

## For Decision

Agenda Item: 13.1  
Date of Meeting: 24/05/23

To: The Management Committee  
From: The Director  
Subject: Outcome of Constitutional Review

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### 1. Introduction and Purpose

- 1.1 Committee held its second and final session on the constitutional review on Tuesday 16<sup>th</sup> May with Lauren Little our solicitor from TC Young and Linda Ewart our governance consultant.
- 1.2 Following this session Committee is asked to decide the following:

To proceed with changing Rosehill's constitution from a Fully Mutual Co-operative to a "Charitable" Housing Association **or** retain the status quo.

### 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".

### 3. Current Position

3.1 Committee held its second and final session on the constitutional review on Tuesday 16<sup>th</sup> 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 has now been uploaded to the folder on Decision Time. The notes from the session will be available before the Committee meeting.

3.2 Committee is aware that making a decision to change our constitution involves a process which includes seeking the consent of members at a Special General Meeting. As we are changing our financial year effective from 1<sup>st</sup> April 2024, our current financial year is being extended by 6 months to the 31<sup>st</sup> March 2024. This change to our financial year means our AGMs will no longer be held in February or March but will be held in August or September. It is normal that if a Special General Meeting is required that it is held on the same evening as the Annual General Meeting. So our first AGM and potentially SGM, under the changed financial year will be August or September 2024.

3.3 If Committee decides it wishes to proceed with changing our constitution, I will be working with Linda Ewart (with input from Lauren where required) to identify a timeline for implementation of the various processes that are required.

3.4 In the coming months Committee will 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 will 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.

- 3.5 As we want to ensure the “buy in” of our members, we would embark on a communications strategy later this year and through next year. The aim being that by the time of the SGM in August or September 2024 our Members have a good understanding of the reasons for changing our constitution and we have their support when the matter is voted on at the SGM. Again I will be working with Linda Ewart on developing an effective communication strategy in the coming months.

#### 4. Risk

- 4.1 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 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.

- 4.2 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.
- 4.3 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, so I do not intend to repeat them here.

## **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 has held two review sessions with our Governance Consultant and Solicitor and has concluded that it has sufficient information to now make a decision.
- 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 3 of this report.
- 5.3 The approach 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 presentation from the second Constitutional Review Session will be added to the evidence bank for Regulatory Standards 1, 4 and 7.

## **6. Summary and Decision Required**

- 6.1 Committee began discussions last year about whether the fully mutual model remained fit for purpose. Following on from this Committee commissioned a governance and assurance review which was carried out in two parts, with the second part being a constitutional review.
- 6.2 Committee has considered a report from the appointed Governance Consultant, Linda Ewart and has held two review sessions with Linda, with our solicitor, Lauren Little, attending the second session. Committee heard from Lauren about the legal processes and considerations in relation to changing from a fully mutual to a charity.
- 6.3 If Committee decide that it wishes to proceed with changing our constitution certain action will be taken in the coming months as covered in paragraphs 3.2 to 3.5.
- 6.4 Committee considered the disadvantages/risks of changing to a Charity in the review sessions, which have been set out again in Section 3 of this report. Following the review sessions, Committee concluded that there were more potential advantages than disadvantages to becoming a Charity.

- 6.5 The approach to undertaking a constitutional review demonstrates our compliance with Regulatory requirements as set out in Section 5 of this report.
- 6.6 Committee is asked to consider this report and the information contained in the Constitutional Review folder on Decision Time. It is then asked to decide whether it wishes to proceed with changing from a fully mutual co-operative to a Charitable Housing Association **or** to retain the status quo.