

## **For Discussion**

Agenda Item: 12.2  
Date of Meeting: 24<sup>th</sup> April 2024

**To:** The Management Committee

**From:** The Director

**Subject:** Proposed Constitutional Change – Update Report

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### **1. Introduction and Purpose**

- 1.1 At last month's meeting Committee approved the variations to the Model Rules and approved the draft revised rules and the resolutions to be put to our Members at an SGM to be held on 17<sup>th</sup> September 2024.
- 1.2 It was reported that there were other matters to be undertaken and the purpose of this report is to provide an update on those matters for Committee's consideration.

### **2 Other Key Considerations and Matters**

#### **2.1 Lender's Consent**

- 2.1.1 As agreed at the last meeting, following Committee's approval of the draft revised rules, I contacted our lender, Bank of Scotland, to seek its consent to the proposed constitutional change which involves the adoption of new rules and a name change. I sent a copy of the draft revised rules. The request was sent on 28<sup>th</sup> March 2024. Following the Easter holiday weekend I received confirmation from our Relationship Director, Grahame Andrew, that consent was given to the change in constitution to Rosehill Housing Association Ltd. I replied confirming that our name would become Rosehill Housing Association Limited.

#### **2.2 Financial Conduct Authority (FCA) – Initial Contact**

- 2.2.1 Committee will recall that our solicitors, TC Young, planned to submit the draft rules to the FCA, to ask them for their non-binding indicative view as to whether the variations in the rules would be acceptable. This is not however standard practice, as FCA usually only have sight of the rules at such time as and when the rules are being sent for registration and it may take some time to obtain FCA's input. By the time of the March Committee meeting, an email had been sent from TC Young to FCA asking if they could confirm that they do not foresee anything within the proposed rules that would prevent them from registering the proposed

rules at the relevant time. It was reported at the time that a response was awaited from FCA.

2.2.2 On 28<sup>th</sup> March (the day after the Committee meeting) I emailed our solicitors at TC Young and L Ewart, Governance Consultant to advise of Committee's decisions at its meeting – approval of draft revised model rules and the resolutions to be put to our members at a SGM to be held in September. I also advised that I had sent a copy of the draft rules to our Lender, seeking their consent to the constitutional change.

2.2.3 I received a reply from J Baynham, TC Young on Friday night (29<sup>th</sup> March which was Good Friday) She advised she had received a response from FCA to which she had responded to the points they raised. A copy of the email exchange with FCA is attached (12.2.1). J Baynham advised that “hopefully we have justified the reasoning behind the changes and they agree with the changes proposed however it is not always guaranteed.”

2.2.4 She acknowledged that I had already contacted our lender and sent a copy of the draft revised rules. She advised that “it may be advisable to highlight to the bank that the rules may be subject to amendment by FCA and OSCR as you are awaiting to hear from them with their in principle approval. We wouldn't want to delay the process at this stage if the bank give consent and then either FCA and OSCR require a further amendment to be made. If any amendments are required, the bank would be required to give an updated consent.”

2.2.5 I responded to J Baynham when I returned to work on 2nd April, after the holiday weekend, by that time I had received our Lender's consent to the constitutional change. She advised that as the Lender had responded so quickly to hold off contacting them again until such time, we have received a further response from FCA, as there is not much more we can tell our lender. If the FCA respond positively we will not need to contact our lender again.

2.2.6 I checked with J Baynham on 15<sup>th</sup> April if there was any update from FCA, and she advised she was still waiting for its further response. She confirmed that she had contacted them again that day. If a response is received by the date of the Committee meeting, I will update the Committee then.

2.3 Application to the Office of the Scottish Charity Regulator (OSCR)

2.3.1 Committee will recall that TC Young would, on our behalf, submit an application to OSCR to apply for registration as a charitable organisation and obtain its in principle consent.

2.3.2 As part of the application I needed to provide some information about our employees and to have all committee members complete the Trustee Form. By the 3<sup>rd</sup> of April I had all the completed forms from Committee and emailed these to J Baynham. J Baynham replied confirming that she had all the information required and was ready to submit the application to OSCR. However, she would hold off submitting the application until we hear back from FCA.

## 2.4 Member/Tenant Communication

2.4.1 Following Committee's approval of the information leaflet for our members/tenants on the proposed constitutional change, the leaflet was shared earlier this month. It was posted on the Notice Board on our website. Links were sent by text, email and via our facebook page. Paper copies were sent out to approximately 300 members who still prefer that method of communication.

2.4.2 To date we have received one enquiry from a tenant asking for some more information. Below is the information requested and my response.

Question	Answer
<p>Can I ask how the move to charitable status will benefit the tenants, as charities normally exist to serve a public benefit. Your leaflet is a bit vague about this.</p>	<p>As a fully mutual housing co-operative, we have encountered barriers to accessing funding for projects to support our tenants, as our membership is restricted to our tenants. Being a charitable registered housing association may open up funding streams for Rosehill e.g. funding to provide digital skills training for tenants and funding to provide projects that could tackle social isolation. Some funding sources are restricted to charitable organisations, so we couldn't apply for these under our current constitution.</p>
<p>Also, how will the charitable status impact on Rosehill's compliance with statutory regulation of your services. Will there still be a requirement to comply with statutory requirements as a housing provider? Will these remain the same or decrease?</p>	<p>Rosehill would still be a registered social landlord but would now be a charitable registered housing association. All of the legal and regulatory responsibilities we have currently as a social landlord remain the same and our main Regulator would continue to be the Scottish Housing Regulator (SHR). However, we would now have another</p>

	<p>regulator which is the Office of the Scottish Charity Regulator (OSCR), and we would be required to submit an annual return to it. However, there is an agreement between OSCR and SHR that SHR would be the lead Regulator for housing. The majority of registered social landlords are charitable registered housing associations.</p> <p>I hope you find the above information helpful. As mentioned in the information leaflet, we intend to hold a series of drop-in sessions in late Spring and early Summer to enable our tenants to come in for a chat about the proposed change to our constitution and ask any questions they may have. We aim to have the dates of these sessions published in early May.</p>
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2.4.3 Depending on how many other enquiries we may receive and what comes out of the drop-in sessions we are planning to hold during late Spring and early Summer, this will inform the next information leaflet.

2.4.4 I will shortly begin looking at dates for the drop-in sessions. I am looking at a period starting w/b 13<sup>th</sup> May to w/b 17<sup>th</sup> June. Committee is reminded that the sessions will be attended by me and at least one Committee Member.

### 3. Risk

3.1 The risks relating to the proposed constitutional change were covered again in my March report to Committee. For ease of reference, I have attached the Risk Section from the report. (12.2.2)

### 4. Delivery of our Strategic Objectives

Area	Related Strategic Objective(s)
Proposed Constitutional Change	2) Engage effectively with our tenants and service users 7) Achieve the highest standards in all that we do

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## 5. Delivery of our Core Values

Area	Related Core Value(s)
Proposed Constitutional Change	<ul style="list-style-type: none"> <li>Engaged and Responsive</li> <li>Accountable and Compliant</li> <li>Fair and Approachable</li> <li>Excellent and Committed</li> </ul>

## 6. Compliance and Assurance

- 6.1 The approach we have undertaken to the proposed constitutional change including taking independent expert advice and legal advice and having a clear timetable of the key stages of the processes required, our communication and engagement plans for our members, will ensure we are meeting our legal and regulatory requirements as follows.

Compliance Source	Details
The Standards of Governance and Financial Management for RSLs	<p><b>Standard 4 - The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.</b></p> <p><b>Guidance 4.1</b> - The governing body ensures it receives good quality information and advice from staff and, where necessary, expert independent advisers, that is timely and appropriate to its strategic role and decisions. The governing body is able to evidence any of its decisions.</p> <p><b>Standard 7 - The RSL ensures that any organisational changes or disposals it makes safeguard the interests of, and benefit, current and future tenants.</b></p> <p><b>Guidance</b> Where an RSL is considering organisational or constitutional change, or acquisition or disposal of land or assets:</p> <p><b>7.1</b> The governing body discusses and scrutinises any proposal for</p>

	organisational change and ensures that the proposal will benefit current and future tenants.
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## 6.2 Evidence Bank

Evidence	Assurance Exercise Location
<ul style="list-style-type: none"> <li>Report for 24/04/24 meeting and attachment</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory Standard 4 – Guidance 4.1</li> <li>Regulatory Standard 7 – Guidance 7.1</li> </ul>

6.2.1 Committee is reminded that our Assurance Exercises are available in the Committee Log-in Area of our website, which Committee can access at any time.

## 7. Summary

7.1 Following Committee’s decisions at the March meeting which included approval of the draft revised rules and the resolutions to be put to members at a SGM to be held on 17<sup>th</sup> September 2024, Committee is being updated on other related key considerations and matters.

7.2 Updates on matters relating to obtaining our Lender’s consent, the request for a non-binding indicative view from FCA, our application to OSCR and the information leaflet for members/tenants are provided under Section 2.

7.3 The risks associated with the proposed constitutional change are covered in the attached document (12.2.2 – Extract from March 2024 Report).

7.4 Section 4 shows how the matter of the proposed constitutional change contributes to the delivery of our strategic objectives.

7.5 Section 5 shows how the matter of the proposed constitutional change contributes to the delivery of our Core Values.

7.6 Section 6 sets out how we comply with Regulatory requirements.

7.7 Committee is asked to note the updates on matters relating to the proposed constitutional change and is invited to discuss any aspects of this report.

Email Exchange between our solicitors, TC Young and the FCA

Sent: 25/03/24

Dear Jacqui Baynham

Thank you for your submission.

Having considered the proposed wording for rule 36.1, we don't think it is acceptable at present. This is as follows:

- we would need to understand more around the proposed wording.
- you would need to explain what is meant by 'factoring service'

It should be understood that it is not usually appropriate for a community benefit society to give any particular group of members greater rights or benefits.

Furthermore, rule 71.2 removed 'an organisation which is a Member of the Association' from the list of people who cannot act as auditor. We understand that it is due to not allowing organisation members - which would be fine. However, it should be noted that in section 92(2) of the Act mentions 'any connected registered society'. Therefore you would need to ensure this rule amendment it isn't contrary to the Act

Please contact us if you have any questions.

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Sent: 29/03/24

Thank you for your email and for your comments. I would respond to your comments as follows:-

- 36.1 We note your comment in that it is not usually appropriate for a community benefit society to give any particular group of members greater rights or benefits.

The current organisation has been set up as a housing co-operative whereby it is required that to be a tenant you need to be a member; and to be a member you need to be a tenant. The society noted that there was increasing challenges of recruiting committee members from their tenants. The committee of society felt that remaining as a housing co-operative was no longer fit for purpose and wished to adopt the model rules to allow them to have a wider membership.

As part of that process, whilst they will be widening their membership, the society wished to safeguard against a disproportionate number of non-tenant service users being on the committee and therefore being able to unduly influence the strategy and objectives of the society. Indeed, we are aware of other societies whose registered rules include wording in relation to limiting the number of committee members who are from a particular group of members.

The wording as inserted "members who receive a factoring service" refers to the owner of a house in respect of which the society provides a factoring service. Given the explanation provided, would this wording be acceptable?

- 72.1 The SFHA supporting guidance for the Model Rules 2020, state that there is no statutory or regulatory requirement to allow organisations to become members. Any reference to “organisations” can therefore be removed by amendment if an RSL does not wish to allow organisations to be members at the option of the Association. Indeed, this wording has also been removed in their current registered rules.

The removal of the wording is as you note due to not allowing organisation members. We note that you agree this is acceptable.

We also note your comments in relation to “However, it should be noted that in section 92(2) of the Act mentions 'any connected registered society'. Therefore you would need to ensure this rule amendment isn't contrary to the Act. I don't think this is an issue as an organisation cannot be a member, therefore the removal of prohibition on organisations who are members acting as auditors simply flows from this and has no further practical effect. The current auditors of the society are chartered accountants and as such would not fall within the category of “any connected registered society” and therefore this would not be contrary to the Act.

I look forward to hearing from you with your comments.

## Extract from March 2024 Report

### 5. Risk

- 5.1 Changing our constitution is a relatively significant event, therefore, it is important that associated risks are considered. The presentations from both Linda and Lauren set out the potential advantages and disadvantages of changing our constitution to that of a charity. In terms of potential disadvantages/risk, these are:

**Could be seen as reducing/weakening tenant influence and control.**

This could be mitigated by having a clear aim within our new Membership Policy that we have a majority of tenants on the Committee, where possible. It would also be mitigated by ensuring that the communication with members is clear about the reasons for changing our constitution and the benefits. Part of this strategy would involve mechanisms for members (tenants) to ask questions and raise concerns. We will issue information by post, via links sent by email, text and posted on our facebook page. We will also offer tenants/members opportunities to meet with us face-to-face by holding drop-in sessions at various times (morning, afternoon and evening) with a choice of attending in-person or virtually.

**Members don't vote for rule change to become a charitable registered housing association.**

Again, this would be mitigated by ensuring we have an effective communication strategy in place which will provide clear and "plain English" information about the reasons for the change, the benefits and how the change would affect them and to provide assurance that the change in constitution would have no impact on them as tenants. Providing members with ample opportunity to ask questions or raise concerns.

**Additional Regulation.** We would also be registered with OSCR who would be another Regulator. However, there is an agreement between OSCR and the Scottish Housing Regulator (SHR) that SHR will be the primary regulator. We will be required to submit an annual return to OSCR, which is along the lines of the annual return we do to the Financial Conduct Authority and involves providing a copy of our Financial Statements. Therefore, it is not envisaged that being registered with OSCR will be unduly onerous. Obviously, the majority of registered housing associations in Scotland are charitable.

**Restricted to Charitable Activities.** Our activities would require to be permitted under the Housing (Scotland) Act 2010 and a charitable activity under the Charities Act (e.g. relief of poverty, relief of those in need by

reason of age, financial hardship or other disadvantage). This does not present a real risk to Rosehill as fundamentally we are about providing good quality, affordable homes and the provision of good quality services including services such as welfare benefits advice.

- 5.2 Committee is reminded that Linda's and Lauren's presentations covered the challenges and risks of a fully mutual co-operative e.g. the challenges of recruiting committee members from a closed group and the potential regulatory risk if committee membership fell below 7.
- 5.3 From the information provided at both Constitutional Review Sessions, Committee concluded that there were more advantages than disadvantages to changing to a charitable registered housing association. The advantages are clearly set out in both presentations, which are available on DecisionTime, so I do not intend to repeat them here.
- 5.4 Other identified risks are as follows:

**Governance** – not taking appropriate advice and giving the matter full consideration could lead to the wrong decision being made.

*Mitigating measures* - from the beginning of this process Rosehill commissioned external, expert advice from a Governance Consultant to undertake a review of its constitution and to explore alternatives.

**Legislation/Regulation** – linked with the above, if we failed to take appropriate advice including legal advice on changing our constitution and following the required processes, we could breach the associated legal and regulatory requirements.

*Mitigating measures* - Rosehill has continued to work with its Governance Consultant and has taken legal advice. This has included: consideration of the report from the Governance Consultant on the outcome of the review of Rosehill's constitution; holding 2 sessions in 2023 to explore options including retaining the status quo and to consider the risks and benefits of staying as a fully mutual housing co-operative and changing our constitution and becoming a charitable registered housing association. The Governance Consultant facilitated both sessions and our solicitor attended the second session to provide the legal basis and explain the processes for changing our constitution. A further session was held in January 2024 to explore the model charitable rules again facilitated by the Governance Consultant with our solicitor attending to provide clarity on any legal points and answer any questions to aid the discussion.

In conjunction with our Governance Consultant and Solicitor, I produced a timetable of the key processes and timelines for achieving the constitutional change (which also includes a name change) to ensure that we are in a position to hold an SGM in September 2024 to put the proposal to our members. Having a clear timetable in place ensures we will meet our legal and regulatory requirements for changing our constitution e.g. seeking our lender's consent, applying to the Office of the Scottish Charity Regulator, submission of new rules and name change to FCA for registration and a notifiable event to SHR.

**Reputation** – if we fail to follow correct procedures, we run the risk that we can't deliver our plans to change our constitution and therefore, lose the confidence of our members (tenants) and stakeholders.

If we fail to adequately inform and engage with our members over the proposed constitutional change (and name change) we could be accused of not being suitably transparent about our plans, which could lead to dissatisfaction amongst our members (tenants).

*Mitigation measures* – the measures outlined under Governance and Legislation/Regulation should mitigate the first risk set out above.

To ensure the support of our Members for the change to our constitution we will embark on an awareness campaign and communication strategy to ensure our Members are fully informed. This will include setting out our reasons for the proposed constitutional change, what the main changes are and what this means for our members. We will use different methods for sharing this information e.g. paper form and emailing/texting links to information on our website. We will give our members the opportunity to attend a mix of in-person and virtual events to hear more about the proposal and ask any questions they may have.

When it is appropriate to do so we will notify other stakeholders and partners e.g. GCC of our plans to demutualise.