

For Discussion

Agenda Item: 10.2
Date of Meeting: 03/07/24

To: The Management Committee
From: The Director
Subject: Proposed Constitutional Change - Update

1. Introduction and Purpose

1.1 At last month's meeting it was reported that our solicitor had received confirmation from the Financial Conduct Authority (FCA) that the proposed change in wording for rule 36.1 was acceptable. Committee is reminded that this remains a non-binding indicative view from the FCA. We will still need to formally submit the new rules, once approved by our membership at the SGM in September, to the FCA for approval and registration.

1.2 The Committee then approved the updated Rules, which incorporated the revised wording for 36.1 and amendments to the section in the rules "Interpreting These Rules". The changes were as follows:

36.1 "The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum of (including co-optees) of 12 persons. No more than two members of the Committee of Management shall be Factored Owners. The Association shall keep up to date a register of the names of the Committee Members which shall be made available to any person at no cost. The names of Committee Members will also be published by the Association on its website, and in its annual reports and other similar documentation."

Interpreting These Rules

- Addition of 88.8 which states "Factored Owner" means the owner of a property in respect of which the Association has been appointed as Property Factor.
- Addition of 88.17 which states ""Property Factor" means (in accordance with the Property Factors (Scotland) Act 2011) a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned -
 - (i) by two or more other persons, or
 - (ii) by the local authority or housing association and one or more other person.

- 1.3 It was also reported that our solicitor would now proceed with seeking OSCR's in-principle approval of our application and that once this was received I would then resubmit the updated Rules to our Lender for its further consent.
- 1.4 The purpose of this report is to update Committee on the matter of our OSCR application and Lender's consent. It is also to update Committee about the member/tenant engagement over our proposed constitutional change.

2. OSCR Application and Updated Lender Consent

- 2.1 On seeking an update from our solicitor on 30th May about OSCR's in-principle approval, I was advised that our application to OSCR had been submitted on 13th May but to date no response had been received. On the 11th June I then received an email from our solicitor sharing the response from OSCR which is set out below.

Application for Charitable Status for Rosehill Housing Association Limited

I refer to your recent application for charitable status for the organisation named above.

I can confirm that on the basis of the information provided and the proposed articles of association, Rosehill Housing Association Limited would pass the charity test under [Section 7 of the Charities and Trustee Investment \(Scotland\) Act 2005](#). Therefore, it is eligible, in principle, to be registered as a charity in Scotland.

If you wish to go ahead with the organisation's registration as a charity, please forward a copy of the certificate of incorporation and a copy of the articles of association as incorporated. When you send the articles of association, please confirm this is the same as the draft that was received by OSCR on 13 May 2024. If you have made any changes, please draw these to our attention as this will help to speed up the process. The articles of association must be signed by two members of the company.

Please note that the proposed charity name will also need to be accepted by the FCA and Scottish Housing Regulator before we can award charitable status.

Once we receive these documents, we will complete the decision-making process to enable us to enter Rosehill Housing Association Limited in the Scottish Charity Register and issue a charity number. Please note that until this is done, Rosehill Housing Association Limited must not describe itself as a charity.

2.2 As we had obtained OSCR’s in-principle approval, I then contacted our Lender to share the revised Rules and to seek its updated consent to the proposed constitutional change which involves the adoption of the new updated rules and a name change. I received an out of office reply from our Relationship Manager, Grahame Andrew, who was on holiday. My email was then passed onto a colleague of Grahame’s, Grant Fraser. Grant emailed me later that night advising of the following:

“Grahame is on leave at the moment.

Reading the detail of the change, I cannot see this being an issue. Happy for you to take this E-Mail as Bank consent.”

2.3 If there is any further update to this matter I will report it to Committee at the meeting. However, as it stands we have obtained the updated consent from our lender.

3. Member/Tenant Engagement Update

3.1 Following the drop-in session leaflet being issued to our members/tenants, there has been a low turnout for the sessions as follows:

Date	Time	No. Members who attended
29/05/24	3:30 pm – 5 pm	2
29/05/24	6:15 pm – 7:30 pm	1
05/06/24	3:30 pm – 5 pm	2
06/06/24	9:30 am – 11 am	0
11/06/24	3:30 pm – 5 pm	0
12/06/24	6:15 pm – 7:30 pm	0
18/06/24	6:15 pm – 7:30 pm	2
20/06/24	9:30 am – 11 am	0

3.2 Despite the Customer Services Officer issuing reminders before each session, the turnout remained low, with no-one attending four of the sessions.

3.3 Out of the seven people who attended the sessions, five, following some discussion, advised they were happy with our plans and the reasons for changing our constitution. Four of them indicated they would attend the SGM to vote in favour of the proposal to change our constitution. It was agreed that if for any reason they couldn’t attend they would submit a proxy form, taking account of the need to have this submitted to our office

5 days before the SGM/AGM. Attendees were also asked to speak to their neighbours and encourage them to engage with us.

- 3.4 The other two tenants who attended a session, are not supportive of our plans. It became apparent that the first tenant hadn't attended the session to discuss our plans but rather to go over, in her view, that Rosehill previously, wrongly stopped its members/tenants from having the right to buy. I reminded the tenant that, as requested by her at the time of our discussions early last year, I had got our solicitor to provide legal advice on the matter of fully mutual housing co-operatives and the right to buy. However, the tenant was unhappy with the advice given. The tenant asked a couple of questions unrelated to our proposal and then left the session. The second tenant seemed to have concerns that by opening up our membership, organisations such as the Council would come on and take over. I did clarify that organisations couldn't become members of Rosehill if we changed our constitution. Concerned about tenants becoming the minority on the Committee and that others would have undue influence on key decisions e.g. that rents could double in a few years' time. Kerry, Paula and I tried to reassure him that wouldn't be the case, but our attempts were unsuccessful.
- 3.5 I also contacted a tenant who had requested that I phone her to discuss our proposal. Although she initially indicated that she didn't have any questions but just wanted to hear more about it, she subsequently asked more about people joining the Committee who are not connected with Rosehill. I tried to reassure her that the Committee wish to keep a majority of tenant members on the Committee and that this aim would be included in our new Membership Policy. I encouraged the tenant to attend one of the remaining drop-in sessions and speak to Committee Members about her concerns. She advised she was unable to attend due to work commitments. It was left that if she had any further questions she would get back in touch.
- 3.6 We now have a dedicated webpage about our proposed constitutional change and I have produced a further information leaflet about why it makes sense to vote in favour of the proposal. I have also produced 2 Vote Yes Posters which are displayed at reception and in the interview rooms. Although links to the webpage have been text/emailed to tenants, the latest information leaflet will be posted out to every tenant in the coming weeks.

Ongoing Engagement Plans

- 3.7 In the next few weeks I am planning to attend one of the breakfast club mornings at the local hall in an effort to engage with some of our

members/tenants. The club runs on Tuesday mornings. It would be helpful if a Committee Member could attend with me.

- 3.8 I also intend to produce a further leaflet based on the questions or concerns raised that we have received to date. This is likely to be distributed in August.
- 3.9 I am organising a stall at our Fun Day on 8th August (12:30 pm to 4:30 pm) to promote the proposed constitutional change. Staff will be advised to encourage and direct our members/tenants to the stall. I also intend to get the MC for the event to promote the presence of the stall throughout the afternoon. It would be helpful, if Committee Members who are available to attend the Fun Day could join me at the stall. Depending on how many could be available, we could set up a rota with hourly timeslots.
- 3.10 Then the next and final phase of engagement involves a door knocking exercise which will be undertaken by me and the Managers. Initially we will target the members who attended last year's AGM or submitted proxies. Depending on the outcome of this initial exercise, we will then do a wider door knocking exercise.

4. Risk

- 4.1 The risks relating to the proposed constitutional change including member engagement have been set out in previous reports. However, these have been set out below in the new format for assessing risk.

Risk Category	Mitigating Measure
<p>Governance:</p> <ul style="list-style-type: none"> • Could be seen as reducing/weakening tenant influence and control 	<p>Having a clear aim within our new Membership Policy that we have tenant majority on the Management Committee, where possible.</p> <p>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.</p>

<ul style="list-style-type: none"> • Members don't vote for rule change to become a charitable registered housing association. • Additional Regulation - We would also be registered with OSCR who would be another Regulator. • 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). • Not taking appropriate advice and giving the matter full consideration could lead to the wrong decision being made 	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p>Legislation & Regulation:</p> <p>Linked with the above Governance risk, if we failed to take appropriate advice including legal advice on</p>	<p>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</p>

<p>changing our constitution and following the required processes, we could breach the associated legal and regulatory requirements.</p>	<p>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.</p> <p>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.</p>
<p>Reputation:</p> <p>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.</p> <p>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</p>	<p>The measures outlined under Governance and Legislation/Regulation should mitigate this risk.</p> <p>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</p>

<p>suitably transparent about our plans, which could lead to dissatisfaction amongst our members (tenants).</p>	<p>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.</p> <p>When it is appropriate to do so we will notify other stakeholders and partners e.g. GCC of our plans to demutualise.</p>
<p>New Risk</p>	
<p>Customer:</p> <p>Lack of Tenant Engagement; Lack of Interest by Tenants (apathy)</p>	<p>Our communication/engagement with our members/tenants is well underway and the lack of response from tenants is an emerging risk.</p> <p>The additional steps being taken to improve communication and engagement may mitigate these risks. The steps include having a dedicated webpage; the latest info leaflet being sent out by post to all tenants; having a stall at our fun day in August and then carrying out a door knocking exercise.</p>

5. 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

6. Delivery of our Core Values

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

7. Compliance and Assurance

- 7.1 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 and, 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>Standard 4 - The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.</p> <p>Guidance 4.1 – 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>Standard 7 - The RSL ensures that any organisational changes or disposals it makes safeguard the interests of, and benefit, current and future tenants.</p> <p>Guidance Where an RSL is considering organisational or constitutional change, or acquisition or disposal of land or assets:</p> <p>7.1 The governing body discusses and scrutinises any proposal for organisational change and ensures that the proposal will benefit current and future tenants.</p>

7.2 Evidence Bank

Evidence	Assurance Exercise Location
<ul style="list-style-type: none"> Report for 03/07/24 meeting 	<ul style="list-style-type: none"> Regulatory Standard 4 – Guidance 4.1

	<ul style="list-style-type: none"> • Regulatory Standard 7 – Guidance 7.1
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7.2.1 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.

8. Summary

8.1 Following the non-binding indicative view from the FCA that the revised wording for 36.1 of the proposed new rules was acceptable, Committee approved the updated rules at its May meeting.

8.2 As the proposed new rules were originally approved at the March meeting, I had obtained the consent of our Lender at the time, to the constitutional change which involves adoption of the new rules and a name change to Rosehill Housing Association Limited. However, as the Management Committee had to approve the updated rules at its May meeting, it was necessary to obtain updated consent from our Lender. Consent would not be sought until our solicitor had received in-principle approval of our application to OSCR. This approval was obtained on 11th June, following which I emailed our Lender the updated rules and sought its further consent. Our own Relationship Manager was on holiday; therefore, a colleague provided the consent requested. If there is any update to this, it will be reported at the next meeting.

8.3 The communication and engagement with our members/tenants, which began in April, is well underway. Disappointingly the turnout was low for the drop-in sessions held over a 4-week period. Out of 8 sessions only 7 members/tenants attended. With the exception of 2, all of the members/tenants were supportive of our plans and most agreed to attend the SGM or at least submit a proxy.

8.4 Our ongoing engagement plans are set out in paragraphs 3.7 -3.10.

8.5 We have considered the risks and mitigating measures relating to the proposed constitutional change and member engagement as set out in Section 4.

8.6 Section 5 shows how the matter of the proposed constitutional change links to the delivery of our strategic objectives.

8.7 Section 6 shows how the matter of the proposed constitutional change links to the delivery of our core values.

8.8 Section 7 sets out how we comply with Regulatory Requirements.

8.9 Committee is asked to note this report and that any updates on aspects of it e.g. lender consent, will be provided at the meeting. Committee is invited to discuss the ongoing engagement plans as set out in paragraphs 3.7 – 3.10.