

Confidential – For Decision

Agenda Item: 14.1
Date of Meeting: 29/11/23

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

1. Introduction and Purpose

- 1.1 Following completion of the constitutional review earlier in the year, Committee decided at its May meeting to proceed with changing its constitution from being a fully mutual housing co-operative to a charitable housing association.
- 1.2 There are still a number of processes to be undertaken to lead up to a SGM being held in September 2024 to seek Members consent to the change of our constitution, which will involve adopting the SFHA Charitable Model Rules 2020. The purpose of this report is to:
- Present a timetable of key stages/processes for Committee's consideration;
 - Decide on a date of the next session to be held to consider the SFHA Charitable Model Rules 2020;
 - Approve an updated proposal from Linda Ewart on the additional work she will undertake to assist with the constitutional review.

2. Background

- 2.1 Last year Committee began discussions about whether the “fully mutual” model remained fit for purpose and continued to be the way forward. The context for this was the increasing challenges of recruiting and retaining Committee Members. In addition it was recognised that our External Auditor had raised the matter in a previous Audit Report (known also as Management Letter) that as we are not a Charity we are subject to paying tax. The Auditor suggested that we looked into the possibility of changing to Charitable status.
- 2.2 It was recognised that changing our status from “fully mutual” to “charitable” may have the added benefit of Rosehill being exempt from some taxation e.g. corporation tax, however, the main driver for any potential change was the challenges of recruiting and retaining committee members. It was recognised that by becoming a Charity, we

could open up our membership to non-tenants e.g. people who live or work in the area or people who support the objectives of Rosehill.

- 2.3 Committee decided that a constitutional review should be included in the plans to commission a governance and assurance review. The review would be done in two parts, with part one the governance and assurance review being carried out first. This was completed by September 2022. The second part which would be the constitutional review would commence at the start of 2023.
- 2.4 The successful consultant appointed was Linda Ewart. Linda produced an initial report for Committee which was considered at its January 2023 meeting. This was in preparation for holding the first session with Committee in February 2023.
- 2.5 Linda's initial report, presentation for the first session and the notes and Q&A from the session were uploaded to Decision Time > Resources under a dedicated folder "Constitutional Review".
- 2.6 Committee held its second and final session on the constitutional review on Tuesday 16th May. In addition to Linda Ewart being there, our solicitor Lauren Little also attended and made a presentation on the legal processes and considerations for changing from a fully mutual to a charity. Lauren's presentation was uploaded to the folder on Decision Time along with the notes from the session.
- 2.7 I had reported at the time that if the decision was to change our constitution I would then draft a timetable of key processes and stages with input from Linda Ewart and Lauren Little where required. I also reported that in the coming months the Committee would need to make further decisions about provisions to be contained in the new rules around quotas for membership of Rosehill and the Management Committee e.g. if tenants should form the majority of members of Rosehill and whether there should be a maximum number of places on the Committee for Rosehill tenant members. Any restrictions/limitations on the make up of the Management Committee would need to be carefully considered. We do not want to set limits that are so restrictive we continue to face challenges on recruiting committee members.
- 2.8 Last month I updated Committee that I had agreed to meet with Linda Ewart in early January to draft communication material for issuing to our tenants/members in February about the proposed constitutional change. The aim is to have the draft material ready for presenting to Committee at its January meeting for approval before issuing to tenants/members.

3. Current Position

3.1 Timetable for Constitutional Change

3.1.1 Based on the processes covered in Lauren Little's presentation to Committee in May, I drafted an initial timetable which I subsequently asked Lauren to review and provide further detail for the processes that require to be undertaken. Attached at Appendix 1 is a copy of the Timetable for Committee's consideration.

3.2 Draft Charitable Model Rules 2020 – Committee Session

3.2.1 Before Committee is in a position to approve the draft new rules, which as per the Timetable is scheduled for the March Committee meeting, it needs to have consideration of the various provisions within the Model Charitable Rules. To facilitate this, it is being proposed that a session is held in late January with Linda Ewart and, if possible, Lauren Little our solicitor. Linda has confirmed her availability for the week beginning 29th January 2024 as follows:

Monday 29th, Tuesday 30th and Wednesday 31st January 2024

3.2.2 Our solicitor Lauren has confirmed that currently she would be available on these dates but would need us to confirm as soon as possible. It is assumed the session will start at 6 pm and will last approximately 60 – 90 minutes.

3.2.3 Committee is asked to approve the proposal to hold a session in January 2024 to consider the various provisions of the Model Charitable Rules and to decide what date (based on the dates above) the session should be held.

3.3 Proposal from Governance Consultant – Additional Tasks

3.3.1 Linda Ewart was successfully appointed last year to carry out the two parts of the Governance Review. In terms of the Constitutional Review, Linda's proposal covered the work to support Committee to review and decide on whether to change our constitution. Now that this work has been completed and the decision is to proceed with a constitutional change, Linda's support is needed to undertake some of the associated processes. Attached is a proposal setting out the additional work required which includes: producing communication material for issuing to tenants/members; facilitating additional committee session in January; drafting new policies such as Membership Policy, Committee Recruitment Policy and Succession Policy.

3.3.2 Whilst our Purchasing, Procurement and Tender Policy states that works/services ranging in value from £750 to £15,000 require at least 2 quotes, Committee is being asked to approve the proposal from Linda Ewart, at a cost of £3,162.50, on the following basis:

- Linda was successfully appointed last year through the quick quote process. Two people were invited to quote but only Linda submitted a quote;
- Linda has assisted Committee with the constitutional review so far and to ensure continuity it would make sense for Linda to carry out the additional tasks.
- Linda's work on the constitutional review and previous work she has undertaken for Rosehill means she has a sound knowledge of the business of Rosehill and fully understands the reasons for the constitutional change.

3.3.3 As can be seen from the proposal, Linda is stating her approach is flexible and the support she can provide can be adapted to meet our needs during the process.

4. Risk

4.1 The risks about changing our constitution were set out in my report presented to Committee in May remain relevant. For ease of reference they are set out below.

4.2 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 ensuring that sufficient places on the Committee are reserved for tenant members. 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.

Members don't vote for rule change to become a Charity. 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.

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.

- 4.3 It should be acknowledged 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.
- 4.4 From the information provided at both Constitutional Review Sessions, Committee concluded that there were more advantages than disadvantages to changing to a Charity. The advantages are clearly set out in both presentations, which are available on DecisionTime > Constitutional Review.

5. Compliance and Assurance

- 5.1 The approach the Committee has undertaken to carry out a constitutional review has involved obtaining independent and expert/legal advice. Committee held two review sessions with our Governance Consultant and Solicitor and concluded that it had sufficient information to make a decision. We will continue to receive expert and legal advice and support throughout the process until the Constitutional change has been completed.
- 5.2 Part of the process has been to consider any associated risks with changing our constitution which were covered in the two sessions and have been set out again in Section 4 of this report.

- 5.3 The approach being undertaken ensures we are compliant with Regulatory Requirements and in particular:

Standard 1

The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.

Guidance

1.1 The governing body sets the RSL's strategic direction. It agrees and oversees the organisation's business plan to achieve its purpose and intended outcomes for its tenants and other service users.

Standard 4

The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.

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.

4.3 The governing body identifies risks that might prevent it from achieving the RSL's purpose and has effective strategies and systems for risk management and mitigation, internal control and audit.

Standard 7

The RSL ensures that any organisational changes or disposals it makes safeguard the interests of, and benefit, current and future tenants.

Guidance

Where an RSL is considering organisational or constitutional change, or acquisition or disposal of land or assets:

7.1 The governing body discusses and scrutinises any proposal for organisational change and ensures that the proposal will benefit current and future tenants.

7.3 The RSL ensures adequate consultation with, and support from, key stakeholders including tenants, members, funders (who may need to give specific approval) and local authorities as well as other regulators.

Evidence bank

- 5.4 This report and the Timetable of Key Stages/Processes will be added to the evidence bank for Regulatory Standards 1, 4 and 7.

6. Summary and Decisions Sought

- 6.1 The Committee's reached its decision in May to proceed with the constitutional change which involves changing from a fully mutual housing co-operative to a charitable housing association.

- 6.2 A timetable setting out the key stages/processes has now been drawn up with input from our solicitor. The next step for the Committee is to review the various provisions of the draft model rules and it is proposed that a session being held at the end of January 2024.
- 6.3 The work undertaken by Linda Ewart, Governance Consultant in relation to the constitutional review has been completed, however further support is required to help implement some of the processes for changing our constitution. The cost proposal from Linda is attached at Appendix 2.
- 6.4 The risks associated with a constitutional change were considered during the two Committee sessions and were further covered in the Committee report presented at the May meeting. For ease of reference the risks are set out again in Section 4 of this report.
- 6.5 The approach adopted by Committee to undertake a constitutional review and now to proceed with constitutional change demonstrates our compliance with Regulatory Standards as set out in Section 5 of this report.
- 6.6 Committee is asked to consider this report and the attached documents and is asked to decide the following:
- To proceed with a Committee Session in January to consider the various provisions of the model rules and to decide what date the session should be held from the following dates - 29th, 30th and 31st January 2024;
 - To approve the cost proposal from Linda Ewart for undertaking additional tasks in relation to the constitutional change for the reasons set out in para 3.3.2 at a cost of £3,162.50.

Rosehill Housing Co-operative Ltd.

Proposal to Support Constitutional Change Process: November 2023

Introduction

1.1 Rosehill Housing Co-operative Ltd. (Rosehill) is a RSL which currently has fully-mutual status. Its regulatory status is 'compliant' (March 2023) and there is no ongoing engagement with the SHR.

1.2 In 2023, Rosehill undertook a review of its constitutional status. The review was prompted by the increasingly complex policy, operating and regulatory environments for RSLs and the associated challenges of recruiting voluntary committee members from the co-op's tenant membership which is associated with its fully-mutual constitution.

1.3 The constitutional review, which I was commissioned to undertake, reported to the Management Committee in February 2023. After consideration and a subsequent meeting which involved Rosehill's solicitor, the Management Committee decided (in May 2023) that it would be in the co-op's best interests to seek to change its constitutional structure and become a housing association that is also a Scottish Charity. It was agreed that this process, that will require the support for Rosehill's members, should be progressed during 2023/24, with the required Special General Meeting (SGM) being held in August / September 2024. I am very pleased to have been asked to support the process and to submit this proposal for the Committee's consideration.

1.4 I have experience of supporting housing associations in progressing constitutional change, including with rule amendments and the establishment of group structures, some of which have required consultation with tenants. I am familiar with the constitutional and regulatory requirements of Scottish RSLs (including the terms of the model rules published by SFHA) and the specific provisions relating to fully-mutual co-ops.

Proposed Approach

2.1 Rosehill intends to adopt Rules based on the Model which is published by the SFHA (2020): these are compliant with the SHR's regulatory and constitutional requirements and are recognised by both the Financial Conduct Authority (FCA) and the Office of the Scottish Charity Regulator (OSCR). It is possible to make amendments to the Model to reflect individual organisation's requirements: I have been asked to support the Management Committee in considering the proposed Rules, and any amendments to the Model, that will form the organisation's constitutional structure as a charitable housing association. I anticipate that amendments may be considered in respect of defining Rosehill's geographic area of activity and, potentially, membership eligibility.

2.2 Additionally, I have been asked to assist in developing information to support communication and consultation with Rosehill's tenants, all of whom are shareholding members who are eligible to vote at the SGM where the new Rules will be presented for approval: 75% of those attending the meeting must support the proposal for it to succeed. I have also been asked to draft policies which Rosehill will require to replace the current provisions for a fully-mutual co-op: these policies relate to Membership, Committee Recruitment and Succession Planning. I also anticipate that I may be asked to advise on matters of process, in consultation with Rosehill's solicitors, which I will be happy to do. I expect that much of my support will be desk-based, with attendance at some meetings and anticipate working closely with Rosehill's Director.

Outputs, Resources and Timescale

3.1 The table below indicates the support that I could provide and illustrates the sequence of tasks to be undertaken between January – September 2024: the time indicated is an informed estimate and will not be exceeded without prior discussion and agreement. If less time is required, only actual time spent will be chargeable.

| Task | Anticipated Time |
|--|-----------------------------------|
| Advice to Management Committee on proposed Rules and potential amendments, including attendance at meeting and preparation of report(s): January / February 2024 | 1 day |
| Advice and support in respect of communication with SHR: January/ February 2024 onwards | Included in liaison with Director |
| Advice on preparation of report(s) to Management Committee seeking approval to progress constitutional change and proposed Rules: March 2024 | 0.5 day |
| Advice and support in drafting initial communication to tenants: March / April 2024 | Included in ongoing communication |
| Drafting Membership Policy: April 2024 | 0.5 day |
| Drafting Committee Recruitment and Succession Planning Policies: April / May 2024 | 1 day |
| Advice and support in communication and consultation with tenants and preparation for SGM: May – August 2024 | 1.5 day |
| Liaison and communication with Director | 1 day |
| Total | 5.5 days |

3.2 My daily rate for this assignment will be £575: based on the task allocation above, the anticipated total cost would be £3162.50. Travel will be charged at 45p per mile. I am always happy to be flexible in my approach and so the support described above can be amended or adapted to meet Rosehill's requirements during the project period.

Ethical Code and Terms of Business

4.1 **Confidentiality:** The project consultant shall not disclose to any other party, without prior approval of the client, the detail and material provided by the client to

enable the commission to be carried out. All information and knowledge acquired during the assignment will remain confidential. The consultant shall not refer to this commission in any advertising or other promotional material, without the prior consent of the client.

4.2 Respect and Inclusion: The consultant seeks to adopt an inclusive and participative approach to all commissions. Linda Ewart's Statement on Equality and Diversity is attached to this proposal as Appendix One.

4.3 References: Referees can be provided on request.

4.4 Declaration of Interest: I confirm that I do not have any relationship with current or former employees or governing body members of Rosehill Housing Co-operative. I do not have any other interests that would be an obstacle to appointment. I have previously provided governance support to Rosehill Housing Co-operative, including in respect of constitutional change, assurance and compliance.

4.5 Payment Terms: A payment schedule would be agreed with the client. Payment should be made by BACS within 28 days following receipt of invoice.

4.6 Termination or Change of Commission Terms: The commission may be terminated by notice in writing by either party where the terms of the appointment have changed substantially or are not being fulfilled. In this case the consultant will invoice the client for work completed to the date of termination. The terms of the commission will be kept under review and can be amended with one month's notice.

4.7 Professional Indemnity: Linda Ewart carries professional indemnity insurance, to a value of £250,000. A copy of the relevant certificate can be made available on request.

Conclusion

5.1 I am always happy to be flexible in my approach to ensure that my assignments meet the client's needs: the methodology described in this proposal can be adapted to meet Rosehill's requirements. Thank you very much for inviting me to submit a proposal.

Linda Ewart
21 November 2023

Appendix One
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Policy Statement on Equality and Diversity

Through this policy statement, Linda Ewart affirms her commitment to respecting diversity and promoting equal opportunities.

To achieve this aim, I will take the following actions:

- The requirements of all applicable equality and anti-discrimination legislation will be met in full.
- All people with whom I have contact will be treated with respect and courtesy. Nobody will be treated less favourably because they belong to a particular group, for example because of their sex, race, colour, marital status, ethnic or national origins, disability, age, sexual orientation, or religious belief.
- I will consider equality issues routinely in providing advice to clients, irrespective of whether the consultancy commission relates specifically to equal opportunities policy and/or practice.
- I will ensure that my communication methods and materials reflect the needs of the people I work with, recognising for example that inappropriate use of technical language or jargon can exclude individuals or groups of people.
- I will only carry out work for organisations which are themselves fully committed to good practice in relation to equalities, based on a published policy statement.
- I will monitor developments in legislation and good practice, to ensure that knowledge of and commitment to equalities issues remains up to date at all times.
- In undertaking commissions, I will comply fully with the values contained in clients' own equal opportunities policies, and with any specific provisions that are relevant to the work being carried out.

I confirm that I have not been the subject of any findings by a court or employment tribunal on the grounds of unlawful discrimination, nor have any complaints ever been made by clients on the grounds of unacceptable conduct or practice.

Linda Ewart (revised September 2023)