

**Confidential – For Discussion**

Agenda Item: 13.3  
Date of Meeting: 28/02/24

**To:** The Management Committee  
**From:** The Director  
**Subject:** Constitutional Change – Draft Model Rules

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**1. Introduction and Purpose**

- 1.1 In late 2022, Committee had commissioned Linda Ewart, Governance Consultant to carry out a governance and assurance review. This was done in two parts, with the second part being a review of Rosehill's constitution and to consider Rosehill changing from a fully mutual housing co-operative to a Housing Association with charitable status.
- 1.2 This resulted in a report from Linda Ewart, followed by two Committee discussion sessions (February and May 2023) with our solicitor, Lauren Little, TC Young attending the second session. At both sessions Committee considered the options open to it, including the option to retain the status quo. It also considered the benefits and risks of de-mutualising and remaining as a fully mutual housing co-operative.
- 1.3 On conclusion of these sessions, Committee made its decision at its May 2023 meeting that it wished to proceed with demutualising and becoming a Housing Association with charitable status, this decision was on the basis that the matter would need to be put to the Members at a Special General Meeting.
- 1.4 The next stage of the process was for Committee to consider the draft model rules (based upon SFHA Charitable Model Rules (Scotland) 2020). A further committee session was held on 30<sup>th</sup> January 2024 to look at the model rules in more detail and to explore the advantages and disadvantages of any potential amendments to the rules, primarily around membership of Rosehill and Committee membership. Linda Ewart led the session with Lauren Little providing clarity and legal advice where necessary to aid the discussion.
- 1.5 As the session on the 30<sup>th</sup> was not a Committee meeting no formal decisions were made, however, Committee indicated its preferences for particular variations to the rules which was to enable Linda and Lauren to re-draft the rules accordingly.

1.6 The purpose of this report is to:

- Summarise the preferences of Committee from the session on 30<sup>th</sup> January;
- Present the updated draft rules, showing the preferences of Committee to date;
- Seek Committee's further preference in relation to rule 59.5 (to be renumbered as 58.5) as to whether there should be a requirement for the position of Chair to be held by a tenant committee member.

1.7 Committee is reminded that the final draft of the proposed new rules will be presented at its March meeting for formal decision.

## 2. Review of Model Rules – Committee Session 30/01/24

2.1 Linda presented the draft rules which had been prepared by Lauren Little and her colleague Jacqui Baynham with input from Linda and myself. A summary of the proposed changes and Committee's preferences are set out in the table below. Committee is asked to note that the notes from the Session which provide more detail, will be made available on Decision Time shortly. Attached is a copy of the commentary on the proposed changes that Linda Ewart produced and was issued to Committee prior to the session.

Changes	Committee's preferences
Our name would need to change, as we would no longer be a co-operative, our name would be Rosehill Housing Association.	N/A
Rule 2 - Revises Rosehill's purpose and objects to (a) allow tenancies to be granted to people who are not members; (b) describe Rosehill's permitted activities, to align with charitable purposes	N/A
Rule 6 and Rule 7 enable an option to have "organisations" as members. Linda explained that she and I had previously discussed this option and had concluded that we couldn't see any particular benefit of having organisations as members.	See Rule 7 below

<p>Therefore, it was being recommended that we do not include this option in the rules.</p>	
<p>Rule 7 – Applying for Membership – this now goes beyond tenants. Tenants can become members if they wish but they are no longer required to do so, which is a big change. Membership would be open to tenants, services users of Rosehill and other persons who support the objects of Rosehill.</p> <p>Having a clear membership policy in place will be key. The management committee has complete discretion in approving membership applications. Membership applications cannot be considered during the 14-day period leading to a general meeting. Joint membership not possible: one member = one vote</p>	<p>Following discussion Committee advised its preference would be to keep the proposed membership categories i.e. tenants, service users and others who support the objects of Rosehill but not to include organisations.</p>
<p>Rule 10 – This is a new provision in the model rules and requires non-tenant members to notify Rosehill of a change of address within 3 months.</p>	<p>N/A</p>
<p>Rule 11 - introduces grounds for ending membership but not related to a tenancy ending. The grounds include missing 5 AGMs in a row where no apologies have been submitted or a representative appointed to attend and vote on the member's behalf.</p>	<p>N/A</p>
<p>Rule 13 (will be renumbered as Rule 12) – Specifies that shares cannot be held jointly. Joint tenants of Rosehill may become individual members. This is another big change from our current fully mutual rules, where</p>	<p>N/A</p>

<p>there is only one member per household but joint tenants can hold joint membership/share with the first named being the member will full membership rights i.e. attend the AGMs and vote on any matters and be able to stand for election to the Committee.</p>	
<p>Rule 37 (will be renumbered as Rule 36) – This relates to Committee Membership. Maximum number of Committee Members to be 12 which maintains the status quo. However there is now a big difference to Committee Membership as anyone who is a member can apply to join the Management Committee. No longer restricted to tenants (as required by fully mutual rules) but membership now also open to service users and others who support the objects of Rosehill. Potential to build in a safeguard that there be a tenant majority for Committee membership.</p> <p>The advantages and disadvantage of such a provision were discussed at length with Lauren Little providing some scenarios of the challenges that may arise if a tenant majority requirement is added to the rules.</p>	<p>Committee concluded its preference would be to keep membership of the Committee more open and therefore not to add a tenant majority requirement to the rules. However, its preference was to restrict the number of places on the Committee for non-tenant service users to 2 places.</p>
<p>Rule 43 (will be renumbered as Rule 42) This relates to eligibility to join the Committee. There is an optional provision 43.1.12 (42.1.12) that can be added in relation to members who are related to existing Committee Members. It is being proposed that this optional provision be</p>	<p>Committee’s preference was to go with the amended optional provision i.e. a person can not join the Management Committee if they live at the same address as a Committee Member.</p>

amended to prevent two or more members living at the same address being Committee Members at the same time.	
Rule 59.5 (will be renumbered as 58.5) Proposes a requirement that the Chair must be a tenant member (59.5): this is not included in the Model Rules, although other RSLs have similar requirements.	Committee discussed the pros and cons of this but advised it wished to give this further consideration. It was agreed that this would be discussed further at the Management Committee meeting in February.

2.2 Based on the preferences Committee expressed at the session, Linda helpfully updated the draft rules to reflect these. She also added suggested wording for rule 36.1 in relation to restricting membership of the Committee to two places for factored owners. This version of the rules was then shared with our solicitor, Lauren Little, to review and advise accordingly. A copy of the latest version of the draft rules are attached. A copy is also available under the Resources Section on Decision Time > Constitutional Review > Draft New Rules.

2.3 Committee is now invited to consider further the proposed change to Rule 59.5 (58.5) in relation to the requirement that the Chair must be a tenant member. Once Committee has determined its preference I will let Linda and Lauren know to enable them to finalise the draft rules. As mentioned earlier in my report, the final draft of the rules will be presented at the March meeting for Committee's approval.

### 3. Risk

3.1 The risks relating to a change in our constitution are primarily in terms of governance, legislation/regulation and reputation. These are considered 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 housing association with charitable status. 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.

#### 4. Compliance and Assurance

4.1 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 will ensure we are meeting our legal and regulatory requirements.

4.2 In particular:

##### **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.

##### **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.

#### Evidence Bank

4.3 A copy of this report, Linda Ewart's Summary of the Proposed Changes to the Rules (issued prior to the session on 30/01/24) and the notes from the session will be added to the evidence bank for Regulatory Standards 4 and 7.

4.4 Committee is reminded that the Assurance Exercises (with links to the evidence bank) are available to review on the Committee log-in area of our website.

#### 5. Summary and conclusions

5.1 Beginning in late 2022, Committee has been considering changing its constitution to a housing association with charitable status. Taking advice

from our Governance Consultant and Solicitor and following committee sessions to explore the proposal further, Committee made its initial decision in May 2023 to proceed with the constitutional change which also involved a name change. This was on the basis that the proposal would need to be put to our Members for approval.

- 5.2 More recently Committee had a discussion session with our Governance Consultant and Solicitor to explore possible amendments/variations to the Charitable Model Rules and to consider the associated potential risks and challenges. Committee's preferences for any variations are set out in the Table at Section 2.
- 5.3 There was one remaining amendment/variation that Committee agreed they wished to consider further and that this would be done at the February Committee meeting. This was in relation to Rule 58.1 and was about whether to include a requirement that the Chair must be a tenant member. The latest version of the draft rules, reflecting the committee's preferences in relation to Membership of Rosehill and Committee Membership are attached.
- 5.4 The risks and mitigating measures in relation to changing our constitution are set out in Section 3.
- 5.5 Under Section 4 we demonstrate our compliance with Regulatory Standards.
- 5.6 Committee is asked to consider this report and the latest version of the draft rules. Committee is also asked to discuss its preference for Rule 58.1 as to whether a requirement that the Chair be a tenant member be included.
- 5.7 Once Committee is clear on its preference for rule 58.1, I will update Linda Ewart and Lauren Little. Lauren will then produce a finalised draft of the rules to be presented to Committee at its March meeting for approval.

## Rosehill Housing Co-operative

### Proposed Constitutional Change to become Community Benefit Society and Scottish Charity

This table has been prepared to support the Management Committee's consideration of the draft Rules which have been prepared. If adopted by Rosehill's members at a Special General Meeting, the new Rules will mean that Rosehill becomes a housing association and will no longer be a fully-mutual co-operative. As previously discussed by the Management Committee, consequently, tenants will no longer be required to become members and membership of the management committee will not be restricted to tenants.

To change Rosehill's status from fully-mutual co-op to a community benefit society, the Model Rules developed by the SFHA have been used. The Model Rules have been approved by the SHR and by the Financial Conduct Authority (FCA) – which has to register the new Rules for them to take effect. It is possible to make some amendments to the Model to take account of specific circumstances: this table identifies where any are proposed for Rosehill. The table also highlights the key changes which the proposed new Rules will introduce, compared to Rosehill's current constitution:

Rule	Effect of proposed change
1.	States the organisation's name as Rosehill Housing <b>Association</b> Limited.
2.	Revises Rosehill's purpose and objects to (a) allow tenancies to be granted to people who are not members; (b) describe Rosehill's permitted activities, to align with charitable purposes
6; 7	Opens membership to tenants, service users and other people who support Rosehill's aims and activities, subject to the published membership policy (to be developed); the management committee has complete discretion in approving membership applications. Membership applications cannot be considered during the 14-day period leading to a general meeting. Joint membership not possible: one member = one vote (see also R13 below). Organisations will continue to be ineligible for membership – the Model permits organisations to join but it is not proposed to expand Rosehill's membership in this way.
10.	Introduces requirement for non-tenant members to notify Rosehill of change of address
11.	Introduces grounds for ending membership, not related to a tenancy, including failure to attend five AGMs
13.	Specifies that shares cannot be held jointly (see 6&7 above)
37.	Membership of the management committee is open to shareholding members, who are not required to be tenants. That tenants should make up a majority. Whilst it would be possible to amend the Model to

	<p>require that a majority of elected committee members are Rosehill tenants, there are disadvantages that would have to be considered. This can be discussed at the session on 30 January.</p> <p>Introduces a requirement for committee members to comply with a direction made in accordance with Scottish charity law, reflecting Rosehill's proposed status as a Scottish charity.</p>
38.	Introduces requirement that the management of any interests and any payments / benefits to committee members comply with Scottish charity law
43.	<p>Amends the grounds which would make someone ineligible to become a member of the management committee to include those relating to misconduct with another charity (in Scotland, England or Wales). Rosehill is proposing to prevent two (or more) members living at the same address being committee members at the same time – this is a variation of an amendment that some RSLs have adopted, with approval from SHR, that prevents people who are related from being committee members at the same time. The justification for this proposed amendment is to ensure good governance by seeking to ensure that no undue influence can be exercised by people with a shared agenda</p>
59.	Proposes a requirement that the Chair must be a tenant member (59.5): this is not included in the Model Rules, although other RSLs have similar requirements. The justification for this proposal is, as at Rule 37, to ensure that Rosehill Housing Association is identified as a community controlled organisation that is accountable to tenants and whose activities are informed and influenced by the direct experiences of tenants.
86.	Specifies that consent from the Office of the Scottish Charity Regulator (OSCR) is required if the Association is to be wound up
88.	Introduces a requirement to obtain OSCR approval, in advance, if Rosehill intends to amend its objects and / or its name

Linda Ewart  
January 2024