), the HCA and the Charity Commission.
22. The Council's Cabinet met on 21 January 2014 and endorsed the following: -
  - (i) the proposed changes to Keelman Homes' articles of association as set out at Appendix 1 to of the Cabinet report;
  - (ii) the recommended changes to the membership structure of Keelman Homes; and
  - (iii) delegate authority to the Strategic Director, Legal and Corporate Services to approve any further associated changes to Keelman Homes' articles of association as may be required to secure the Charity Commission's approval to the change in membership structure.
23. A copy of the proposed amendments to the Articles are attached as Appendix 1 to this report and a frequently asked questions guide is provided at Appendix 2.

### **Link to Values**

24. This report relates to the following company values: -
  - Being customer focused, innovative and professional.
  - Being honest, accountable and transparent,
  - Being a listening and learning organisation.

### **Risk Management Implications**

25. The proposed change in structure should make no significant difference to the protection of the Company's objectives and aspirations for Keelman Homes.

### **Value for Money Implications**

26. Enabling Keelman Homes to deliver an increased new build programme will support the Council's new Housing Strategy to maximise the amount of affordable housing built in the Borough.
27. Keelman Homes will be able to procure its development partners to ensure that all new build schemes demonstrate value for money.

### **Equality and Diversity Implications**

28. There are no equality and diversity implications directly arising from this report.

### **Financial Implications**

29. There are no financial implications directly arising from this report.

### **Health Implications**

30. New affordable homes will contribute to the health and wellbeing of residents. This is particularly relevant to residents who need specialist homes such as bungalows and supported housing.

### **Environmental Implications**

31. There are no environmental implications arising from this report.

### **Consultation carried out**

32. As explained earlier in this report, Cabinet met on 21 January 2014 and endorsed the recommendations.
33. This report has also been discussed prior to this meeting with the chair of the housing company and the chair of Keelman Homes.

### **Impact on Customers**

34. There will be a positive impact on customers with the development of new properties throughout the Borough.

### **Recommendation**

35. It is recommended that the proposed changes to the governance structure of Keelman Homes in order to increase the potential supply of affordable homes in Gateshead are agreed and the report be submitted to Keelman Homes Board for its formal agreement.

Registered Number - 6972673

Company limited by guarantee and not having a share capital

## **Memorandum** Articles of Association

of

**Keelman Homes Limited**

### 1 **Name**

The name of the company is Keelman Homes Limited (the **Charity**).

### 2 **Registered office**

The registered office of the Charity is to be in England and Wales.

### 3 **Objects**

The Objects of the Charity are in the United Kingdom (the **Area of Benefit**):

- (a) to provide houses or hostels or other residential accommodation and any associated amenities for persons in necessitous circumstances upon terms appropriate to their means;
- (b) to provide for aged, disabled (whether physically or mentally), or chronically sick persons in need thereof houses or hostels or other residential accommodation and any associated amenities specially designed or adapted to meet the disabilities and requirements of such persons;
- (c) to provide services, advice or assistance upon terms appropriate to their means to aged, disabled (whether physically or mentally) or chronically sick persons or other persons in necessitous circumstances in need thereof and providing any associated amenities specially designed or adapted to meet the disabilities and requirements of such persons;
- (d) the provision of recreation or other leisure facilities in the interest of social welfare with the object of improving the conditions of life for the residents of the Area of Benefit;
- (e) the relief of poverty amongst the residents of the Area of Benefit;
- (f) the advancement of education, training or retraining, particularly among unemployed people and providing unemployed people with work experience;
- (g) the maintenance, improvement or provision of public amenities for the public benefit in the interests of regeneration in areas of social and economic deprivation in which the Charity owns or manages housing stock; and
- (h) such other charitable purposes beneficial to the public consistent with the objects above as the Trustees shall in their absolute discretion determine.

## 4 Powers

4.1 The Charity shall have the power to do anything that a natural or corporate person can lawfully do which is necessary or expedient to achieve its Objects except as expressly prohibited in the [ArticlesMemorandum](#).

4.2 Without limiting its general powers the Charity shall have the following powers:

4.2.1 to acquire or hire property of any kind,

4.2.2 to construct, maintain and alter buildings,

4.2.3 to provide services and facilities including not only the provision of land and buildings but also the organisation of recreational or other leisure time activities,

4.2.4 to co-operate and enter into arrangements with other bodies including any authorities, national, local or otherwise,

4.2.5 to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act), and to set rents and service charges for such properties,

4.2.6 to promote or carry out research,

4.2.7 to provide advice,

4.2.8 to publish or distribute information,

4.2.9 to support, administer or set up other charities,

4.2.10 to raise funds (but not by [undertaking any substantial permanent trading activitiesmeans of taxable trading](#)),

4.2.11 to borrow money and give security for loans (but only in accordance with the restrictions imposed by the Charities Act),

4.2.12 to make grants or loans of money and to give guarantees,

4.2.13 to set aside funds for special purposes or as reserves against future expenditure,

4.2.14 to deposit or invest in funds in any manner (but to invest only after obtaining such advice from a financial expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification),

4.2.15 to delegate the management of investments to a financial expert, but only on terms that:

(a) the investment policy is set down in writing for the financial expert by the Trustees,

- (b) every transaction is reported promptly to the Trustees,
  - (c) the performance of the investments is reviewed regularly with the Trustees,
  - (d) the Trustees are entitled to cancel the delegation arrangement at any time,
  - (e) the investment policy and the delegation arrangement are reviewed at least once a year,
  - (f) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt, and
  - (g) the financial expert must not do anything outside the powers of the Trustees.
- 4.2.16 to arrange for investments or other property of the Charity to be held in the name of a nominee company acting under the control of the Trustees or of a financial expert acting under their instructions, and to pay any reasonable fee required,
- 4.2.17 to deposit documents and physical assets with any company registered or having a place of business in England and Wales as custodian, and to pay any reasonable fee required,
- 4.2.18 to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required,
- 4.2.19 to pay for indemnity insurance for the Trustees,
- 4.2.20 subject to [article clause 5](#), to employ paid or unpaid agents, staff or advisers,
- 4.2.21 to enter into contracts to provide services to or on behalf of other bodies,
- 4.2.22 to establish or acquire subsidiary companies to assist or act as agents for the Charity,
- 4.2.23 to pay the costs of forming the Charity, and
- 4.2.24 to do anything else within the law which promotes or helps to promote the Objects.

## 5 Benefits to members and Trustees

- 5.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the members but:
- 5.1.1 members who are not Trustees may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied,



- 5.1.2 members (including members who are Trustees) may be paid interest at a reasonable rate on money lent to the Charity,
  - 5.1.3 members (including members who are Trustees) may be paid a reasonable rent or hiring fee for property or equipment let or hired to the Charity, and
  - 5.1.4 members (including members who are Trustees) who are also beneficiaries may receive charitable benefits in that capacity.
- 5.2 A Trustee must not receive any payment of money or other material benefit (whether directly or indirectly) from the Charity except:
- 5.2.1 as mentioned in ~~articles~~ ~~clauses~~ 4.2.19 (indemnity insurance), 5.1.2 (interest), 5.1.3 (rent), 5.1.4 (charitable benefits) or 5.3 (contractual payments),
  - 5.2.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in the administration of the Charity,
  - 5.2.3 an indemnity in accordance with article ~~228~~,
  - 5.2.4 payment to any company in which a Trustee has no more than a 1% (one per cent) shareholding, and
  - 5.2.5 in exceptional cases, other payments or benefits (but only with the written approval of the Commission in advance).
- 5.3 A Trustee may not be an employee of the Charity, but a Trustee or a person who is for the purposes of the Companies Act 2006 connected (which expression shall have the meaning given thereto by section 252 of the Companies Act 2006) with a Trustee may enter into a contract with the Charity to supply goods or services in return for a payment or other material benefit if:
- 5.3.1 the goods or services are actually required by the Charity,
  - 5.3.2 the nature and level of the benefit is no more than reasonable in relation to the value of the goods or services and is set at a meeting of the Trustees in accordance with the procedure in ~~articles~~ ~~12 to 205~~, and
  - 5.3.3 no more than one half of the Trustees are interested in such a contract in any financial year.

## 6 **Limited liability**

The liability of members is limited.

## 7 **Guarantee**

Every member promises, if the Charity is dissolved while he, she or it remains a member or within twelve months afterwards, to pay up to £10 (ten pounds) towards the costs of dissolution and the liabilities incurred by the Charity while he/she or it was a member.

## 8 **Dissolution**

- 8.1 If the Charity is dissolved, the assets (if any) remaining after provision has been made for all its liabilities must be applied in one or more of the following ways:
- 8.1.1 by transfer to one or more other bodies established for exclusively charitable purposes which are the same as or similar to the Objects,
  - 8.1.2 directly for the Objects or for charitable purposes which are within or similar to the Objects, or
  - 8.1.3 in such other manner consistent with charitable status as the Commission approve in writing in advance

**provided that**

- (a) any transfer of the Charity's assets under this clause shall only be made to an organisation or body whose area of operation includes the geographical boundaries of the Council, and
- (b) a final report and statement of account must be sent to the Commission.

## 9 Membership

9.1 The Charity must maintain a register of members.

9.2 The Trustees from time to time shall be members of the Charity, and shall be admitted as members upon appointment or election as a Trustee.~~subscriber to the Memorandum and Articles shall be the first member of the Charity.~~

9.3 The number of members with which the charity proposes to be registered is unlimited.

9.4 Membership of the Charity shall be open to any individual or organisation interested in promoting the Objects who:-

9.4.1 applies to the Charity in the form required by the Trustees,

9.4.2 is recommended by the Trustees and approved by the members of the Charity, and

9.4.3 consents in writing to become a member or signs the register of members.

9.5 The Trustees may establish different classes of membership and prescribe their respective privileges and duties and set the amounts of any subscriptions.

9.6 Membership is terminated if the member concerned:

9.6.1 gives written notice of resignation to the Charity;

9.6.2 dies (or in case of an organisation) ceases to exist;

9.6.3 is six months in arrears in paying the relevant subscription (if any) (but in such a case the member may be reinstated on payment of the amount due); ~~or~~

9.6.4 is a member ~~other than the ALMO~~ and is removed from membership by resolution passed by at least seventy-five percent of the members present and voting at a general meeting after the meeting has invited the views of the member concerned and considered the matter in the light of any such views. For the avoidance of doubt the member concerned shall not be entitled to vote on the decision whether or not to remove them from membership: ~~:- or~~

9.6.5 ~~having been a Trustee they cease to be a Trustee for any reason.~~

9.7 Any organisation which is a member shall nominate a person to act as its representative by an appropriate notice to the Secretary. Such representative shall have the right on behalf of the organisation to attend meetings of the Charity and vote thereat, and generally exercise all rights of membership on behalf of the organisation. The organisation may from time to time revoke the nomination of such representative and nominate another representative in his/her place (the **Authorised Representative**). All such nominations and revocations shall be in writing to the Secretary.

9.8 Membership is not transferable.

9.9 ~~Notwithstanding anything herein contained, the Trustees may not admit any Local Authority person (other than the ALMO Trustee or the Council Trustees) to membership of the Charity.~~

### 10 **General Meetings**

10.1 Members are entitled to attend general meetings in person (or in case of an organisation) through an Authorised Representative or by proxy. Proxy forms must be delivered to the Secretary at least 24 hours before the meeting. General meetings are called on at least 14 clear days' written notice specifying the business to be discussed.

10.2 No business shall be transacted at any general meeting unless a quorum is present. Four members ~~The presence of the ALMO through its Authorised Representative~~ shall be a quorum and must include two Trustees.

10.3 The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee elected by those Trustees present shall preside at a general meeting.

10.4 Except where otherwise provided by the Articles or the Companies Act, every issue is decided by a majority of the votes cast.

10.5 Every member present in person (or in case of an organisation) through an Authorised Representative or by proxy has one vote on each issue.

10.6 The members of the Charity may pass a resolution in writing in accordance with the terms of the Companies Act. A proposed written resolution of the members of the Charity shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the Companies Act 2006).

10.7 The Charity must hold an AGM in every year. The first AGM must be held within 18 months after the Charity's incorporation.

10.8 At an AGM the members:

- 10.8.1 receive the accounts of the Charity for the previous financial year,
  - 10.8.2 receive the Trustees' report on the Charity's activities since the previous AGM,
  - 10.8.3 accept the retirement of those Ordinary Trustees who wish to retire or who are retiring by rotation,
  - 10.8.4 appoint or if appropriate elect Ordinary Trustees to fill the vacancies arising,
  - 10.8.5 appoint auditors for the Charity,
  - 10.8.6 may discuss and determine any issues of policy or deal with any other business put before them by the Trustees.
- 10.9 A general meeting may be called at any time by the Trustees and on requisition of members pursuant to Companies Act.
- 10.10 Articles [114.3.3](#) and article [114.2](#) (but only in so far as article [114.2](#) relates to the member of the Council Trustees) shall not be amended without the prior written consent of the Council which is not to be unreasonably withheld or delayed. Any other article ~~or the Memorandum~~ shall not be amended without a prior notice being given to the Council. The Council shall be entitled (within a reasonable period or such period as stated in the notice) to make representations which the members shall be required to consider.
- 10.11 A consent which is signed by the Chief Executive of the Council (or such other authorised individual) and delivered to the Secretary shall be a conclusive evidence of the Council's consent.

## 11 The Trustees

- 11.1 The Trustees as charity trustees shall have control of the Charity and its property and funds.
- 11.2 The Trustees when complete shall consist of at least four and not more than seven individuals, comprising one individual nominated by the ALMO in accordance with article [114.3.2](#) (the **ALMO Trustees**), two individuals nominated by the Council in accordance with article [114.3.3](#) (the **Council Trustees**) and four individuals appointed or elected in accordance with article [114.3.4](#) (the **Ordinary Trustees**).
- 11.3.1 The first Trustees of the Charity shall be those persons notified to Companies House as the first directors of the Charity. Future Trustees shall be appointed as provided in these Articles.
  - 11.3.2 The ALMO Trustees shall be appointed by the ALMO to serve for such period of office as shall be confirmed by the ALMO. A written notice delivered by the Chief Executive of the ALMO (or such other authorised individual) of the ALMO to the Secretary shall be conclusive as to who has been appointed as an ALMO Trustee and for what period of time. The ALMO may remove and replace the Trustees at any time provided written notice is given to the Secretary.
  - 11.3.3 The Council Trustees shall be appointed by the Council to serve for such period of office as shall be confirmed by the Council. One of the Council Trustees shall be an employee or elected member of the Council and one of the Council

Trustees shall be an existing Council-nominated board member of the ALMO. A written notice delivered by the Chief Executive (or such other authorised individual) of the Council to the Secretary shall be conclusive as to who has been appointed as a Council Trustee and for what period of time. The Council may remove and replace either or both of the Council Trustees at any time provided written notice is given to the Secretary.

11.3.4 The Ordinary Trustees shall be selected by the Trustees and appointed or elected by the members of the Charity in accordance with article ~~210~~.8.4

11.3.5 For the purposes of these Articles a person who is:

- (a) a director or employee of the ALMO or any other company controlled by the Council,
- (b) or has not been in the last four years an elected member of the Council or a member of the ALMO,
- (c) an employee of the Council, or
- (d) a tenant of the Charity or of the ALMO or of the Council

shall not be eligible to become an Ordinary Trustee.

11.4 Every Trustee after appointment or reappointment must sign a declaration of willingness to act as a charity trustee of the Charity before he or she may vote at any meeting of the Trustees.

11.5.1 One third (or the number nearest to one third) of the Ordinary Trustees must retire at each AGM, those longest in office retiring first and the choice between any of equal service being made by drawing lots.

11.5.2 If the members of the Charity, at the meeting at which a Trustee retires in the above manner, do not fill the vacancy, the Trustee shall, if willing to act, be deemed to have been reappointed unless at the meeting it is expressly resolved not to fill the vacancy.

11.6 The Trustees shall have power at any time to appoint any person to be an Ordinary Trustee, either to fill a casual vacancy or as an addition to the existing Trustees but so that the total number of Ordinary Trustees shall not at any time exceed any maximum number fixed in accordance with these Articles. A person appointed under this article shall serve until the next AGM unless reappointed by the members of the Charity in accordance with article 2.8.4.

11.7 A technical defect in the appointment of a Trustee of which the Trustees and/or members are unaware at the time does not invalidate decisions taken by such Trustee.

11.8 A Trustee's term of office automatically terminates if he or she:

11.8.1 is disqualified under the Charities Act from acting as a charity trustee,

11.8.2 is incapable, whether mentally or physically, of managing his or her own affairs,

- 11.8.3 is absent without notice from [number] consecutive meetings of the Trustees and is asked by a majority of the other Trustees to resign,
- 11.8.4 resigns by written notice to the Trustees (but only if at least two Trustees will remain in office),
- 11.8.5 is removed by resolution of the members in accordance with the Companies Act,
- 11.8.6 ceases to have the required qualifications,
- 11.8.7 is an ALMO Trustee and the ALMO serves notice to the Secretary removing that Trustee from office, or
- 11.8.8 is a Council Trustee and the Council serves notice to the Secretary removing that Trustee from office.

### 12 **Trustees' proceedings**

- 12.1 The Trustees must hold at least [three] meetings each year or such other regular meetings as the Trustees may agree from time to time.
- 12.2 A quorum at a meeting of the Trustees is three Trustees.
- 12.3 A meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants.
- 12.4 The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee chosen by the Trustees present shall preside at each meeting. [The ALMO Trustees or the Council Trustees shall not be eligible to become the Chairman].
- 12.5 Every issue may be determined by a simple majority of the votes cast at a meeting, but a written resolution signed by three quarters of the Trustees is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature.
- 12.6 Except for the Chairman of the meeting, who has a second or casting vote, every Trustee has one vote on each issue.
- 12.7 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

### 13 **Trustees' interests**

- 13.1 A Trustee who is interested directly or indirectly in any matter which is under discussion by the Trustees shall disclose the nature and extent of his interest in that matter; and
- 13.2 A Trustee who is directly interested in any matter which is under discussion by the Trustees:
  - 13.2.1 shall not vote on that matter; and

13.2.2 shall not (unless required to do so by the Chairman) remain during the Trustees' discussion of such matter; and

13.3 If a Trustee inadvertently votes on a matter to which ~~6~~13.2.2 applies, his vote shall not be counted.

13.4 A Trustee who is a beneficiary of the Charity shall not have a direct interest for the purpose of article 6 in any decision affecting all or a substantial group of beneficiaries.

13.5 If a conflict of interests arises for a Trustee because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the ~~se Memorandum or the~~ Articles, the unconflicted Trustees may authorise such a conflict of interests where the following conditions apply:

13.5.1 article ~~13~~6 is complied with;

13.5.2 the conflicted Trustee is not to be counted when considering whether a quorum of Trustees is present at the meeting;

13.5.3 the unconflicted Trustees consider it is in the interests of the charity to authorise the conflict of interest in the circumstances applying.

#### 14 Permitted transactions

14.1 For the purposes of sections 175(3) of the Companies Act 2006 as substituted by section 181(2)(a) of the Companies Act 2006 the duty to avoid conflicts of interest shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the Charity in relation to the following:

14.1.1 a matter authorised by the Commission;

14.1.2 an interest in any contract, arrangement, transaction or proposal concerning the purchase and/or maintenance of any insurance policy pursuant to ~~article clause 4.2.19 of the Memorandum;~~ article clause

14.1.3 any payment permitted by ~~article clause 5 of the Memorandum~~ article clause 5 or any benefit granted to a Trustee in the capacity of a beneficiary of the Charity.

#### 15 Interested Trustee not to count for quorum

15.1 A Trustee shall not be counted in the quorum in relation to, any resolution of the Trustees or of a committee of the Trustees concerning any contract, arrangement, transaction or any proposal to which the Charity is or is to be a party and in which he has an interest.

#### 16 Chairman's ruling conclusive on Trustee's interests

16.1 If any question arises at any meeting as to the entitlement of any Trustee (other than the Chairman of the Trustees) to vote or be counted in a quorum, and such question is not resolved by his voluntarily agreeing to abstain from voting or being counted in the quorum, such question shall be referred to the Chairman of that meeting. The Chairman's ruling in relation to the Trustee concerned shall be final and conclusive.

#### 17 Trustees' resolution conclusive on chairman's interest

17.1 If any question arises at any meeting as to the entitlement of the Chairman to vote or be counted in a quorum, and such question is not resolved by his voluntarily agreeing to abstain from voting or being counted in the quorum, such question shall be decided by resolution of the Trustees or committee members present at that meeting (excluding the Chairman), whose majority vote shall be final and conclusive.

### 18 **Charity may ratify**

18.1 Subject to the provisions of the Companies Acts, the Charity may by ordinary resolution suspend or relax the provisions of articles ~~14-179-12~~ or ratify any transaction not duly authorised by reason of a contravention of these articles ~~14-179-12~~ provided always that such ordinary resolution is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the Trustee (if a member of the Charity) and any member connected with him and provided further that such ratification shall not extend to any matter prohibited by ~~articleclause 5 of the Memorandum~~.

### 19 **Trustees' powers**

The Trustees have the following powers in the administration of the Charity:

19.1 to appoint (and remove) any individual or corporation (who may be a Trustee) to act as Secretary in accordance with the Companies Act,

19.2 to appoint a Trustee (who is an Ordinary Trustee) as a Chairman,

19.3 to delegate any of their functions to committees consisting of two or more individuals appointed by them. At least two members of every committee must be Trustees and all proceedings of committees must be reported promptly to the Trustees,

19.4 to make standing orders consistent with ~~the Memorandum,~~ the Articles and the Companies Act to govern proceedings at general meetings,

19.5 to make rules consistent with ~~the Memorandum,~~ the Articles and the Companies Act to govern their proceedings and proceedings of committees,

19.6 to make regulations consistent with ~~the Memorandum,~~ the Articles and the Companies Act to govern the administration of the Charity and the use of its seal (if any),

19.7 to establish procedures to assist the resolution of disputes or differences within the Charity, and

19.8 To exercise any powers of the Charity which are not reserved to a general meeting.

### 20 **Records and Accounts**

20.1 The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies and the Commission of:

20.1.1 annual returns,

20.1.2 annual reports, and



20.1.3 annual statements of account.

20.2 The Trustees must keep proper records of:

20.2.1 all proceedings at general meetings,

20.2.2 all proceedings at meetings of the Trustees,

20.2.3 all reports of committees, and

20.2.4 all professional advice obtained.

20.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours and may be made available for inspection by members who are not Trustees if the Trustees so decide.

20.4 A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or member. A copy must also be supplied, within two months, to any other person who makes a written request and pays the Charity's reasonable costs.

## 21 Notices

21.1 Notices under the Articles may be sent by hand, by post or by suitable electronic means such as fax or e-mail or (where applicable to members generally) may be published in any suitable journal or [national/local] newspaper [circulating in the Area of Benefit] or any journal distributed by the Charity.

21.2 The only address at which a member is entitled to receive notices sent by post is an address shown in the register of members.

21.3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received:

21.3.1 24 hours after being sent by electronic means or delivered by hand to the relevant address,

21.3.2 two clear days after being sent by first class post to that address,

21.3.3 three clear days after being sent by second class or overseas post to that address,

21.3.4 on the date of publication of a newspaper containing the notice,

21.3.5 on being handed to the member (or, in the case of a member organisation, its Authorised Representative) personally, or, if earlier,

21.3.6 as soon as the member acknowledges actual receipt.

## 22 Indemnity

The Charity may indemnify any Trustee against every liability incurred by him or her in that capacity to the extent permitted by the Companies Act.

**Dissolution**

~~The provisions of the Memorandum relating to dissolution of the Charity take effect as though repeated here.~~

23 **Interpretation**

23.1 In ~~the Memorandum and in~~ the Articles, unless the context indicates another meaning:

**AGM** means an annual general meeting of the Charity,

**the ALMO** means Gateshead Housing Company Limited a company incorporated under the Companies Act (Registered Number 04944719) whose registered office is at Keelman House, Fifth Avenue, Team Valley Trading Estate, Gateshead, Tyne & Wear NE11 0XA,

**Area of Benefit** has the meaning ascribed to it in article 3~~the Memorandum~~,

**the Articles** means the Charity's Articles of Association,

**Authorised Representative** means an individual who is authorised by the organisation who is a member of the Charity to act on its behalf at meetings of the Charity and whose name is given to the Secretary,

**beneficiary** and **beneficiaries** means those in needy circumstances as set out further in article~~clause 3 of the Memorandum~~,

**Chairman** means the chairman of the Trustees,

**the Charity** means the company governed by the Articles,

**the Charities Act** means the Charities Act 1993 and the Charities Act 2006 including any statutory modification or re-enactment thereof for the time being in force,

**charity trustee** has the meaning prescribed by section 97(1) of the Charities Act,

**clear day** means 24 hours from midnight following the relevant event,

**the Commission** means the Charity Commissioners for England and Wales,

**the Companies Act** means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force and any provisions of the Companies Act 2006 for the time being in force,

**the Companies Act 2006** means the Companies Act 2006 including any statutory modifications or re-enactment thereof for the time being in force,

**Council** means Gateshead Council or its successor,

**custodian** means a person or body who undertakes safe custody of assets or of documents or records relating to them,

**financial expert** means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000,

**financial year** means the Charity's financial year,

**firm** includes a limited liability partnership,

**indemnity insurance** means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty,

**local authority person means:**

(a) the ALMO;

(b) the Council;

(c) any person who is a director or employee of the ALMO or any other company controlled by the Council, or;

(d) any person who is an employee or elected member of the Council.

**material benefit** means a benefit which may not be financial but has a monetary value,

**member** and **membership** refer to company membership of the Charity,

~~**Memorandum** means the Charity's Memorandum of Association,~~

**month** means calendar month,

**nominee company** means a corporate body registered or having an established place of business in England and Wales,

**the Objects** means the Objects of the Charity as defined in ~~article clause 3 of the Memorandum,~~

**Secretary** means the company secretary of the Charity,

**taxable trading** means carrying on a trade or business for the principal purpose of raising funds and not for the purpose of actually carrying out the Objects, the profits of which are subject to corporation tax,

**Trustee** means a director of the Charity and 'Trustees' means the directors.

**written or in writing** refers to a legible document on paper including a fax message and electronic mail,

**year** means calendar year.

23.2 Expressions defined in the Companies Act have the same meaning.

23.3 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

**Name and address of subscriber**

**Subscriber's signature**

Gateshead Housing Company Limited  
Keelman House  
Fifth Avenue  
Team Valley Trading Estate  
Gateshead  
Tyne & Wear  
NE11 0XA

dated 2014

witness to the above signature:

name:

address:

occupation:

signature

### KEELMAN HOMES – CHANGE IN MEMBERSHIP

#### **What is the current status of Keelman Homes?**

Keelman Homes is a charitable subsidiary of The Gateshead Housing Company. It is currently managed by a board of seven trustees.

The Gateshead Housing Company is entitled to nominate one trustee to the board. This is currently Joanne Carr.

Gateshead Council have the right to nominate up to two trustees to Keelman Homes' board. These positions are currently held by Councillor Peter Mole and Councillor Paul Foy.

The remaining four trustees are independent appointments. In order to secure Keelman Homes' registration as a charity it was essential that the company was not effectively controlled by Gateshead Council or The Gateshead Housing Company, hence the majority of independent trustees on the board.

#### **Who currently owns Keelman Homes?**

No one party 'owns' Keelman Homes in the way that people would normally understand if referring to ownership of a company.

The Gateshead Housing Company is the sole member of Keelman Homes, but it is not entitled to receive any profits generated by Keelman, nor is it entitled to sell or transfer its membership to a third party. Any profits generated by Keelman Homes have to be re-invested in helping to further the good causes that Keelman was originally set up to support.

The Gateshead Housing Company's role as sole member of Keelman is effectively restricted to a limited number of matters provided for by company law. The board of trustees remain responsible for the key business related decisions taken by Keelman Homes.

#### **What is the current proposal?**

To invite the current Keelman Homes trustees to also become members of the company, and for The Gateshead Housing Company to resign as member.

#### **Why is there a proposal to change Keelman Homes' membership structure?**

As a subsidiary of The Gateshead Housing Company, Keelman Homes is precluded from applying for funding from the Homes and Communities Agency (HCA) affordable homes guarantee programme. Keelman will also be unlikely to be able to benefit from any future funding programmes offered by

the HCA, as currently any loan finance that Keelman Homes receives will constitute additional public sector debt.

Changing the membership of Keelman Homes will allow it access to new potential funding resources from the HCA or the private sector, and with this there is the potential to increase the amount of new affordable homes Keelman are able to deliver.

**Is there an additional risk to the trustees who are now also asked to become members?**

Keelman Homes is a company limited by guarantee. The 'guarantee' comes from the members of the Company, who are each required to pay up to the maximum sum of £10 (ten pounds) towards Keelman's liabilities if the company is ever dissolved while they are a member. The provision of a nominal guarantee in this way is very common, and is also currently used in respect of The Gateshead Housing Company.

There is no significant additional risk to the trustees in also becoming members of the company. Again, this sort of structure is a common approach taken by many smaller charities. The members will have no liability to contribute to Keelman's capital while it remains a going concern.

**Is there a loss of control here?**

The proposed change in structure should make no significant difference to the protection of our objectives and aspirations for Keelman Homes. The Housing Company and Council will continue to nominate trustees to serve on Keelman's board.

The majority of Keelman Homes' development activities will be on what is currently Council owned land, and where appropriate, provisions can be built into the land sale agreements to help protect the Council's position.

The Housing Company and Council will also continue to meet on a regular basis to discuss and consider potential new build activities across the borough.

**What about the potential loss of homes under the Right to Buy / Right to Acquire? How will the proposed change to Keelman Homes affect this?**

The proposed changes to Keelman's membership structure will not change the current position.

The Right to Buy is generally only available to Council tenants, and so unless Keelman take on an existing Council tenant who already has the right to buy their home, properties developed by Keelman Homes will not be subject to the Right to Buy.

However - Keelman Homes are a registered provider of social housing, and in certain circumstances its properties will be subject to the Right to Acquire. As with the Right to Buy, this will mean that eligible tenants of Keelman Homes have the right to purchase their property. The key difference is that the level of discount available under the Right to Acquire is significantly lower, and is currently capped at £9,000.