

## **For Discussion**

Agenda Item: 11.1  
Date of Meeting: 28/08/24

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

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

- 1.1 At the May meeting, Committee approved the further amendment to the proposed new rules, following feedback 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 At last month's meeting I reported to Committee that we had now obtained "in principle" approval from OSCR and that updated consent had been obtained from our lender.
- 1.3 The next formal processes will be undertaken once the SGM has taken place and assuming the members (or majority of 75%) vote in favour of the constitutional change through adopting new rules and change in name to Rosehill Housing Association.
- 1.4 The purpose of this report is to provide an update with our ongoing communication and engagement with members/tenants over the proposed constitutional change.

### **2. Member/Tenant Engagement Update**

- 2.1 We had a stand at our Fun Day on 8<sup>th</sup> August which was covered by me and a rotation of Committee Members – Nicki, Sadie, Karen, Keiran and Hugh. By the end of the event, 14 tenants/members had visited the stand, all of whom advised they were happy with our plans to change our constitution. All completed proxy forms and confirmed they were happy for a committee member to act as their proxy and vote in favour of the constitutional change. Keiran, also spoke with a few tenants and got some names for visits to be carried out.
- 2.2 I have not yet managed to arrange to visit one of the breakfast club mornings at The Hall on Peat Road. I will decide shortly whether this is

still worthwhile and will be influenced by how well the door knocking exercise goes.

- 2.3 The door knocking exercise is underway and began week beginning 12<sup>th</sup> August. At the time of writing this report over 180 visits had been carried out. The results so far are:

Confirmed attendance at SGM/AGM and voting Yes	Voting Yes and submitted a proxy	Confirmed attendance at SGM/AGM and voting No	Undecided (how to vote and/or whether attending SGM/AGM)
22	26	1	18

- 2.4 Based on the above and those members/tenants who completed proxies at the fun day we have, at this time, 62 members supporting the constitutional change and will vote in favour of this at the SGM (either in person or by proxy). This does not include Committee Members' votes (9 who will be in person at the SGM and 1 appointing a proxy). In addition, we have 25 pending proxies, where the member/tenant has advised they will vote yes and will complete the proxy forms and return to the office. To encourage the return of these proxy forms, our Customer Engagement Officer is contacting the members/tenants to confirm they will be returned or if necessary, offer to collect them.
- 2.5 Currently, the total of confirmed attendance, proxies submitted, proxies pending and committee member attendance/proxy, is 97 votes in favour. There are also another 10 follow up cases that I or the Managers will be contacting shortly to discuss the matter further and hopefully will then be able to ascertain if they will be attending or submitting proxies.
- 2.6 There are approximately 4 – 6 members/tenants who were visited who didn't support our plans for various reasons e.g. happy with things as they are, concerned about who would come on the committee and "outsiders" being involved in decisions. However, none of them indicated that they would be attending the SGM/AGM or would submit a proxy.
- 2.7 I am still aiming to have a final information leaflet produced based on any feedback or questions, concerns raised by members throughout the engagement process. Staff are busy just now preparing the SGM/AGM packs to be sent out by 29<sup>th</sup> August. As such the final leaflet may not be able to go out until after this. If possible, I will at least try to get it uploaded to our website and links text or emailed to members, with any paper copies required going out after 29<sup>th</sup> August.

### 3. Risk

3.1 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><b>Governance:</b></p> <ul style="list-style-type: none"> <li>• Could be seen as reducing/weakening tenant influence and control</li> <li>• Members don't vote for rule change to become a charitable registered housing association.</li> <li>• Additional Regulation - We would also be registered with OSCR who would be another Regulator.</li> </ul>	<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> <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</p>

<ul style="list-style-type: none"> <li>• 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).</li> <li>• Not taking appropriate advice and giving the matter full consideration could lead to the wrong decision being made</li> </ul>	<p>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><b>Legislation &amp; Regulation:</b></p> <p>Linked with the above Governance risk, 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.</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 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</p>

	<p>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><b>Reputation:</b></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 suitably transparent about our plans, which could lead to dissatisfaction amongst our members (tenants).</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 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><b>New Risk</b></p>	
<p><b>Customer:</b></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</p>

	<p>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>
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#### 4. Delivery of our Strategic Objectives

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

#### 5. Application 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 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><b>Standard 4</b> - The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.</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</p>

	<p>and appropriate to its strategic role and decisions. The governing body is able to evidence any of its decisions.</p> <p><b>Guidance 4.2</b> – The governing body ensures that the RSL provides tenants, residents and service users with easy and effective ways to provide feedback and raise concerns, and ensures that the RSL considers this and provides a quick and effective response.</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 organisational change and ensures that the proposal will benefit current and future tenants.</p>
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## 6.2 Evidence Bank

Evidence	Assurance Exercise Location
<ul style="list-style-type: none"> <li>Report for 03/07/24 meeting</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory Standard 4 – Guidance 4.1 and 4.2</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 The current position with the ongoing engagement and communication with our members/tenants about the constitutional change is set out in Section 2.

- 7.2 We have considered the risks and mitigating measures relating to the proposed constitutional change and member engagement as set out in Section 3.
- 7.3 Section 4 shows how the matter of the proposed constitutional change links to the delivery of our strategic objectives.
- 7.4 Section 5 shows how the matter of the proposed constitutional change links to the application of our core values.
- 7.5 Section 6 sets out how we comply with Regulatory Requirements.
- 7.6 Committee is asked to discuss this report and the progress being made with our communication and engagement with members/tenants. Any updated results will be presented at the meeting.

## Proposed Constitutional Change

Over the last few months, we have been communicating and engaging with our members/tenants about the proposed change to our constitution. This would see Rosehill change from a fully mutual housing co-operative to a charitable registered housing association. It would also involve a name change from Rosehill Housing Co-operative Limited to Rosehill Housing Association Limited.

In previous information shared with members we set out the reasons why we want to change and what this means for our members/tenants. We emphasised that nothing will change about your rights or responsibilities as a tenant.

During our engagement, some members/tenants raised some questions or concerns. Therefore, we thought it would be helpful to cover these in this leaflet.

You asked	Rosehill replied
1) There are rumours that Rosehill is in financial difficulty and that is why it wants to change to a charity.	<p>Rosehill is a financially strong organisation. It has enjoyed a long track record of being financially viable and that still remains the case.</p> <p>The funding that Rosehill would hope to access by becoming a charitable registered housing association, is to enable us to provide wider role projects, initiatives and activities to support our tenants and the local community. Examples of these may include projects to support the development of digital skills and to tackle social isolation. It may also enable Rosehill to continue to hold its annual fun day and to hold other such events.</p> <p>The funding is <b>not</b> needed and will <b>not</b> be used for:</p> <ul style="list-style-type: none"><li>• Delivering normal services to our tenants e.g. repairs service;</li><li>• Planned maintenance works to our tenants' homes e.g. renewal of kitchens, bathrooms, windows and doors.</li></ul>

<p>2) What is the difference between a Housing Co-operative and a Housing Association?</p>	<p>Rosehill is currently a fully mutual housing co-operative. This means that membership is restricted to Rosehill tenants only and all tenants must be members.</p> <p>In a Housing Association membership is open to not just the tenants of the organisation. In addition the tenants are not required to be members, as membership is optional.</p>
<p>3) Why do we want to change? Is Rosehill being taken over?</p>	<p>The main reason Rosehill wants to change to being a housing association is that currently its membership is restricted to its own tenants, who in turn form the pool for recruiting for the Management Committee, however, it is becoming increasingly difficult to encourage members/tenants to join the Committee. If we change to a housing association our membership can be opened up beyond our tenants and this could help address the challenges of recruiting to our Management Committee.</p> <p>As a housing association, Rosehill can become a Scottish Charity and would then be able to apply for grants and funding to support wider role activities.</p> <p>Rosehill is not being taken over. Rosehill will still exist but as a Housing Association instead of a Housing Co-operative. Day-to-day nothing changes for our tenants:</p> <ul style="list-style-type: none"> <li>• The tenancy agreement remains unchanged, tenants will still have the same rights and responsibilities;</li> <li>• The services we currently provide e.g. repairs service, remain the same;</li> </ul>

	<ul style="list-style-type: none"> <li>• Our office will still be at 250 Peat Road;</li> <li>• Our staff team remains the same.</li> <li>• Tenants' membership of Rosehill will continue. (However, if we become a charitable registered housing association tenants will have the choice to stay a member or cancel their membership without affecting their tenancy agreement.)</li> <li>• Existing members of the management committee will remain in their roles</li> </ul>
<p>4) How will the charitable status impact on Rosehill's compliance with statutory regulation of its 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 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>5) Concerned about non-tenants being on the Committee and making decisions that affect tenants.</p>	<p>The Management Committee did consider the risk of losing tenant control. To help address this, the new Membership Policy will include a key objective that tenants form the majority of the Committee. If Rosehill becomes a Housing Association and opens up its membership, it would still intend to include tenants within future recruitment campaigns for any</p>

	<p>vacancies on the Management Committee. However, if it can't get enough tenants to join, it will have the ability to recruit other people onto the Committee.</p> <p>The current Management Committee (10 x tenant members) believes that becoming a charitable registered housing association and opening up the membership of the organisation, is the right thing for Rosehill. It believes that bringing some other people onto the Committee could strengthen the Committee both in terms of numbers and skills.</p>
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