

SOUTH TYNESIDE

local development framework

THE NEW DEVELOPMENT PLAN FOR YOUR BOROUGH



South Tyneside Council

Final ADOPTED
Version

SPD 4: Affordable Housing

Supplementary Planning Document

August 2007



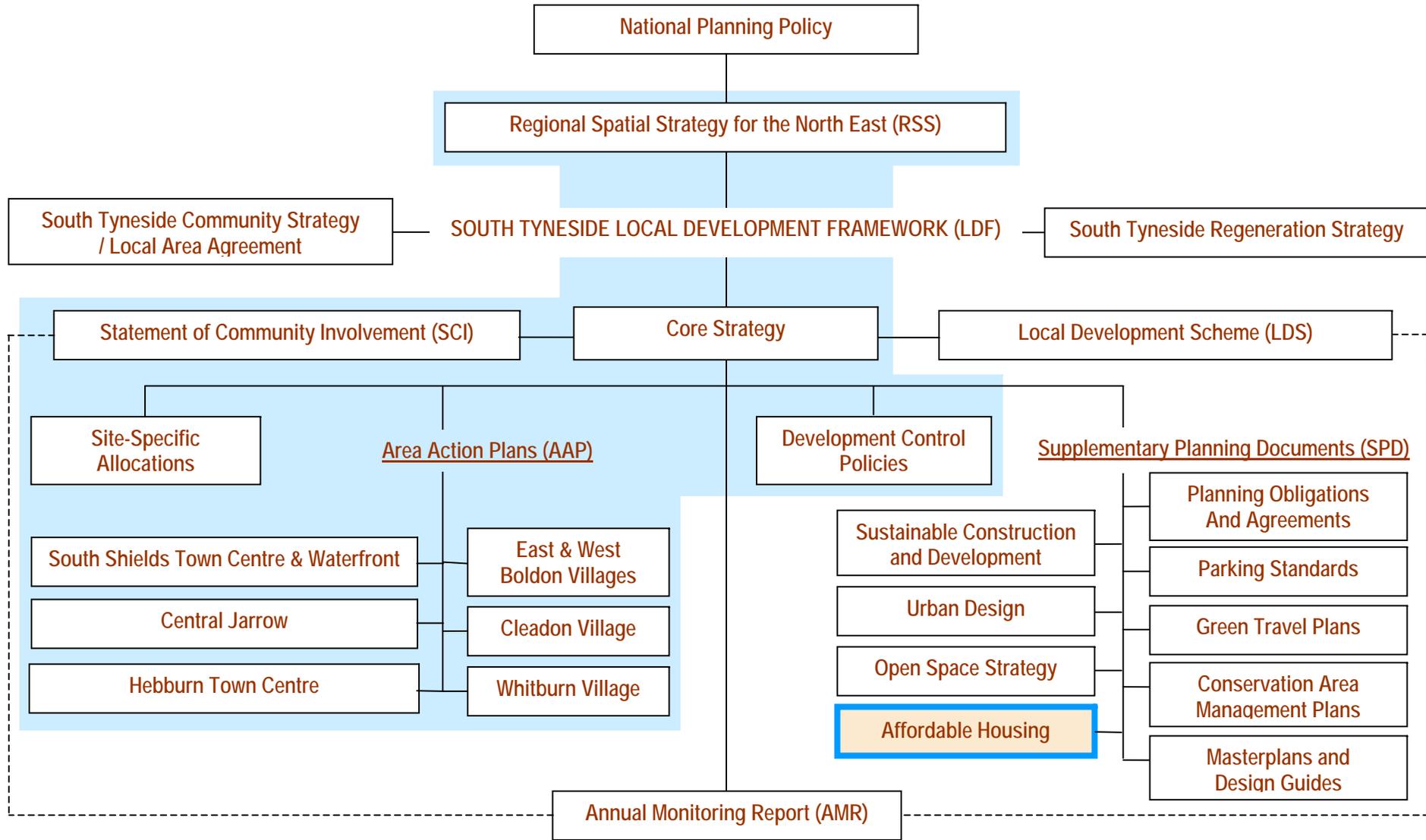
Final Version

SPD 4: Affordable Housing

Supplementary Planning Document

August 2007

South Tyneside Local Development Framework – Family Tree



- the statutory Development Plan

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SPD4: Affordable Housing

South Tyneside Local Development Framework

Local Development Scheme (LDS)

Core Strategy

South Shields Town Centre & Waterfront Area Action Plan

Hebburn Town Centre Area Action Plan

Central Jarrow Area Action Plan

Regional Spatial Strategy for the North East (RSS)

North East Regional Housing Strategy (RHS)

Tyne and Wear Sub-Regional Housing Strategy

South Tyneside Housing Strategy

South Tyneside Homelessness Strategy

South Tyneside Community and Neighbourhood Renewal Strategy / Local Area Agreement "The Spirit of South Tyneside"

South Tyneside Regeneration Strategy

Introduction

- 1.1 Everything we do is about achieving "a better future for South Tyneside's people". That is our vision for the Borough. To deliver a better future, one of our big challenges is to make South Tyneside a place where people choose to live, work and visit. This means developing new and exciting buildings whilst preserving our beautiful coastline and countryside. It also means ensuring a quality range of homes, shops and businesses, parks and public spaces, all linked by an excellent transport system. All of these things need to be delivered through the planning system, and in particular the **South Tyneside Local Development Framework (LDF)**. This will guide the future development and use of land and buildings in the Borough over the next 10-15 years, and replace the existing Unitary Development Plan (UDP).
- 1.2 This supplementary Planning Document provides additional guidance on the Council's housing in support of various development plan policies. In particular, it supports Policy SC4 of the Local Development Framework's adopted Core Strategy. Specifically it sets out how the affordable housing requirement in Policy SC4 is to be provided through the planning process. **The Core Strategy has now been considered by an independent Planning Inspector and judged to be "sound" and fit for purpose. It was adopted by Full Council on 28 June 2007.**

SPD 4 is in support of the following Development Plan policies:

Regional Spatial Strategy for the North East (Proposed Modifications)

32 Improving Inclusivity

Local Development Framework Core Strategy (adopted June 2007)

SC4 Housing Needs, Mix and Affordability

South Shields Town Centre and Waterfront Area Action Plan (submission draft July 2007)

SS11 Living in South Shields

Hebburn Town Centre Area Action Plan (submission draft July 2007)

H8 Living in Hebburn

Central Jarrow Area Action Plan (preferred options draft July 2007)

J9 Living in Jarrow

It will also support corresponding policies in the LDF's forthcoming Site- Specific Allocations document. Consequently, if any applications do not demonstrate that they meet the requirements of the above policies they are liable to be refused planning permission as contrary to one or more of the key policies above.



- 1.3 This document has been prepared in accordance with part 5 of the Town and Country Planning (Local Development) (England) Regulations 2004. In particular its preparation has been informed by:
- The LDF's initial Issues and Options exercise in July and August of 2004;
 - The preparation of the LDF Core Strategy. Especially in respect of consultations in Summer/ Autumn 2005 ('preferred options'), Spring 2006 ('submission') and the findings of the binding Inspector's Report of April 2007 as they pertained to this topic;
 - Representations made during the consultation from 4 December 2006 to 15 January 2007 under Regulation 17 and in accordance with the Council's adopted LDF Statement of Community Involvement. A list of the organisations and individuals consulted and the representations received in the draft version of this Document are listed in Annex C. This also details how each representation has been taken into account in preparing the adopted SPD; and
- 1.4 A Sustainability Appraisal of its social environmental and economic effects of the draft SPD, the results of are to be found in Annex D of this Document. The Council considers that there is no need for an Appropriate Assessment of this Supplementary Planning Document under the Habitats Directive 92/43/EEC. This is because the effects of affordable housing policy were already adequately covered by the Habitats Regulations Assessment of the Core Strategy of October 2006 (including the parent policy of this Document, SC4).
- 1.5 There are a number of different ways in which affordable housing can be provided. This SPD is only concerned with the provision of affordable housing through the planning process. This includes dwellings provided through all forms of development opportunities, that is, allocated, windfall and exception sites, including both new build and changes of use.
- 1.6 This SPD reflects an up to date view of current Government guidance on affordable housing, notably as it is set out in PPS3: Planning Policy Statement 3 "Housing" (November 2006). Particular care has been taken to apply the policies on affordable housing in Paragraphs 27 to 30 and the relevant definitions in Annex B of PPS3. The application of national policy is discussed in Section 2 of this document. It reviews the policy context relating to the provision of affordable housing through the planning process, defines the different types of affordable housing, discusses housing need in South Tyneside, and sets out thresholds and requirements.
- 1.7 **Please note that is it vital for developers to have early pre-application discussions with the Council's Area Planning and Housing Futures Teams. Details of how affordable housing will be met must be submitted with planning applications. Failure to do this may result in the application being refused.**

Planning Policy Statement 3: Housing

Delivering Affordable Housing Policy Statement

Affordable housing is:

'Affordable housing includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market.

Affordable housing should:

- Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.
- Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision'.

Social rented housing is:

'Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime. The proposals set out in the Three Year Review of Rent Restructuring (July 2004) were implemented as policy in April 2006. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant.'

Intermediate affordable housing is:

'Housing at prices and rents above those of social rent, but below market price or rents, and which meet the criteria set out above. These can include shared equity products (eg HomeBuy), other low cost homes for sale and intermediate rent.'

Policy Context and Definition of Affordable Housing

- 2.1 Planning Policy Statement 3 (PPS3): Housing (November 2006) sets out the national planning policy framework for delivering the Government's housing objectives. The specific area of affordable housing is detailed in the accompanying guidance 'Delivering Affordable Housing' (November 2006).
- 2.2 In accordance with the definition of affordable housing set out in this guidance (see margin), the Council considers that affordable housing is either:
- Social rented housing; or
 - Shared ownership / shared equity intermediate affordable housing.
- A glossary of the terms used in this Supplementary Planning Document is included at Annex A.
- 2.3 Social rented accommodation is to be provided on an assured tenancy at a Target Rent level set in accordance with the Communities and Local Government (CLG) department's rent restructuring formula.
- 2.4 Shared ownership is when a purchaser acquires an equity share in the property and pays rent on the balance. The purchaser will usually purchase a 50% share initially, but this may be as much as 75%, or as little as 25%. At a subsequent date, the purchaser can acquire a further share of the equity, up to full ownership, (except in rural settlements of less than 3,000 population, where ownership may be restricted to a maximum of 80%).
- 2.5 Shared equity housing is when a purchaser acquires an equity share in the property and the balance remains with a third party.

Housing Need in South Tyneside

- 3.1 Housing need is defined as households in inappropriate accommodation and unable to afford market costs for alternative accommodation or repairs. An update of the Council's 2002 Housing Needs Survey was undertaken in 2004¹ (a summary table is included at Annex B). The survey identifies an acute shortage of affordable homes in South Tyneside. An estimated 6,712 households were found to be in housing need; this being 10.2% of all households in the Borough. The survey identified the need for at least 550 additional affordable homes over the 5-year period 2004 - 2009. Core Strategy Policy SC4 highlights the predominant housing needs in the Borough's Housing Market Areas.
- 3.2 As shown in Figure 1, average house prices in South Tyneside rose from £56,446 in 2000 to £126,915 in 2006, this being an increase of 125%.

Figure 1: Average house prices 2000 - 2006²

Year	Detached	Semi-Detached	Terraced	Flat / Maisonette	Overall	Annual % increase
2006	£255,139	£143,892	£111,867	£89,569	£126,915	7%
2005	£268,900	£133,402	£106,725	£88,676	£118,584	9%
2004	£238,574	£121,685	£92,450	£81,515	£108,854	26%
2003	£181,814	£100,453	£73,565	£64,381	£86,415	27%
2002	£150,749	£81,376	£56,387	£40,674	£68,202	10%
2001	£133,301	£72,519	£48,991	£34,374	£61,811	10%
2000	£115,651	£63,257	£44,514	£36,327	£56,446	N/A

¹ Northern Housing Consortium (2004) South Tyneside Housing Market Review

² www.landregistry.gov.uk/propertyprice/interactive/

- 3.2 The 2006 Annual Survey of Hours and Earnings³ stated that the median full-time gross earnings in South Tyneside were £20,997 per annum. Taking into account the level of benefit claimants the average income of households in South Tyneside is approximately £11,000 per annum.
- 3.3 This shows that the average house price in South Tyneside is over six times the average salary of people living in the Borough and at present many households are realistically only able to consider renting as a choice of tenure (as demonstrated by the high demand for social rented accommodation in the Borough).

³ www.statistics.gov.uk

Site Threshold

- 4.1 The Local Development Framework Core Strategy Policy SC4 states that the Council will seek to secure at least 25% of dwellings as affordable units on any development of 15 units or more or 0.5 hectares or more (whichever gives the greater number of dwellings). This has replaced the 25 units / hectare threshold previously set out in Unitary Development Plan (UDP) Policy H7. This new threshold is in-line with PPS3. Policy SC4 also sets a lower threshold for providing affordable housing in the urban fringe villages (Whitburn, Cleadon, East Boldon, West Boldon and Boldon Colliery) at developments of 5 units or more.
- 4.2 The 25% target will apply to all developments above these thresholds. However, the following will also be material considerations in determining planning applications for residential development:
 - The need to ensure genuine affordability; and
 - Local housing need for affordable housing (this can include special needs housing).
- 4.3 The Council will seek to ensure that development sites are not sub-divided or cumulatively developed where this would result in the thresholds set for provision of affordable housing being circumvented.

Provision of Affordable Housing

SPD 5 Planning Obligations and Agreements

- 5.1 All affordable housing is to be provided by a Development Partner approved by the Council⁴. An indicative guide to the amount that Development Partners can reasonably be expected to pay for social rented and intermediate housing (the 'Affordable Value') on specific schemes will be provided to developers on request.
- 5.2 The landowner/developer contribution will therefore be the difference between the 'Open Market Value' and the 'Affordable Value' and should be reflected in the price that is paid for the land. This contribution will be secured through the planning process by use of a Section 106 Legal Agreement. Further guidance on this appears in the emerging LDF Supplementary Planning Document 5 "Planning Obligations", the draft version of which was published for consultation in April 2007. This Agreement is the means by which the dwellings can be provided at a cost that brings them within the definition of affordability. In the absence of such an agreement, planning permission may be refused.
- 5.3 Excessive service charges are not expected to be passed on to tenants of social rented housing and should be taken into account when dwellings are transferred to a Development Partner.
- 5.4 The Council is keen to ensure that new developments cater for a range of housing needs, including special housing needs (for example, housing for older and disabled persons) so as to encourage the development of mixed and balanced communities.
- 5.5 In line with PPS 3 (Paragraph 29), the expectation is that affordable housing will be provided on site so that it contributes towards creating a mix of housing.
- 5.6 Developers are expected to 'pepper pot' the affordable housing element throughout the development, and not concentrate affordable housing within a cluster. The Council will expect designers to ensure that the affordable housing is integrated into the overall development, in terms of their built form and external appearance, such that affordable homes are indistinguishable from those intended for sale. Less desirable positions within a site should not be used for locating any particular tenure.

⁴ A Registered Social Landlord (RSL) or approved private developer

- 5.7 Where parking is provided for open market housing then this should also be provided for affordable housing, regardless of tenure type.
- 5.8 Affordable housing schemes which receive Social Housing Grant will be expected to meet the Housing Corporation's Design and Quality Standards (and other requirements as may be introduced by the Housing Corporation or any successor body).
- 5.9 Involving approved Development Partners (and other organisations involved in the long term management of the scheme) in the design process will enable this to be achieved more quickly and with better outcomes than if the design is developed in isolation.
- 5.10 The Council requires nomination rights to all affordable housing provided through Section 106 agreements, at 100% on new allocations and at least 50% on all subsequent allocations.

Contributions in Lieu

SPD5 Planning Obligations and Agreements

- 6.1 The Council considers that on-site provision of affordable housing is the preferred way to meet affordable housing needs. However, on certain sites where a requirement for an element of affordable housing would be inappropriate, the Council may find it preferable that a payment in lieu (known as a commuted sum) should be made. For example, the Council may decide that, whilst a need exists, provision of affordable housing on a particular site may be inappropriate. This could, for example, be where the cost of remediation measures would make the scheme unviable, or where affordable housing elsewhere in the housing market area is more likely to widen and encourage better social mix. Commuted sums are to be used to provide affordable housing elsewhere in the Borough, or may also be used for the purchase and rehabilitation of empty private sector properties where this would add to the Borough's stock of affordable housing.

Section 106 Legal Agreements

- 7.1 The Council will seek to secure the affordable housing and ensure affordability in perpetuity by means of a Section 106 Legal Agreement. Section 106 Agreements are likely to cover the following:
- How completed dwellings or land are to be transferred to an approved development partner, including costs and phasing of handover;
 - How the occupancy of the affordable housing is to be reserved for people in housing need;
 - The number, size and tenure of affordable housing or the area of land to be made available; or the level of financial contribution if it is to be provided off-site (commuted sum);
 - Pre-emption clauses requiring that no more than a specific proportion of the site will be sold or occupied before the affordable housing has been contractually secured;
 - Where applicable, the means of restricting 'staircasing' to full ownership on grant-funded low cost home ownership properties; and
 - How the dwellings completed as affordable units are retained as such to benefit future occupants.
- 7.2 A model Section 106 Agreement is at Annex F. Individual Section 106 Agreements will need to be tailored to meet the specific requirements of the site and circumstances. Agreements must be available for signing within the statutory period for determining applications (8 weeks for minor and 13 weeks for major). Therefore, it is important that contact is made with the Council's Area Planning and Housing Futures Teams in advance of any planning application being submitted so as to identify the proportion of affordable housing needed in a particular location, as well as to discuss the appropriate dwelling mix and type of accommodation and provide details of Development Partners (as shown in the stages of planning process flowchart at Annex E).

Monitoring and Review

- 8.1 The Council will review the Housing Needs Survey for the Borough on a three to five yearly cycle and will monitor and review the operation of this policy in terms of its impact in meeting housing need.
- 8.2 The Council will review this Supplementary Planning Document in the light of: changes to the Borough's housing needs; emerging changes to the planning system; and approaches to planning obligations nationally.

Annex A: Glossary

DCLG	Department of Communities and Local Government (formerly the Office of the Deputy Prime Minister)
ha	Hectare
LASHG	Local Authority Social Housing Grant
LCHO	Low Cost Home Ownership
LDF	South Tyneside Local Development Framework
NAHP	National Affordable Housing Programme
ODPM	Office of the Deputy Prime Minister (Since 5 May 2006 known as the Communities and Local Government department (CLG))
PPS3	Planning Policy Statement 3 'Planning for Housing Provision'
RHS	North East Regional Housing Strategy
RSL	Registered Social Landlord (Housing Association registered with the Housing Corporation)
RSS	Regional Spatial Strategy for the North East
SHG	Social Housing Grant
SPD	Supplementary Planning Document (part of the LDF)

Annex B: Housing Market Areas Needs Summary 2004-2009

Housing Market Area:	Hebburn Sub-Area (Hebburn CAF)	Jarrow Sub-Area (Jarrow CAF)	Hebburn / Jarrow	(Riverside CAF)	(West Shields CAF)	(East Shields CAF)	South Shields Sub-Area	Urban Fringe Sub-Area (Boldon/Ceadon/ Whitburn CAF)	South Shields / Urban Fringe	South Tyneside Borough
Households in Need	3,781	3,939	7,720	4,237	5,161	5,182	14,580	3,601	18,181	25,901
% of all households in HMA	39.6%	39.4%	39.5%	44.0%	40.5%	39.3%	41.3%	34.5%	39.5%	39.5%
Number that require additional housing (A)	310	270	580	409	407	383	1,199	326	1,525	2,105
% of all households in HMA	8.2%	6.9%	7.5%	9.7%	7.9%	7.4%	8.2%	9.1%	8.4%	8.1%
Concealed Households (additional couple(s) and/or lone parent(s) resident) (B)	164	139	303	206	298	261	765	119	884	1187
Household Flow Projections (Migration Movements in past 5 years) (C)	118	-182	-64	-108	57	-189	-240	502	262	198
⇒ Total Projected Requirement (A+B+C):	592	227	819	507	762	455	1,724	947	2,671	3,490
% of Total Projected Requirement	17.0%	6.5%	23.5%	14.5%	21.8%	13.0%	49.4%	27.1%	76.5%	100.0%
⇒ Minimum Number of Affordable Units Required:	55	75	130	115	149	95	359	61	420	550
Projected Affordable Homes Requirement %	9.3%	33.0%	15.9%	22.7%	19.6%	20.9%	20.8%	6.4%	15.7%	15.8%

[Source: South Tyneside Housing Market Review (2004) – update and reweighting of 2002 Housing Need Survey using Census 2001 data, Further information can be found in the Annual Monitoring Report.]

Annex C: Organisations and Individuals consulted with and results of consultation exercise

Government Office North East

Home Builders Federation

Housing Corporation

Developers local to South Tyneside:

- Atisreal Limited
- AJ Flatliners Ltd
- Ambax
- Barratt Homes Newcastle
- Bellway Homes Limited
- Bett Homes (NE) Ltd
- Bowey Homes
- Brosley Homes
- Bryant Homes
- Care Line Lifestyle
- Carlton Developments
- Colin Lilley
- David Barlow Homes
- Esh Developments
- Faithful & Gould
- GallifordTRY Communications
- George Wimpey North East Ltd
- Glenrose Developments
- GVA Lamb & Edge
- Hallgate Management Services Ltd
- Hare Homes Ltd

- Haslam Homes Ltd
- Henry Robinson-Moore
- ISOF Housing Group
- James Ingleford Ltd
- JAK Properties
- JW Wood Commercial
- Lancing Homes
- Meadowcroft Homes
- McCartnery & Stone
- Miller Homes North East Ltd
- Moody & Co.
- NJW Developments (c/o Signet Planning)
- North East Properties
- Parian Development Limited
- Pentagon Properties
- Persimmon Homes
- Ravensworth Homes
- Sandbroke Homes
- Sanderson Weatherall
- Snugfit Windows
- Surgo Construction Limited
- Sycamore Properties
- Three Rivers Housing Association
- Tynebridge Investments
- Vardy Group
- Vigilant Homes UK Ltd
- Waring and Netts Architects
- Wilcomm Homes
- And individual developers working in the Borough

National Housing Federation

North East Assembly

Northern Housing Consortium

Registered Social Landlords:

- Accent Homes Limited
- Anchor Trust
- Byker Bridge Housing Association Limited
- Carr-Gomm Society Limited
- Cheviot Housing Association Limited
- Durham Aged Mineworkers Home Association
- English Churches Housing Group Limited
- Home Group Limited
- Jane Cameron's Old People's Charity
- New Era Housing Association Limited
- New Leaf Supporting Independence Limited
- Nomad Enterprise 5 Housing Association Limited
- Places for People
- Phoenix House Housing Association
- Railway Housing Association and Benefit Fund
- Temple Green Co-operative Housing Association Limited
- Three Rivers Housing Association Limited
- William Sutton Housing Association Limited

Tyne and Wear Local Authorities

- Gateshead Council
- Newcastle-upon-Tyne City Council
- North Tyneside Council
- Sunderland City Council

South Tyneside Local Development Framework, SPD (4): Affordable Housing
 – Public Consultation General Responses/Representations with Council Response –

Reference #	Name / Organisation	Policy / Paragraph	Support / Objection	Details of Response/Representation	Council Response
	Mark Ellis / Newcastle City Council		Comment / Objection	PPG3 and Circular 6/98 will be superseded by PPS3 1 April 2007: change policy to reflect this? (see example: <i>SPD: Affordable Housing, Working Draft January 2007</i> , Newcastle City Council)	SPD has been updated to reflect these changes in National Planning Policy
	Simon Smith / Parian Developments Limited		Comment / Objection	<p>Proposed thresholds of 25% affordable housing provision for urban and urban fringe too low; small scale housing sites (size and/or density) likely to be most affected, rendering them unviable and negating any affordable provision</p> <p>Larger scale housing sites (size and/or density) more likely to be able to bear the cost of a reasonable affordable housing provision</p> <p>Amount of affordable housing provision should relate both to the identified need in that area and more specifically the ability of sites to bear the cost of such provision, largely reflecting larger size and/or higher density than the thresholds proposed</p>	<p>Site thresholds were established in LDF Core Strategy and has been accepted by an Independent Inspector. Core Strategy to be Adopted June 2007.</p> <p>The threshold was brought down due to small number and small size of development sites in urban fringe in order to ensure that the large shortage of affordable housing in the urban fringe wards could be addressed, as was clearly shown through the housing needs study</p> <p>No change required in response. Respondent would need to object to review of Core Strategy at the appropriate time.</p>

	<p>Sandra Thompson / Signet Planning on behalf of NJW Developments Ltd</p>	<p>Para 3.2, 3.5, 10, 38, 6.2, 8.1</p>	<p>Comment / Objection</p>	<p>Essential to revise SPD to accord with published PPS3 and its supplementary document on Affordable Housing and undertake a further consultation exercise prior to progressing the SPD to adoption</p> <p>More specific detailed breakdown of housing requirements across the Borough, supported by Housing Market area assessment, required, from paragraph 22 of PPS3</p> <p>Housing needs study 2004 out of date: fails to provide robust evidence base required to accord with PPS3 and support SPD on affordable provision. Evidence base available from sub-regional market area assessment, by Tyne and Wear Authorities?</p> <p>SPD does not reflect need to have new definition of affordable housing in PPS (paragraph 29, PPS3), in particular the reference to housing for sale below market levels where "equity discount" can be retained in perpetuity</p> <p>Para 3.2 accords with definition of intermediate housing in SPD, however, para 3.5 re retention of equity share by "purchasing" approved development partner does not</p> <p>Signet Planning has taken forward, on behalf of clients, affordable provision that is discounted market rate properties to meet particular local needs, secured in perpetuity through a cascade mechanism in a S106 agreement. However no "purchasing" approved partner is involved</p> <p>The approach used has been taken forward in numerous Authorities in the region including in Tyne and Wear and is considered to meet with PPS 3 definition and the guidance document on Affordable Provision in Para's 10 and 38. The definition in the SPD does not accord with PPS3 and as such is strongly objected too. This</p>	<p>SPD Has now been revised to reflect SPD and relatively minor changes required. No need to re-consult as the levels of contribution and primary mechanism remain unchanged.</p> <p>Sub-regional Housing Market Assessment work is underway and as stated in the Monitoring and Review section will inform future reviews of the is Affordable Housing Policy. Whilst it is accepted that the Housing Needs Survey was produced in 2004, housing affordability issues have clearly increased as set out in section 3.0</p>
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				<p>objection carries through to the further references in para 6.2 and 8.1</p> <p>Signet Planning reserves position to make further comments when SPD is revised/re-published following completion of Sub-regional Housing market assessment and consideration of PPS3: Housing</p>	
	<p>Liam Currie / Level Ltd on behalf of McCarthy and Stone (Developments)</p>	<p>Para 5.1, 6.3, 29</p>	<p>Support / Objection</p>	<p>Urge the Council to re-draft SPD in light of the revised national policy PPS3 and submit to a further period of consultation should significant changes be made (see tests ii, iv, PPS12 tests of soundness)</p> <p>Lack of evidence base to inform proposals (see PPS12)</p> <p>Proposals lack consistency with UDP and appear to promulgate altering the policy itself (see PPS12)</p> <p>Concerned that SPD is a pre-empting policy and whether SPD would bring about increased supply of affordable housing development. Delay SPD until Core Strategy parent doc I adopted, so SPD is flexible enough to deal with changes</p> <p>Introduction of new policy beyond the role of SPD: should be confined to a separate DPD on housing or affordable housing which would be submitted to a higher level of scrutiny and be more in keeping with the spirit of the LDF. Would also help to separate Affordable Housing from other Development Contributions due to the contentious nature and unsettled national policy basis behind it.</p> <p>SPD should only be progressed in tandem with parent DPD in order to fill gap in policy, thus ensuring SPD is flexible enough to deal with changes to the Core Strategy (see Test vi, ix, PPS12)</p> <p>Concerned that a robust and credible evidence base is developed in order to inform new policy formulation and guidance (see PPS12, para 1.3 vi). Concerned the Council is attempting to introduce new guidance without sufficient evidence in place and without Going through the appropriate LDF process (see PPS12, para 4.8)</p>	<p>Changes to the SPD have been made to reflect PPS3m but no significant modifications have been required. No need to reconsult.</p> <p>Evidence base is considered sufficient at this stage. Monitoring and Review Framework states mechanisms for review. Sub-regional Housing market Assessment and future Housing Needs Surveys will inform review of policy.</p> <p>This affordable Housing SPD simply introduces the mechanisms to implement Core Strategy Policy SC4. Thresholds are set out in the Core Strategy which has been subject to Independent Examination and is to be adopted on 28th June. Therefore no need to delay SPD4.</p> <p>Contributions to off-site provision have now been</p>

				<p>Must give only minimal weight to Housing Market Review, published in 2004, and based on 2002 findings. Revised Housing Needs Survey needed for local consultation and consultation within the building industry</p> <p>HNS should not be principle source to recommend quantum or types of affordable housing</p> <p>Lacking robust and credible evidence base: recommend that a comprehensive evidence base is developed in collaboration with the Development Industry in order that the SPD meets the requirements of test vii of the tests of soundness contained within PPS12</p> <p>The SPD's purpose should be to provide details of the delivery mechanisms such as tenure, mix, the availability of grant funding, area specific need which is likely to be subject to change and would therefore be best served in a flexible document that can react effectively to variations in local house prices, salaries and other socio-economic factors.</p> <p>SPD should include reference to taking account of economic site constraints, as well as proportion of affordable housing to be required</p> <p>Percentage affordable housing sought by Council needs to be justified in terms of development economics</p> <p>Criticism: the policy is not locally distinctive; it rests on an emerging policy. Council has not presented sufficient evidence to support any variation to its current adopted position. It has not been scrutinised in the light of detailed evidence of local circumstances (see SPD4 para 5.1, 29).</p> <p>Reduction in site size threshold needs to be more justified in terms of</p>	<p>included in the policy.</p> <p>Percentages are already established in the Core Strategy and this SPD does not need to justify these further.</p>
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				<p>development economics.</p> <p>Neither the policy nor the supporting text state a specific tenure split. We support the lack of prescription in respect of tenure and type of affordable housing especially in high-level policy documents such as SPD's.</p> <p>The mix and tenure of affordable housing development should be negotiated between the Council and developer, having regard to the need in the District, the development site specifics and locality.</p> <p>In exceptional circumstances where both parties agree that on-site provision would be impractical, off-site contributions, whether in kind or in cash, should be considered.</p> <p>SPD needs to formally define the circumstances where an offsite provision or financial contribution would be applicable. Paragraph 6.3 of the draft SPD should include: Exceptionally, where the Borough Councils accepts that on-site provision is not possible or where a better outcome is agreed to be acceptable off-site, it may consider the use of off site provision or commuted sum.</p> <p>Recommended that recognition of some types of development are not suitable fall outside the provision of being just fully dispersed through the site and designed to the Housing Corporation's Scheme Development Standards (e.g. accommodation standards for older people)</p> <p>should undertake detailed monitoring activities in order to determine the basis upon which the policy is being implemented and the effect the policy is having on development volumes.</p> <p><u>In Conclusion:</u></p> <p>SPD is not consistent with the higher adopted Local Plan and seeks</p>	
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				<p>to modify it (test iv) Council must demonstrate its policies are economically sound and deliverable (test iii) Does the Council have a robust and comprehensive evidence base in order to inform the formulation of housing policy, specifically affordable housing (test vii) No mechanisms are demonstrated for the implementation and monitoring of the delivery of affordable and market housing arising from the application of the SPD (test viii) There is a lack of conformity to the adopted or draft policies which ultimately could result in the provision of housing being frustrated and less housing being provided resulting in the need for affordable housing being further exaggerated.</p>	
	James Johnson / Persimmon Homes (North East) Limited	Para 2.1, 2.2, 9.2	Comment / Objection	<p>2.1 – Circular 6/98 has now been superseded by the publication of PPS 3 and its companion document relating to Affordable Housing</p> <p>2.2 – There is currently a policy vacuum following the publication of PPS 3 which is due to come in to force 1 April 2007, therefore the planning system is currently within a transitional period until this date</p> <p>9.2 – The Council are to review this documentation in light of emerging changes to the planning system. Following the publication of this document, PPS 3 has now been published therefore the current document is out of date and should be recalled and re-written accordingly</p> <p>Persimmon Homes would like to reserve the right to comment further once discussions have been held with you in light of the above remarks</p>	SPD has been reviewed in light of PPS3 being published and no major changes which affect the nature of the contributions or their cost have been required.

	Phil Jones / North East Assembly		Support	SPD conforms to RPG1 (Policy H7) and Submission Draft RSS (Policy 32): The Assembly welcomes the publication of the Draft South Affordable Housing SPD	Support welcomed
	Martin Jefferson / Accent North East	Para 3.6, 6.5,	Support / Objection	<p>General support to the policy</p> <p>NAHP funding not normally available (a classic double subsidy). Developers need to understand the wider community benefits paid out to better land values following planning approval and not the public purse. Include some words from Housing Corporation in Context Section to provide a more complete picture</p> <p>Para 3.6 Nomination Rights: wrong in a land use planning document. Can an LA "reserve the right" to 100% nominations on a privately owned site being developed by independent RSLs and house builders? Nomination levels: usually agreed between LAs and RSLs where NAHP is involved; but in no grant S.106 situations this is very much a negotiation situation and there is very much doubt whether LAs have any means of enforcing this</p> <p>Introduction of 'one stop shops for people seeking affordable housing' (Zone Agents and Choice Based Lettings) have further complicated LA nominations situation. Suggested further talk with housing colleagues to minimize confusion and conflict. Most RSLs have their own lettings policies and financial criteria in respect of general needs</p> <p>Para 6.5 Scheme Development Standards (SDS) is being comprehensively reviewed by the Housing Corporation (widely viewed as out of date and far too prescriptive). Whilst coming under the "Urban Design Framework" banner in your document the rigorous application of SDS has produced bland identikit social housing schemes throughout the region. Extremely difficult to enforce this expectation through the land use planning process as SDS deals with</p>	<p>Support welcomed. Other points noted. Housing Corporation standards now only relate to developments that are funded by the Housing Corporation</p> <p>Model Section 106 agreement based on an actual one that is already in operation. We will, however continue to monitor its usefulness and appropriateness over time.</p>

				<p>Impending difficulty of justifying refusal of planning permission on issues now dealt with under Building Regulations, HQIs and normal DC practice</p> <p>The intention of ensuring affordable housing is indistinguishable from market housing is laudable, however, the application of SDS to the affordable element only will result in the reverse of this as the SDS housing will instantly stick out due to its larger size and requirements for garden sheds and canopies (for example). The Three Rivers/Haslam Homes development at Middlefield, Pelton near Chester le Street provides a good example of this</p> <p>Model S.106 Agreement: rather impenetrable, of little use. Suggest: bullet points covering main themes emphasizing each site's uniqueness and the issues negotiated with the developers-all parties concerned have to agree it, not the Council dictate it</p>	
	Mary Edwards / GONE		Objection / Comment	<p>Whilst SPD mentions Core Strategy Policy SC4, SPD needs to be made much clearer up front that it is in support of that Policy, and that Policy SC4 is the hook upon which it hangs</p> <p>Also concerned with the publishing of SPD just before the new PPS3 and Affordable Housing guidance note were published</p>	<p>Point noted and document amended accordingly. Changes in relation to PPS3 have been completed.</p> <p>Core Strategy is still consistent with PPS3.</p>

Annex D: Results of Sustainability Appraisal

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
1. To create and retain wealth	Will new businesses be created? Will it generate sustainable economic growth? Will it generate new employment? Will it increase average household income?	⌘	⌘	⌘	⌘	⌘	⌘	⌘	⌘	
2. To help businesses start up, grow and develop	Will it stimulate an entrepreneurial culture? Will it improve business development and enhance competitiveness? Will it promote growth in key sectors? Will it encourage business diversity?		→	→	→	→	⌘	→	→	<ul style="list-style-type: none"> • Need for key worker housing • Evidence arising there is a problem with affordability problems
3. To ensure high and stable levels of employment so everyone can share and contribute to greater prosperity	Will this reduce outward migration? Will this reduce unemployment rates? Will this increase employment rates? Will this reduce the rate of worklessness?		→	→	→	→	→	→	→	<ul style="list-style-type: none"> • Travelling in from areas of low cost availability

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
Sustainable Development Objectives										
4. To establish and retain a flexible and highly skilled workforce through training and education	Will it improve people’s skills? Will it improve educational performances against the national average? Will it encourage retention of people with higher level skills? Will this encourage links between education and employment at all educational levels? Will this encourage social inclusion?	-	⇄	→	→	→	-	→	→	<ul style="list-style-type: none"> <u>Debate</u> – the 3rd and 5th points are relevant, but 4th point could be linked but weakly
5. To encourage self sufficiency and local production in Borough	Will it encourage self-sufficiency and local production in South Tyneside?	⇄	⇄	⇄	⇄	⇄	⇄	⇄	⇄	

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
Sustainable Development Objectives										
6. To prevent deterioration and where possible improve local air quality levels for all	Will it prevent deterioration or improve local air quality?	☒	☒	☒	☒	☒	☒	☒	☒	
7. To protect and enhance the quality of the Borough's land and groundwater, rivers and seawaters	Will it reduce pollution of land, groundwater, rivers and the sea? Will it protect and enhance the quality of the Borough's groundwater, river and seawaters? Will it encourage use of the Borough's natural assets?	☒	☒	☒	☒	☒	☒	☒	☒	
8. To protect and enhance the Borough's coastline and water frontage	Will it manage the coastline in accordance with the Shoreline Management Plan? Will it reduce and minimise the risk to people and properties of flooding? Will it reduce the risk of damage to property by storm events?	☒	☒	☒	☒	☒	☒	☒	☒	

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
Sustainable Development Objectives										
9. To reduce the causes and impacts of climate change	<p>Will it lead to an increased proportion of energy needs being met from renewable sources?</p> <p>Will it reduce greenhouse gas and CO2 emissions in line with national targets?</p> <p>Will it improve the SAP rating of housing in the Borough?</p>	☒	☒	☒	☒	☒	☒	☒	☒	<ul style="list-style-type: none"> • If there was great emphasis on SAP ratings • Energy Efficiency (SAP)
10. To protect and enhance the Borough's biodiversity and geology	<p>Will it protect and enhance the Borough's biodiversity?</p> <p>Will it protect and enhance the Borough's designated sites of scientific and natural resource interest?</p> <p>Will it protect and strengthen populations of priority species and enhance priority habitats?</p>	☒	☒	☒	☒	☒	☒	☒	☒	
11. To protect and enhance the Borough's diversity of cultural heritage	<p>Will it protect and enhance the Borough's diversity of cultural heritage?</p> <p>Will it protect and enhance the Borough's sites and features of historical and archaeological importance?</p> <p>Will it encourage the interpretation and use of cultural assets in the Borough?</p>	☒	☒	☒	☒	☒	☒	☒	☒	

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
Sustainable Development Objectives										
12. To ensure good accessibility for all to jobs, facilities, goods and services in the Borough	<p>Will it encourage travel (domestic and freight) by means other than private car or HGV?</p> <p>Will it help to reduce traffic congestion and improve road safety?</p> <p>Will it encourage mixed-use development in accessible locations?</p> <p>Will it encourage and promote the use of e-infrastructure including broadband ICT?</p> <p>Will it ensure good accessibility for all to jobs, facilities, goods and services in the Borough to appropriate standards?</p>	⊘	↘ ↘	↘ ↘	↘ ↘	↘ ↘	⊘	↘	↘ ↘	
13. To minimise the amount of waste produced and promote sustainable waste management	<p>Will it ensure that the management of wastes is consistent with the waste management hierarchy (avoid, reduce, reuse, recycle and residual disposal through the BPEO)?</p> <p>Will it encourage more recycling/composting?</p> <p>Will it reduce waste production?</p> <p>Will it divert waste from landfill?</p>	⊘	⊘	⊘	⊘	⊘	⊘	⊘	⊘	

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
Sustainable Development Objectives										
14. To make prudent use of natural resources	Will it minimise the use of water? Will it minimise the demand for raw and finite materials? Will it minimise the use of fossil fuels?	☒	☒	☒	☒	☒	☒	☒	☒	
15. To promote sustainable design and enhance the natural and built environment	Will it encourage high quality design? Will it encourage higher density development in accessible locations? Will it promote the construction of homes and commercial buildings to recognised energy efficiency standards e.g. Eco-Homes and BREEAM? Will it enhance the existing natural and built environment? Will it encourage use of recycled and sustainable building materials and construction methods?	☒	☒	☒	☒	☒	☒	☒	☒	<ul style="list-style-type: none"> • Potentially this could be low density • Could balance itself out • Other points covered are highlighted elsewhere within the LDF

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
Sustainable Development Objectives										
16. To protect and enhance the quality and distinctiveness of the Borough's land and landscapes	Will it minimise development of Greenfield land? Will it encourage the remediation of potentially historically affected land? Will it protect special landscape features? Will it maintain or enhance the Borough's stock of trees?	⌘	⌘	⌘	⌘	⌘	⌘	⌘	⌘	<ul style="list-style-type: none"> Don't have an exceptions policy, it could do with moving
17. To maximise the opportunity to redevelop PDL	Will it maximise the use of PDL?	⌘	⌘	⌘	⌘	⌘	⌘	⌘	⌘	
18. To ensure everyone has the opportunity of living in a decent and affordable homes and tenure of choice	Will it encourage a mix of housing types, sizes and tenures that meet identified needs? Will it ensure adequate provision of affordable housing? Will it reuse existing housing stock where appropriate?	-	→ →	→ →	→ →	→ →	-	→ →	→ →	

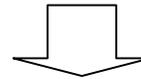
Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
Sustainable Development Objectives										
19. To reduce crime and anti-social behaviour and the fear of crime and anti-social behaviour	Will it reduce crime and anti-social behaviour levels and the fear of these activities? Will it encourage community-led safety? Will it promote the adoption of design measures that reduce crime and the opportunity for it?		→	→	→	→	*	→	→	
20. To improve health and well-being and reduce inequalities in health care and access to it for all	Will it improve access to equal health care for all? Will it reduce health care inequalities among all groups of the Borough? Will it promote a healthier lifestyle with facilities and opportunities for recreation and leisure for all?	-	→	→	→	→	-	→	→	
21. To promote equality and diversity and protect and strengthen community cohesion	Will it promote equality throughout the Borough? Will it address the needs of minority groups within the Borough?	-	→ →	→ →	→ →	→ →	-	→ →	→ →	<ul style="list-style-type: none"> To expand upon within 6.4

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Severity	Cumulative	Local			
22. To increase public involvement in decision making and civic activity	Will it encourage participation in public consultation at all ages and all levels? Will it encourage community inclusion? Will it encourage public empowerment?	⌘	⌘	⌘	⌘	⌘	⌘	⌘	⌘	

← Move away significantly ← Move away marginally → Move towards marginally → Move towards significantly ⌘ No Relationship ◇ Uncertain ✓ Operates at this timescale - Not Applicable

Annex E: Stages of the planning process

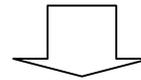
Developer contacts Area Planning and Housing Futures Teams for pre-application advice and meeting



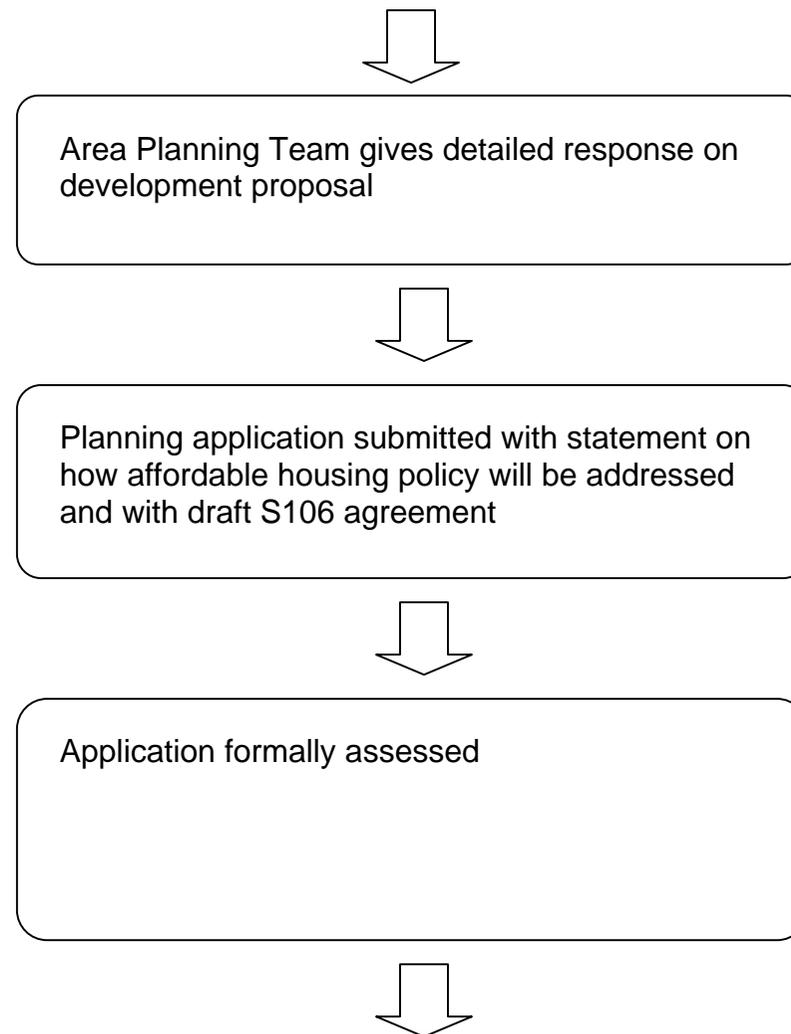
In consultation with Housing Futures, Area Planning Team confirms:

- Suitability of site for housing
- Whether affordable housing is required
- Number of units, size and tenure of affordable housing
- Any other relevant planning issues

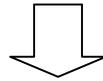
Area Planning Team provides current list of Development Partners



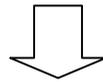
Developer prepares initial sketch scheme, taking into account advice given, including Development Partner input, to allow Area Planning Team to provide further pre-application advice on all aspects of development



Application considered by the Council's Planning Committee or under delegated powers within statutory timescale (8 weeks or 13 weeks)



Section 106 Agreement signed and financial arrangements finalised within statutory timescale



Planning decision issued with all necessary agreements

Annex F: Model Section 106 Legal Agreement

DATED _____XXXX_____ 200Y

SOUTH TYNESIDE BOROUGH COUNCIL

and

A N OTHER

PLANNING OBLIGATION pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) relating to land at AAAAA

THIS DEED is made the [] day of [] 200Y

BETWEEN

- (1) **South Tyneside Council** ("the Council")
- (2) **?????LIMITED** (Company NoNNNNN) whose registered office is at ("the Owner")

IT IS AGREED as follows:

- 1 INTERPRETATION
 - 1.1 Any reference in this Deed to either of the parties is deemed to include their successors in title and assigns.
 - 1.2 The expression "person" means any person, firm, authority or company or other legal entity.

2 DEFINITIONS

2.1 In this Deed the following words and expressions which begin with capital letters shall, unless the context so otherwise requires, have the precise meanings set out below:-

2.1.1 **"Affordable Housing"** means the XXXX Affordable Rented Dwellings or the YYYY Shared Ownership Dwellings or the ZZZZ Shared Equity Dwellings or, where the context so admits, both the XXXX Affordable Rented Dwellings and the YYYY Shared Ownership Dwellings, or both the XXXX Affordable Rented Dwellings and the ZZZZ Shared Equity Dwellings, or both the YYYY Shared Ownership Dwellings and the ZZZZ Shared Equity Dwellings, or the XXXX Affordable Rented Dwellings and the YYYY Shared Ownership Dwellings and the ZZZZ Shared Equity Dwellings.

2.1.2 **"Housing Commuted Sum"** means a contribution in lieu of on-site provision of affordable housing which is agreed between the Owner and the Council.

2.1.3 **"Affordable Rent"** a rent which is comparable to Government Target Rents. Affordable Rented Dwellings *including all service charges and ground rent* and any increases or decreases shall be in accordance with the Registered Social Landlord's (RSL's) or approved private developer's rent setting policy and the Housing Corporation's guidance at the time; such rent to be agreed by the Council (such agreement not to be unreasonably withheld);

2.1.4 **"Application"** means the application made to the Council for the Development and given the Council reference XXXXX;

2.1.5 **"Arbitrator"** means the person appointed under clause 7 of this Deed;

2.1.6 **"Development"** means the residential housing development authorised by the Planning Permission;

2.1.7 **"Discount Percentage"** means the percentage of the price of an initial sale calculated at the time of the disposal of a Shared Equity Dwelling by reference to the following formula:

$$\frac{\text{Shared Equity Price} \times 100}{\text{Open Market Value}}$$

- 2.1.8 “**Shared Equity Price**” means the price shown in the right hand column of the table in Schedule 5;
- 2.1.9 “**Dwelling**” means a unit of residential accommodation that may be built on the Land;
- 2.1.10 “**Eligible Occupier**” means a person or household identified and approved in accordance with the provisions of the allocation policy or criteria from time to time of the Council and the Housing Association for rented dwellings, shared ownership dwellings and Shared Equity dwellings;
- 2.1.11 “**Land**” means all that area of land situated at XXXX shown edged red on the location plan submitted with the Application;
- 2.1.12 “**Long Leasehold**” means any lease where the demise is not less than one hundred and ninety years and excluding any premium payment is at a maximum acknowledgement rent of £5 per annum;
- 2.1.13 “**Marketing Period**” means the period commencing three months before the estimated date for completion of the construction of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings and ending the date three months after the date of completion of the construction of the same or on the sale of the last of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings whichever is the earlier;
- 2.1.14 “**Month**” calendar month;
- 2.1.15 “**Open Market Dwellings**” means Dwellings erected on the Land pursuant to the Planning Permission excluding The XXXX Affordable Rented Dwellings, the YYYY Shared Ownership Dwellings and the ZZZZ Shared Equity Dwellings;
- 2.1.16 “**Open Market Value**” means the best price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation assuming:
- (a) A willing seller; and

- (b) That prior to the date of valuation there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale; and
- (c) That the state of the market level of values and other circumstances were on any earlier assumed date of contracts the same as on the date of valuation; and
- (d) That no account is taken of any additional bid by the prospective purchaser with a special interest; and
- (e) That both parties to the transaction had acted knowledgeably and prudently and without compulsion;

2.1.17 “**Shared Ownership Basis**” means the granting of a lease or sublease as the case may be in the form of a shared ownership lease containing those clauses designated as mandatory by the Housing Corporation;

2.1.18 “**Staircasing**” means the exercise by a leaseholder from time to time of his right to pay for a further percentage of the value of the Shared Ownership Dwelling or the Shared Equity Dwelling up to a maximum of 100% of its Open Market Value;

2.1.19 “**Subsequent Sale Price**” means the sum at which any Shared Ownership Dwelling or any Shared Equity Dwelling is always sold subsequently and which is to be calculated by multiplying the Open Market Value by the Rented Proportion or Discount Percentage provided always that where Staircasing has taken place in relation to a Shared Ownership Dwelling or Shared Equity Dwelling the Subsequent Sale Price shall be calculated by multiplying the Open Market Value by the percentage of the equity owned by the owner of the Shared Ownership Dwelling or the Shared Equity Dwelling following such staircasing;

2.1.20 “**Planning Act**” means the Town and Country Planning Act 1990 (as amended);

- 2.1.21 "**Planning Permission**" means the planning permission to be issued by the Council pursuant to the Planning Application forthwith on completion of this Agreement in the form set out in the Third Schedule;
- 2.1.22 "**Plan X and Plan Y**" means the plans attached hereto and marked "X and Y";
- 2.1.23 "**Purchaser**" means the purchaser of either the leasehold or freehold of an Open Market Dwelling;
- 2.1.24 "**Registered Social Landlord**" means a Registered Social Landlord as defined by the Housing Act 1996 (or as redefined by any amendment, replacement or re-enactment or such Act) and registered by the Housing Corporation under the provisions of Chapter 1 of the Housing Act 1996 and approved by the Executive Director of Neighbourhood Services of the Council;
- 2.1.25 "**Approved Development Partner**" means a number of Registered Social Landlords the number of which will be proposed by the Owner and may be approved by the Council (such approval not to be unreasonably withheld or delayed) and the Registered Social Landlords shall then be nominated in accordance with the provision of clauses 1.4 and 1.5 of Schedule 1;
- 2.1.26 "**The ZZZZ Shared Equity Dwellings**" means the ZZZZ Dwellings all duly identified in Schedule 5 as to location, size, open market value and discount for sale price;
- 2.1.27 "**The Housing Association**" means any Registered Social Landlord or approved development partner as may be proposed by the Owner and approved by the Council from the council's list of approved development partners (such approval not to be unreasonably withheld or delayed);
- 2.1.28 "**The Officer**" means the Executive Director of Neighbourhood Services of the Council for the time being or such other officer of the Council nominated to carry out an equivalent function;

- 2.1.29 **"The XXXX Affordable Rented Dwellings"** means the XXXX Dwellings all duly indicated in Schedule 5 as to location and size all of which are to be made available at an Affordable Rent to persons nominated in accordance with the provisions of the Nomination Deed which constitutes Schedule 4;
- 2.1.30 **"Transfer Trigger"** means the provision in that regard as set out in Schedule 6 and being the point in the time reached in the Development which the Affordable Housing so indicated will be duly transferred by the Owner in accordance with this Agreement.
- 2.1.31 **Government Target Rent** - to be added
- 2.1.32 **Ground Rent** – to be added
- 2.1.33 **Service Charges**- to be ADDED
- 3 LAND OWNERSHIPS
- 3.1 The Owner is seised for an estate in fee simple absolute in possession of the Land shown edged in red on Plan 1.
- 4 ENABLING POWERS
- 4.1 This Deed is made pursuant to Section 106 of the Planning Act and all other enabling powers including the Local Government Act 1972 Section 111 and the Local Government (Miscellaneous Provisions) Act 1982 Section 33.
- 4.2 The obligations contained in this Deed are conditional and shall not come into force unless and until the Planning Permission has been granted and issued and the Development commenced (within the meaning of Section 56(4) of the Planning Act).
- 4.3 The obligations of the Owner which are set out in Schedule 1 hereto are planning obligations for the purposes of Section 106 of the Planning Act and are enforceable by the Council as local planning authority for the area in which the Land is situated.

5 OBLIGATIONS

- 5.1 The Owner hereby covenants with the Council to perform the obligations or activities specified in Schedule 1 of this Deed.
- 5.2 The Owner further covenants to pay the Council's reasonable legal costs charges and disbursements incurred in the negotiation of this Agreement.
- 5.3 The Council covenants with the Owner to observe and perform its obligations set out in the Second Schedule 2.
- 5.4 No party shall be liable for breach of a covenant contained in this Agreement after having parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 5.5 The Owner and the Council do not intend that any of the terms of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 5.6 This Agreement shall not bind or be enforceable by the Council against the buyer of a freehold or leasehold individual Open Market Dwelling.

6 DETERMINATION OF DEED

- 6.1 If the Planning Permission shall expire before the Development is commenced (within the meaning of Section 56(4) of the Planning Act) or shall at any time be revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Deed from the Register of Local Land Charges.
- 6.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a Planning Permission (other than the one relating to the Development as specified in the Application) granted (whether or not an appeal) after the date of this Agreement.

6.3 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.

6.4 This Agreement is a local land charge and shall be registered as such.

7 ARBITRATION

7.1 Any dispute or difference relating to any matter or thing arising out of or in connection with this Agreement shall be referred to arbitration in accordance with the Arbitration Act 1996 except for valuation required by the Schedule.

7.2 If the parties do not agree upon the appointment of the Arbitrator within 28 days of the service of an arbitration notice, the Arbitrator shall be nominated upon the application of either party by the President or Vice President for the time being of the Royal Institution of Chartered Surveyors. The Arbitrator shall be an independent person who is professionally qualified in respect of the subject matter of the dispute for minimum period of 10 years.

7.3 Unless the Arbitrator shall direct to the contrary:

7.3.1 Not more than 28 days after the Arbitrator's appointment the claimant shall send to the Arbitrator and respondent a summary of its case together with a bundle of key documents relied upon;

7.3.2 Not more than 28 days after the receipt of the claimant's submission the respondent shall send the Arbitrator and the Claimant a summary of its case together with a bundle of key documents relied upon;

7.3.3 The Arbitrator shall not hear oral evidence or representations.

7.4 The Arbitrator shall be at liberty to visit the Land.

- 7.5 The Arbitrator may call for such written evidence from the parties as he may require.
- 7.6 The Arbitrator shall use all reasonable endeavours to make his award and the reasons for it in writing as quickly as possible and in any event within 90 days of his appointment. Within 21 days of the receipt of the Arbitrator's award either party may apply to the Arbitrator for further written clarification of his award and the reasons including details of the methodology of any calculation and the Arbitrator shall provide such clarification within 21 days of the Application.

IN WITNESS whereof those present have been duly executed as a Deed by the parties hereto the day and year first before written.

SCHEDULE 1

PLANNING OBLIGATIONS OF THE DEVELOPER AND THE OWNER

1 AFFORDABLE HOUSING

The Owner covenants with the Council as follows:

- 1.1 To build the XXXX Affordable Rented Dwellings and offer copy of offer to be sent to the Officer at the same time as the to the Housing Association to transfer the freehold or Long Leasehold in accordance with the terms of this Agreement and in accordance with the Transfer Trigger requirements of Schedule 6 at a price which enables the Housing Association to charge an Affordable Rent.
- 1.2 The Owner will leave the offer open for acceptance by the Housing Association for a period of 56 working days and will during that period use reasonable endeavours to agree with the Housing Association the terms other than price PROVIDED ALWAYS that it will be a term of the sale of the XXXX Affordable Rented Dwellings that the Housing Association shall not dispose of or cause or permit the disposal of the XXXX Affordable Rented Dwellings other than for the purpose of providing tenancies at an Affordable Rent to persons pursuant to the Nomination Deed as set out in Schedule 4 provided that the Housing Association may transfer or sublet the XXXX Rented Affordable Dwellings or any of them to another Registered Social Landlord (or other provider of social housing) with the consent of the Council such consent not to be unreasonably withheld but subject to such reasonable terms which seeks to preserve the purposes of this Agreement (and any successors may transfer or sublet on the same basis) subject to and with the benefit of the restrictions and other relevant matters contained in this Agreement and the use by any such Housing Association of the Nomination Deed (Mutatis Mutandis).

- 1.3 If the offer is accepted by the Housing Association within the 56 day period provided by clause 1.2 above then the Owner will use reasonable endeavours to exchange contracts for the sale of the XXXX Affordable Rented Dwellings within a period of 3 calendar months from the date of acceptance to the offer by the Housing Association or the date of delivery of a full package of contract documentation and full evidence of title by the Owner/Developer to the Housing Association whichever is the later.
- 1.4 If the offer has been rejected or has not been accepted or contracts have not been exchanged with the Housing Association within the period deferred to at clause 1.3 above for the sale of the XXXX Affordable Rented Dwellings the Owner will in writing notify the Council to that effect with an explanation as to why such exchange of contracts has not been secured or the offer was not accepted and will propose the Alternative Housing Associations for the Council's approval (such approval not to be unreasonably withheld or delayed).
- 1.5 Within 15 working days of the Council receiving from the Owner the notification pursuant to clause 1.4 above the Council will notify the Owner in writing of its approval to the Alternative Housing Associations proposed by Owner or will nominate Alternative Housing Associations to whom the Owner shall make an offer of sale of the XXXX Affordable Rented Dwellings ("the Council's Notification") PROVIDED ALWAYS that if the Council does not notify the Owner within the 10 working days it shall be deemed that the Council has approved the Owner's Alternative Housing Associations.
- 1.6 On receipt of the Council's Notification or deemed notification pursuant to clause 1.5 above the Owner shall within 7 working days:
 - 1.6.1 Withdraw the offer made to the Housing Association pursuant to clause 1.2 above; and

- 1.6.2 Shall market the XXXX Affordable Rented Dwellings to all of the Alternative Housing Associations at its own cost for a period of 28 working days such marketing to identify if any of the Alternative Housing Associations are interested in purchasing the XXXX Affordable Rented Dwellings.
- 1.7 After the 56 working days referred to at clause 1.6.2 above if any of the Alternative Housing Associations have expressed an interest in purchasing the XXXX Affordable Rent Dwellings in writing to the Owner then:
- 1.7.1 If only one of the Alternative Housing Associations expresses an interest in purchasing the XXXX Affordable Rented Dwellings the Owner shall make an offer to that Alternative Housing Association; and
- 1.7.2 In the event there are two or more Alternative Housing Associations that have expressed an interest in purchasing the XXXX Affordable Rented Dwellings the Owner shall be entitled at its absolute discretion to determine which of the interested Alternative Housing Associations it will make an offer to; and
- 1.7.3 The Owner will make an offer to sell the XXXX Affordable Rented Dwellings on the same terms as set out at clause 1.2 above to the Alternative Housing Association identified pursuant to clauses 1.7.1 and 1.7.2 above and the provisions of clauses 1.2 and 1.3 above shall apply and be read as if they referred to the Alternative Housing Association.
- 1.8 If the offer has been rejected or has not been accepted or after the period referred to at clause 1.2 above contracts have not been exchanged with the Alternative Housing Association for the sale of the XXXX Affordable Rented Dwellings the Owner will in writing notify the Council to that effect with an explanation as to why such exchange of contracts has not been secured AND FURTHER the Owner shall be entitled to withdraw the offer and the obligations to clauses 1.1 to 1.7 inclusive shall cease to have effect and the provisions of clause 1.10 shall apply.

- 1.9 In the event that none of the Alternative Housing Associations express an interest within the 56 working day period pursuant to clause 1.6.2 above the Owner will in writing notify the Council of this situation and the provisions of clause 1.1 to 1.7 shall cease to have effect and clause 1.10 shall apply as regards the XXXX Affordable Rented Dwellings.
- 1.10 In the event of the circumstances set out in clause 1.8 or 1.9 applying the Owner shall be entitled to dispose of the XXXX Affordable Rented Dwellings on the open market subject to the provisions set out below in this clause 1.10.
- 1.10.1 The Owner shall pay the Affordable Housing Commuted Sum to the Council within 28 days of the date of sale of the XXXX Affordable Rented Dwellings on the Open Market in lieu of the provision of the XXXX Affordable Rented Dwellings;
- 1.10.2 On payment of the sum referred to in clause 1.10.1 the Owner shall be released from all obligations in this clause relating to the XXXX Affordable Rented Dwellings.
- 1.11 Notwithstanding any of the provisions herein contained none of the covenants or obligations contained in this Agreement shall apply to a disposal of any of the XXXX Affordable Rented Dwellings being required by:
- (a) Any statutory provisions now or hereafter in force
 - (b) The Housing Corporation
 - (c) A Court Order
- Upon any such disposal as is referred to in (a), (b) or (c) above the property so disposed of shall henceforth cease to be subject to the provisions of this Agreement.

- 1.12 In the event the XXXX Affordable Rented Dwellings are disposed of to either the Housing Association or an Alternative Housing Association the following provisions shall continue to apply:
- 1.12.1 If a mortgagee, chargee or a receiver of the XXXX Affordable Rented Dwellings exercises any power of sale or takes any enforcement action under the terms of its charge or mortgage so that such mortgagee or chargee or receiver appointed by its wishes to realise its security by a sale or other disposition (of whatever description) of the Housing Association's interest in the XXXX Affordable Rented Dwellings (or any part or parts of them) then such mortgagee chargee or receiver ("the Seller") shall use all its reasonable endeavours to effect the sale or other disposition of the XXXX Affordable Rented Dwellings (or any part or parts of them) upon the following terms:
- 1.12.1.1 To market the XXXX Affordable Rented Dwellings (or relevant part or parts of it) exclusively to Registered Social Landlords as shall be approved by the Officer for a minimum period of 13 weeks; and
- 1.12.1.2 Provided that the Seller shall effect a sale of the XXXX Affordable Rented Dwellings at the Price (as hereinafter defined) and upon other terms that are reasonably acceptable to the Seller, to use reasonable endeavours to enter into within the period of 13 weeks referred to in clause 1.12.1.1 above a binding agreement for the sale of the XXXX Affordable Rented Dwellings at the Price and upon terms which are reasonably acceptable to the Seller and to the Registered Social Landlord ("the Buyer") which has made an unconditional offer provided that such agreement includes an obligation to complete the transaction within a further 13 weeks after the expiry of the period of 13 weeks referred to in clause 1.12.1.1 above; and

- 1.12.1.3 Upon the commencement of marketing the XXXX Affordable Rented Dwellings to notify the Officer of the commencement of the same and send with such notice a copy of this agreement referring to this provision;
- 1.12.1.4 In clause 1.12 "Price" shall mean the value of the XXXX Affordable Rented Dwellings as specified by the Seller in its notice served on the Council pursuant to Clause 1.12.1.3 above or otherwise (or if such value is challenged by the Council) determined by an independent Chartered Surveyor of not fewer than ten years' relevant experience agreed between the Seller and the Council (or appointed on the application of the Seller or the Council by the President for the time being of the Royal Institution of Chartered Surveyors if the parties cannot agree) not more than four weeks after the Seller has specified the value in accordance with the Royal Institute of Chartered Surveyors Appraisal and Valuation Manual current at the date of marketing the Property) Existing Use Value Social Housing;
- 1.12.1.5 The approval of the Council required by clause 1.12.1.4 above shall not be unreasonably withheld or delayed provided that upon any buyer declaring an interest to purchase the XXXX Affordable Rented Dwellings and the Seller notifying the Executive Director of Neighbourhood Services of the Council in writing of the identity of such a buyer the Council must respond within 15 working days of receipt of such notice confirming whether it approves such buyer for the purpose of this clause and the following provisions shall apply;
- 1.12.1.6 If the Council does not approve the buyer then within 10 working days specified for a response to the notice in clause 1.12.1.5 above it shall specify in writing the adequate reasons for such refusal;
- 1.12.1.7 If no reasons or inadequate reasons are given in the notice referred to above within the said period of time then the Council will be deemed to have approved the buyer;

- 1.12.1.8 The process for approval referred to in this clause shall be repeated as many times as necessary and time shall be of the essence;
- 1.12.2 In the event of a purchase of XXXX Affordable Rented Dwellings being effected in accordance with clause 1.12.1 above the Buyer shall be subject to the obligations in respect of the XXXX Affordable Rented Dwellings set out in this Deed as if references to the Buyer were references to the Owner;
- 1.12.3 If despite the Seller using reasonable endeavours the Seller cannot dispose of the XXXX Affordable Rented Dwellings (or relevant part or parts of them) to a Buyer after having complied with the terms of clause 1.12.1 above the Seller shall be at liberty to dispose of the XXXX Affordable Rented Dwellings on the open market upon such terms as it thinks fit and the Seller of the XXXX Affordable Rented Dwellings and any owner thereof of any interest therein including any lessee successor in title assignee or otherwise shall forthwith cease to be subject to the terms of this planning obligation;
- 1.12.4 In the event that clause 1.12.3 becomes effective then the Council will upon written request supply promptly to any interested party confirmation of the effect and events to the same and will on written request promptly remove any entry in the Local Land Charges Register and any other entry in any other register open to public inspection.
- 1.12.5 In the event of clause 1.12.3 becomes effective the Seller will pay to the Council the Affordable Rented Housing Commuted Sum within 28 days of the sale
- 1.13 In exercising its rights under this clause 1.12 a Seller shall be entitled to seek to dispose of individual Dwellings within the definition of "The XXXX Affordable Rented Dwellings" and the provisions of this clause shall apply to the individual Dwelling or Dwellings identified by the Seller.

- 1.14 Service of any notice under clause 1.12 upon the Council shall be served upon the Officer or such other person as the Council shall nominate in writing from time to time.

Disposal of theYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings

- 1.15 The Owner covenants with the Council to construct and complete at its own cost the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings on the Land and transfer them to the Housing Association in accordance with the Transfer Trigger provisions of Schedule 6 and clauses 1.17 to 1.21 of this Agreement.
- 1.16 In respect of any initial sale of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings by the Housing Association.
- 1.16.1 The Housing Association shall market the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings to Eligible Occupiers residing within the Borough of South Tyneside for the Marketing Periods at a price in each case duly identified in Schedule 5 but it shall be a condition of sale that the purchasing Housing Association covenants to observe and perform 1.15 to 1.24 of this Schedule but if at the expiration of the Marketing Period Eligible Occupiers residing within the Borough of South Tyneside have not offered to purchase the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings in accordance with this clause the Housing Association shall market it or them to Eligible Occupiers residing out of the Borough of South Tyneside for a further Marketing Period at the same price and on the same terms as indicated
- 1.16.2 Each two bedroomed apartment at the price as set out in Schedule 5;
- 1.16.3 Each two bedroomed house at the price as set out in Schedule 5;
- 1.16.4 Each two bedroomed apartment at the price as set out in Schedule 5;

- 1.16.5 Each three bedroomed house at the price as set out in Schedule 5;
- 1.16.6 The four bedroomed house at the price as set out in Schedule 5.
- 1.17 If the persons identified in accordance with clause 1.16 above are approved by the Housing Association the Owner shall offer to sell individually each of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings to the Housing Association.
- 1.18 The offer referred to at clause 1.17 above shall include be / shall not be limited to the following terms:
- 1.18.1 The YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings shall be offered for sale to the Housing Association in each case at the price duly indicated for that unit in Schedule 5;
- 1.18.2 Contracts to be exchanged within two months of the date of acceptance of the offer by the Housing Association or the date of delivery of a full package of contract documentation and full evidence of title by the Owner/Developer to the Housing Association whichever is the later which in case of houses shall be a freehold or a Long Leasehold interest but in the case of flats a Long Leasehold.
- 1.19 The Owner shall leave the offer referred to at clause 1.17 above open for acceptance by the Housing Association for a period of 56 working days from the date of the offer.
- 1.20 In the event the offer referred to in clause 1.17 above is rejected by the Housing Association or is not accepted by the Housing Association within the 56 working day period provided in clause 1.19 above then the offer shall lapse and shall no longer be capable of acceptance and the terms of clause 1.22 below shall apply.

- 1.21 If the Housing Association accepts the offer within the 56 day period provided by clause 1.19 above then the Owner will use reasonable endeavours to exchange contracts for the sale of the individual unit that was the subject of the offer with the Housing Association within a period of two months from the date of acceptance of the offer by the Housing Association or the date of delivery of a full package of contract documentation and full evidence of title by the Owner/Developer to the Housing Association whichever is the later PROVIDED ALWAYS that exchange of contracts with the Housing Association shall take place simultaneously with the exchange of contracts between the Housing Association and the Eligible Occupier.
- 1.22 If after the two month period referred to at clause 1.21 above contracts have not been exchanged or the offer has lapsed in accordance with clause 1.19 above then the following shall apply:-
- 1.22.1 If the Marketing Period has not expired then the provisions of clauses 1.17 to 1.21 inclusive shall be repeated to the effect that the process shall be recommenced involving a new Eligible Occupier; or
- 1.22.2 If the Marketing Period has expired then the obligations set out in clauses 1.16 to 1.22 inclusive shall cease to have effect and the provisions of clause 1.23 below shall apply in respect of affordable housing provision.
- 1.23 If after the Marketing Period has expired any outstanding offers shall continue to be progressed in accordance with clause 1.19 to 1.21 inclusive and in the event any offers have been rejected or contracts have not been exchanged within the two months period specified in clause 1.21 for any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings then the following shall apply:

- 1.23.1 The Owner will notify the Council and the Housing Association in writing that the offers have been rejected or contracts have not been exchanged (“the Notification”); and
- 1.23.2 The Housing Association shall have a period of 10 working days from the Notification to serve notice in writing on the Owner and/or the Developer indicating that the Housing Association wishes to acquire the Shared Equity Dwellings to which clause 1.23 applies at the Discount for Sale Price and if the Housing Association serves such a notice in relation to such dwellings or any of them the Owners/Developers shall be obliged to sell the same to the Housing Association completion of such sale to take place within 6 weeks of Notification; and
- 1.23.3 In the event that the Housing Association fails to indicate that it wishes to acquire the Shared Ownership Dwellings or the Shared Equity Dwellings or any of them to which this clause 1.23 applies or, having indicated that it wishes to acquire the Dwellings fails to complete such acquisition within 6 weeks of the Notification through no fault of the Owners’ and/or Developer’s then the Owners and/or the Developer shall be entitled to dispose of any of the unsold Shared Ownership Dwellings and Shared Equity Dwellings to which this clause 1.23 applies on the open market;
- 1.23.4 The Owner shall pay to the Council within 28 days of the date of sale on the open market of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings a sum equal to the difference between the Discount for Sale Price and the Open Market Value;
- 1.23.5 On payment of the sum referred to in clause 1.22.3 above, the Owner shall be released from the affordable housing obligations in this clause 1 in their entirety in so far as they relate to any or all of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings in respect of which

a commuted sum has been paid pursuant to Clause 1.23.3 above PROVIDED ALWAYS that the provisions of clause 1.24 shall continue to apply to any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings that have been disposed of to the Housing Association.

1.24 Subject to the provisions of clause 1.24.13 to 1.24.17 of this Schedule the following provisions shall only apply and regulate the future disposals of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings disposed of to the Housing Association by the Owner:

1.24.1 The legal interest of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings disposed of in accordance with clause 1.16 to 1.23 above shall not subsequently be assigned transferred or disposed of other than at the Subsequent Sale Price;

1.24.2 When any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings becomes available for re-sale the person seeking to re-sell ("the Vendor") will write to the Housing Association informing it and inviting the Housing Association to market the property on behalf of the Vendor;

1.24.3 On receiving notification referred to at 1.24.2 above the Housing Association shall write to the Officer requesting a list of persons who have registered an interest in purchasing homes of this type, size and location. The Council will forward this list within 10 working days of the request. The Housing Association shall write to each person on the list giving sales details of the property;

1.24.4 During the first 12 weeks from the commencement of marketing pursuant to 1.24.3 above no interest in any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings shall be offered for sale other than to a person or persons residing within the Borough of South Tyneside;

- 1.24.5 If required by the Council the Vendor shall satisfy the Council that the relevant unit has been actively marketed for a period of at least 12 weeks from the commencement of marketing to persons residing within the Borough of South Tyneside who cannot afford to purchase Dwellings of a similar kind generally available on the open market in the Boough;
- 1.24.6 In the event that any interest is offered for sale in accordance with the provisions of paragraph 1.24.4 and 1.24.5 above and on either:
- 1.24.6.1 The expiration of the period of 12 weeks from the commencement of marketing there is no buyer who has made an offer to purchase the interest in the relevant unit a price not exceeding the Subsequent Sale Price of such interest upon the terms that are reasonably acceptable to the Vendor; or
- 1.24.6.2 If there is such a person who is prepared to proceed on that basis who has not entered into a contract to purchase and which has not been completed at that price upon terms that are reasonably acceptable to the Vendor within 20 weeks of the relevant unit having been placed on the open market for sale pursuant to the provisions of 1.24.3 to 1.24.5 above then the Vendor may dispose of his interest in the relevant unit in accordance with 1.24.5 above to a person irrespective of his geographical area of residence who cannot afford to purchase Dwellings of a similar kind generally available on the open market in the district;
- 1.24.7 If despite the Vendor using reasonable endeavours cannot dispose of the relevant unit within 32 weeks of it being offered for sale and complying with the provisions of clauses 1.24.1 to 1.24.6 inclusive above then the Vendor shall be at liberty to dispose of the relevant unit on the open market upon such terms as it thinks fit;

- 1.24.8 In the event of a disposal of the relevant unit pursuant to paragraph 1.24.7 the Vendor shall pay a sum to the Council equivalent at the date of such sale to the difference between the Subsequent Sale Price and the Open Market Value;
- 1.24.9 In the event of a disposal of the relevant unit on the open market in accordance with clause 1.24.8 the Shared Equity Dwelling shall forthwith cease to be subject to the terms of this planning obligation;
- 1.24.10 In the event that clause 1.24.9 becomes effective the Council (or its successor) will upon written request supply to any interested party confirmation of the effect and events of the above and will remove the entry in the Local Land Charges Register and any other entry in any other register open to public inspection;
- 1.24.11 For the purposes of 1.24.1 to 1.24.18 the Open Market Value shall take no account of any improvements made to the Shared Equity Dwelling and the Vendor shall be entitled to retain 100% of the increase in open market value attributable to such improvements;
- 1.24.11.1 In the event of a Shared Equity Dwelling being occupied on a Shared Ownership Basis and the lessee Staircasing the monies obtained by the Housing Association lessor from the lessee upon the completion of the Staircasing shall after the deduction of all administration and legal expenses reasonably incurred by the Housing Association in dealing with the Staircasing and any sums required by the mortgagee or chargee of the Housing Association in order to provide its content and/or the release of the Shared Equity Dwelling from any mortgage charge or other funding agreement which may be subsisting from time to time shall be used to assist in the acquisition and development by the said Housing Association of further land for Affordable Housing within the boundaries of the Borough of South Tyneside within five years of such monies being received by the Housing Association lessor PROVIDED ALWAYS that in the event that the Housing Association lessor having made all

reasonable efforts to identify purchase and develop such land which it considers to be suitable for the purpose of providing Affordable Housing at a price which the Housing Association considers to be reasonable is unable to identify and purchase such land within the period of five years the provision of this sub clause shall cease to have effect upon the service of an appropriate written notice by the Housing Association on the Council;

1.24.12 If a mortgagee, chargee or a receiver of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings exercises any power of sale or takes any enforcement action under the terms of its charge or mortgage so that such mortgagee or chargee or receiver appointed by it wishes to realise its security by a sale or other disposition (of whatever description) of the Eligible Occupier's interest in the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) then such mortgagee chargee or receiver ("the Seller") shall use all reasonable endeavours to effect the sale or other disposition of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of it) upon the following terms:

1.24.12.1 To market the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) for a minimum period of 12 weeks [(the first 6 weeks of which shall be in respect of persons residing in the Council's area)] and;

1.24.12.2 Provided that the Seller shall effect a sale of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) at the Price (as hereinafter defined) and upon other terms that are reasonably acceptable to the Seller to use reasonable endeavours to enter into within the period of twelve weeks clause 1.24.12.1 above a binding agreement for the sale of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) at the Price and upon terms which are reasonably acceptable to the buyer

- (“the Buyer”) which has made an unconditional offer provided that such agreement includes an obligation to complete the transaction within a further twelve weeks after the expiry of the period of 12 weeks referred to in clause 1.24.12.1 above;
- 1.24.12.3 Upon the commencement of marketing of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part of parts of them) to notify the Officer of the commencement of the same and send with such notice a copy of this agreement referring to this provision;
- 1.24.12.4 In this clause 1.24.12 “Price” shall mean a sum to be calculated by multiplying the Open Market Value by the Discount Percentage (or, where Staircasing has occurred, the percentage of the value which has been Staircased) of the open market value of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part of parts of them) specified by the Seller in its notice served on the Council pursuant to Clause 1.24.12.3 above or otherwise (or if such value is challenged by the Council) determined by an independent Chartered Surveyor of not fewer than ten years’ relevant experience agreed between the Seller and the Council (or appointed on the application of the Seller or the Council by the President for the time being of the Royal Institution of Chartered Surveyors if the parties cannot agree) not more than two weeks after the Seller has specified the values in accordance with the Royal Institute of Chartered Surveyors Appraisal and Valuation Manual (current at the date of marketing the Property);
- 1.24.12.5 The approval of the Council as required by this clause shall not be unreasonably withheld or delayed provided that upon any buyer declaring an interest to purchase the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) and the Seller notifying the Officer in writing of the identity of such a buyer the Council shall respond within 10 working days of receipt of such notice confirming whether it approves such buyer for the purpose of this clause and the following provisions shall apply;

- 1.24.12.6 If the Council does not approve the buyer then within 10 working days specified for a response to the notice in clause 1.24.12.5 above it shall specify in writing adequate reasons for such refusal;
- 1.24.12.7 If no reasons or inadequate reasons are given in the notice referred to above within the said period of time then the Council will be deemed to have approved the buyer;
- 1.24.12.8 The process for approval referred to in this clause shall be repeated no more than three times and time shall be of the essence;
- 1.24.13 In the event of a purchase of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) being effected in accordance with clause 1.24.12.1 above the buyer shall be subject to the obligations in respect of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) set out in this Deed as if references to the Buyer were references to the Owner;
- 1.24.14 If despite the Seller using reasonable endeavours the Seller cannot dispose of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) to a buyer after having complied with the terms of clause 1.24.12.1 to 1.24.12.8 above the Seller shall be at liberty to dispose of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) on the open market provided that the Seller shall pay to the Council a sum representing the difference between the Open Market Value and the Subsequent Sale Price (or, where Staircasing has occurred, the percentage of the value which has not been Staircased) less the value of any improvements made by the Seller of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) but otherwise upon such terms as it thinks fit and the Seller of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or

any part or parts of them) and any owner thereof of any interest therein including any lessee successor in title assignee or otherwise shall henceforth cease to be subject to the terms of this planning obligation;

1.24.15 In the event that clause 1.24.14 becomes effective then the Council will upon written request supply promptly to any interested party confirmation of the effect and events in relation to the same and will on written request promptly remove any entry in any other register open to public inspection;

1.24.16 Pay commuted sum....

1.24.17 Service of any notice under this clause upon the Council shall be served upon the Executive Director of Neighbourhood Services or such other person as the Council shall nominate in writing from time to time.

Determination of Open Market Value

1.25 For the purposes of clause 1.25 only;

1.25.1 The Open Market Value shall be agreed by the owner of the relevant unit of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings and the Housing Association prior to the disposal of the relevant unit and in default of agreement determined by an independent chartered surveyor appointed by agreement between the owner and the Housing Association;

1.25.2 In the absence of the agreement the surveyor shall be appointed by the President of the Royal Institute of Chartered Surveyors;

1.25.3 The surveyor shall act as an expert and his decision shall be final and binding and in the absence of a determination by the surveyor his fees shall be borne by the parties in equal shares;

1.25.4 In arriving at the Open Market Value the assumptions contained in the definition of Open Market Value at clause 2.1.24 shall apply.

1.26 For the purpose of this clause the perpetuity period shall be eighty years from the date of this Agreement.

SCHEDULE 2

THE COUNCIL'S COVENANTS

1 PLANNING PERMISSION

The Council shall issue planning permission for the Development within seven days of completion of this Agreement in the form annexed as the Schedule 3 of this Agreement.

SCHEDULE 3

DRAFT CONDITIONS

Application at:

By:

Application Ref No:

Application Received on:

CONDITIONS OF APPROVAL

1 The shall be begun not later than the expiration of the five years from the date of this permission.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990.

2 The Development shall not be carried out

SCHEDULE 4**NOMINATION DEED****NOMINATION DEED**

THIS DEED OF NOMINATION is made the

day of _____ 200Y

BETWEEN _____ **ASSOCIATION**

Having its registered offices at

("the Association") and **SOUTH TYNESIDE COUNCIL** ("the Council")

NOW THIS DEED WITNESSETH as follows:-

1. DEFINITIONS
- 1.1 Words and phrases defined in the Agreement dated _____ 200Y and made between the Council and [_____] ("the Principle Agreement") shall where the context so admits bear the same meaning where used in this Agreement.
- 1.2 Reference to any statutory provisions shall be deemed to include any such provisions as from time to time amended extended increased or replaced and to any orders or regulations made under the same.
- 1.3 Reference to a person in housing need shall include any person who might reasonably expect to live with that person as part of the same family unit.
- 1.4 Reference to the Association shall include its successors in title but not any person purchasing Affordable Rented Dwellings or an individual Affordable Rented Dwelling pursuant to Clause [_____] of the Principle Agreement.

2. NOMINATION RIGHTS

2.1 It is hereby agreed that the Council shall henceforth have the right for a period of eighty years (which period shall be the perpetuity period applicable to this Agreement) except as expressly otherwise provided to nominate as tenants of vacant Affordable Rented Dwellings or any Affordable Rented Dwellings which fall vacant during the said period of eighty years any person in housing need to whom the Council owes a statutory duty or any other persons who are from time to time on the housing register (including waiting lists of existing tenants of the Council seeking transfers) maintained by or for the Council PROVIDED THAT such right shall be in respect of 100 per centum of all initial lettings and that the first three out of every four of all subsequent re-lettings in strict rotation of Affordable Rented Dwellings.

3. NOMINATION PROCEDURE

3.1 The Association shall notify the Council when an Affordable Rented Dwelling to which this Agreement relates is available for nomination under clause 2 above. The Council will then within five working days of receipt of such notification send to the Association written notice of the person ("the Nominee") (with full names and addresses and such other information as the Association may reasonably require) it nominates to the Affordable Rented Dwellings. The Association shall then within ten working days offer to the Nominee a tenancy of the Affordable Rented Dwelling if the Association reasonably considers the Nominee suitable. If multiple nominations are requested, the Association shall at the same time inform the Council of the nominee(s) to which the Dwelling is not to be offered.

- 3.2 Assessment of suitability of the Affordable Rented Dwelling by the Association shall take into account (inter alia) the location of the Affordable Rented Dwelling in relation to the needs of the Nominee and the Association's management policies and the letting shall be on terms normally and from time to time offered to applicants by the Association and in the form of the Association's standard assured non-shorthold tenancy agreement from time to time.
- 3.3 The Association shall be entitled to reject the Nominee for reasons of sound housing management but in such cases shall provide written reasons for so doing to the Council. Such reasons shall be substantial and in no way based on grounds of race colour ethnic or national origin religion gender sexuality or disability (except where the Affordable Rented Dwelling would be unsuitable by reasons of such a disability).
- 3.4 In the event of a Nominee rejecting an offer of such a tenancy the Association shall forthwith re-offer the Affordable Rented Dwelling to the Council for nomination pursuant to clause 3.1 above. This procedure shall be repeated as many times as is necessary until a Nominee accepts an offer PROVIDED ALWAYS that in the event of any third nominee rejecting an offer of such tenancy the nominated representative of each of the Association and the Council shall as soon as possible after such rejection and in any case within 5 working days enter into discussions with a view to seeking to agree the appropriate expeditious letting of the tenancy.
- 3.5 A Nominee who unreasonably delays his agreement to accept a tenancy of such Affordable Rented Dwelling for more than seven days shall be deemed to have rejected the offer of a tenancy.
- 3.6 The Association shall notify the Council of any Nominee who rejects any offer of accommodation within two days of the actual or deemed rejection and shall request a further nomination.
- 3.7 If there is no nomination made within 5 days pursuant to clause 3.1 above The Association shall have the right and liberty to let the relevant Affordable Rented Dwelling free from any rights of nomination on that occasion.

4 NOMINATION

4.1 On request the Association shall promptly give the Council:-

- (a) full details of any lettings made by it of each Affordable Rented Dwelling;
- (b) full details of any offer of a tenancy made by it to a Nominee and whether such offer has been accepted or rejected.

5 ARBITRATION

5.1 Any dispute or difference relating to any matter arising out of or in connection with this agreement shall be referred to in arbitration in accordance with the procedure contained in clause 9 of the Principle Agreement.

6 NOTICES

6.1 Any notice required to be served hereunder shall be sufficiently served on the parties if sent by pre-paid first class recorded delivery post to the address of the parties indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two business days after posting.

IN WITNESS whereof the parties hereto have executed these presents as a deed and delivered the day and year first before written.

THE COMMON SEAL of)

THE ASSOCIATION was)

Hereunto affixed in the presence of:-)

THE COMMON SEAL OF SOUTH TYNESIDE COUNCIL)

was hereunto)

Affixed in the presence of:-)

Head of Corporate Governance

SCHEDULE 5

RESIDENTIAL DEVELOPMENT AT

XXX Affordable Rented Dwellings Location to be specified and shown in Plan 2.

Discount for Sale Dwellings location to be specified and shown on Plan 2

SCHEDULE 6

Completion in total of xx Open Market Dwellings	The Affordable Rented Dwellings comprising the whole of Block -- as indicated on the Plan 2
Completion in total of xxx Open Market Dwellings	All the Shared Ownership Dwellings in Block -- as indicated on the Plan 2
Completion in total of xxxx Open Market Dwellings	All the Discount for Sale Dwellings in Block --as indicated on the Plan 2
Completion in total of xxxxx Open Market Dwellings Xxxxx = site total – 25% of total	The remainder of all the Affordable Rented, Shared Ownership Dwellings and Discounted for Sale Dwellings not previously transferred

EXECUTED as a DEED by)

LTD acting by)

Executive Director

Executive Director / Secretary

THE COMMON SEAL of SOUTH TYNESIDE COUNCIL)

was hereunto)

Affixed in the presence of:-)

Head of Corporate Governance

Document Reference: XXXXX

**To find out more about
the new Local Development Framework,
contact:**

Spatial Planning Team
Regulatory Services
South Tyneside Council
Town Hall and Civic Offices
Westoe Road
South Shields
Tyne and Wear
NE33 2RL

Telephone: **(0191) 424 7688**

Email: **ldf@southtyneside.gov.uk**

Visit: **www.southtyneside.info/planning/strategic/ldf**

If you know someone who would like this information in a different format, for example Braille, audio tape and languages other than English, these can be provided, on request, by contacting the Communications Unit on 0191 424 7385.



South Tyneside Council