


#### 4. SOCIAL HOUSING FUNDING



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##### **PURPOSE OF REPORT**

1. The purpose of this report is to provide information to councillors so that they can:
  - (a) consider the options for funding the Council's social housing portfolio;
  - (b) decide on the options to be consulted on through a special consultative procedure;
  - (c) make a decision on social housing rentals for 2009 before 1 May 2009.

##### **EXECUTIVE SUMMARY**

2. On 27 March and 28 April 2008 the Council made decisions that increased by 24% the rentals charged in respect of its social housing units. This did not include the Whakahoa Village units.
3. The process adopted by the Council prior to it making those decisions was challenged by the Council of Social Services on behalf of tenants. An application for a judicial review of the process was granted by the High Court.
4. The Council's decisions were overturned by the Council because the Council failed to have regard to the significance of the decisions and in that context failed to adequately consider the views and preferences of affected persons at the time it was identifying and assessing options for dealing with its social housing portfolio. The Court also found that the Council had not considered all reasonably practical options to meet the funding requirements of the portfolio.
5. The Court criticised the Council for defining too narrowly the issues to be determined. It was noted that rather than being inadequate rental income, the real problem was insufficient funding for maintenance and other costs associated with providing social housing.
6. Social Housing is currently under funded and has been for the past four (or more) years. This situation will become much more serious in the next 10 years when substantial maintenance and renewal issues will arise.
7. This report addresses that criticism and provides information for councillors to make decisions on the reasonably practicable options that have been identified by staff for addressing the funding issues facing the Council.
8. It also recommends a process for obtaining the views and preferences of social housing tenants and the wider community.
9. When that process is completed, the Council will be in a position to make a decision on the future funding of the social housing portfolio. This can be incorporated into the 2009-19 LTCCP and will enable rents to be adjusted for 2009.

##### **FINANCIAL IMPLICATIONS**

10. There are financial implications associated with each option that is identified in this report. They have been included in the information provided on those options.
11. Essentially, the Council's social housing portfolio must be funded from:
  - (a) rental income alone; or
  - (b) a mix of rental income and funding from other sources.

12. One of those sources is the Council's income from rates. The Council's current policy, confirmed in the social housing strategy, is that social housing is to be rates neutral.
13. The financial effect of each option identified by the Council will be further addressed in the proposal going out for consideration.

#### **Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?**

14. This report focuses on options for funding with effect from 1 May 2009. Any decisions made by the Council will follow the completion of a special consultative procedure. These decisions will be included in the 2009/19 LTCCP.

#### **LEGAL CONSIDERATIONS**

15. The High Court in the COSS case found against the Council in three areas. The Court's judgement said that the Council had failed to:
  - (a) identify and assess all reasonably practicable options, as required by section 77(1) of the Local Government Act 2002. In particular, the Council failed to properly assess the option of government funding;
  - (b) obtain and give consideration to the views and preferences of persons likely to be affected, in particular its social housing tenants, in the manner that the Court considered was required under section 78(1) of the Act;
  - (c) comply with the requirements of section 80 of the Act by not expressly addressing inconsistencies between the decisions made by the Council and its 2006/16 LTCCP;
16. The decision making process referred to in this report will address the failures identified by the Court.
17. Council staff have identified various options for funding the Council's social housing portfolio. These will be set out in the statement of proposal to be distributed under the special consultative procedure and will include the option of government funding.
18. The views and preferences of persons likely to be affected by or have an interest in the future funding of the social housing portfolio will be obtained through the adoption of the special consultative procedure.
19. The Court described the Council's breach of section 80 of the Act as being "largely of a technical nature". The special consultative procedure being adopted before the Council decides on funding issues in respect of the social housing portfolio is similar to the procedure required for amending the LTCCP. Any decisions made will be incorporated in the 2009/19 LTCCP.
20. The High Court criticised the Council for not having considered the significance of the decision to increase social housing rents by 24%. This will be addressed if a special consultative procedure is carried out before the Council makes a decision on the funding issues that it faces. If this procedure is adopted, a statement of proposal will be prepared and included on the agenda for the meeting on 19 December 2008.
21. It is recommended that the Council determine that the issue has a reasonably high degree of significance. This is because of the rental increases and the substantive change to Council policies if certain options are adopted (i.e. elements of rates funding or asset sales).
22. The process recommended in this report is consistent with the matter being determined as significant.

### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

- 23. The activity management plans in respect of the Council's social housing portfolio will require amendment according to the decisions made by the Council in respect of funding issues.

### **Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?**

- 24. The options referred to in this report will, to a lesser or greater degree, ensure that the Council is able to continue to maintain a portfolio of social housing units. This commitment is contained in the 2006/16 LTCCP.
- 25. Any change to that commitment as a result of public consultation through the special consultative procedure will need to be included in the 2009/19 LTCCP.

### **ALIGNMENT WITH STRATEGIES**

- 26. The Council's housing policy states that this activity is to be financially self supporting (allowing for depreciation, loan servicing, administration and maintenance). It also records the Council's commitment to providing a safe and pleasant environment and a maintenance and support service responsive to the reasonable requirements of tenants.
- 27. Any decision on funding issues that may impact on these commitments will require amendment of the policy. This can be achieved at some future time, also by way of the special consultative procedure.
- 28. In October 2007 the Council adopted a Social Housing Strategy. This also included reference to the housing portfolio being self funding. Any change to this can also be made, depending on the outcome of the process for determining funding issues.
- 29. It is not envisaged that these amendments will have any effect on the considerable amount of work and consultation that preceded the decision to adopt the housing policy and Social Housing Strategy.
- 30. Any consideration of the possible sale or other disposal of the Council's social housing portfolio, however, will require a separate consultative process to that referred to in this report.

### **CONSULTATION FULFILMENT**

- 31. Council staff have drawn on existing information and knowledge of the views and preferences of affected people and organisations in preparing this report. Whilst a preferred option can be identified, the statement of proposal will include other reasonably practicable options. This will be available for tenants and the wider community to consider during the special consultative procedure.

### **STAFF RECOMMENDATION**

- 32. It is recommended that the Council:
  - (a) address the funding issues arising from the Council's ownership of its social housing portfolio for the period commencing on 1 July 2009;
  - (b) determines that these issues are significant;
  - (c) considers the options for addressing those issues set out in the staff report;
  - (d) adopts the preferred option referred to in the appendix;
  - (e) obtains the views and preferences of tenants and the wider community through a special consultative procedure that will include the opportunity to consider all reasonably practicable options as well as the Council's preferred option;

- (f) makes no decision with regard to funding issues until the consultation process is completed;
- (g) before making any decisions, determines whether or not government funding is available;
- (h) incorporates its decisions into the 2009-19 LTCCP;
- (i) supports the proposal that the Council's housing working party meets with interested organisations to discuss the future of social housing in Christchurch.

**BACKGROUND (THE ISSUES)**

33. On 27 March and 28 April 2008 the Council made decisions that increased by 24% the rentals charged in respect of its social housing units (except the Whakahoa Village complex).
34. The process adopted by the Council prior to it making those decisions was challenged by the Council of Social Services on behalf of tenants. An application for a judicial review of the process was granted by the High Court in its decision dated 25 November 2008.
35. There were three grounds on which the Court granted the application. The council was found to have failed to:
  - (a) identify and assess all reasonably practicable options, as required by section 77(1) of the Local Government Act 2002. In particular, the Council did not assess the option of seeking government funding.
  - (b) obtain and give consideration to the views and preferences of persons likely to be affected, in particular tenants, in the manner in which the Court considered was required under section 78(1) of the Act;
  - (c) comply with the requirements of section 80 of the Act with regards to expressly addressing inconsistencies between the Council's decisions and its 2006/16 LTCCP.
36. The parties to the action were required to consider the precise form of the order to be made by the Court. Agreement was reached between them and an order has been made by the Court.
37. One of the requirements of that order is that the Council makes a new decision with regard to its social housing rentals for the period 1 July 2008 – 20 June 2009. This decision will be made by the General Manager, Community Services Group, acting pursuant to his delegated authority. Rentals will increase by the level prescribed in the annual CGPI which is currently at 2.3%.
38. The amount overpaid by each tenant will be refunded, probably prior to Christmas.
39. The purpose of this report is to provide information to councillors in respect of the reasonably practicable options identified by staff for dealing with the funding issues arising from ownership of the social housing portfolio. In doing so, staff have had regard to the judgement delivered by the Court in COSS v CCC and the steps required to address the Court's view of the Council's compliance with the consultation and decision making obligations set out in the Local Government Act 2002.
40. Whilst the Council may indicate its preferred option, all reasonably practicable options identified by staff will be included in the statement of proposal to be distributed in accordance with the special consultative procedure. This will meet the Court's concerns as they relate to this particular matter.
41. By adopting the special consultative procedure, the Council is recognising the significance of this matter at the level considered by the Court to be appropriate. Also, steps will be taken to determine whether or not government funding is available.

## **THE OBJECTIVES**

42. The objectives of this report are to put in front of councillors the reasonably practicable options identified by staff for addressing funding issues arising from the Council's social housing portfolio. It also recommends that the views and preferences of tenants and the wider community with regard to these issues be obtained through a special consultative procedure. A decision on which of the options should form the basis of the Council's decision in the matter will not be made until those views and preferences have been heard.

## **THE OPTIONS**

43. **Attached** to this report are the options that have been identified by Council staff and information with regard to each one. It is proposed that further work is carried out on these before they are included in the statement of proposal put out for consultation.

## **THE PREFERRED OPTION**

44. It is recommended that Councillors adopt the preferred option referred to in the appendix.