



LANCASTER
CITY COUNCIL

Promoting City, Coast & Countryside

EXTRAORDINARY COUNCIL MEETING

Wednesday, 31 March 2010

6.00 p.m.

Lancaster Town Hall

Mark Cullinan,
Chief Executive,
Town Hall,
Dalton Square,
LANCASTER



LANCASTER CITY COUNCIL

Promoting City, Coast & Countryside

Sir/Madam,

You are hereby summoned to attend an extraordinary meeting of the Lancaster City Council to be held in the Town Hall, Lancaster on Wednesday, 31 March 2010 commencing at 6.00 p.m. for the following purposes:

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST**
3. **LANCASTER MARKET** (Pages 1 - 38)

To consider the recommendations of Cabinet from its meeting on 23rd March 2010.

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Chief Executive

Town Hall,
Dalton Square,
LANCASTER,
LA1 1PJ

Published on Tuesday 23rd March, 2010.

COUNCIL**Lancaster Market
31 March 2010****Report of Cabinet****PURPOSE OF REPORT**

This is a referral report from Cabinet. It presents the findings of the Cabinet Working Group, established by a resolution of full Council on 3 March 2010, to consider the future of Lancaster Market.

This report is public, with the exception of Appendices A, B, C and D to Appendix 1, which are exempt from publication by virtue of paragraph 3, of Schedule 12a of the Local Government Act 1972.

RECOMMENDATIONS

- (1) **That Council consider and make a decision on the options for the future of Lancaster Market, set out in the report presented to Cabinet on 23 March 2010 (Appendix 1).**

1.0 Introduction

- 1.1 The budget report at the Council meeting on 3 March 2010 included reference to Lancaster Market. Following this, and a representation on behalf of the Lancaster Market Tenants' Association, Council resolved that:-

- (a) Council desires a thriving indoor market in Lancaster, and wishes to allow Cabinet to carefully consider this issue in the context of the recent proposal from the Market traders and involve those who wish to make a contribution, enabling all alternatives to be tested before being brought for debate at full Council.
- (b) Council therefore defers its decision on Lancaster Market and refers it back to Cabinet for urgent decision.
- (c) A working group of Cabinet Members nominated by the Leader and reporting to Cabinet, be established to consider all the options available on the market and the business plan from the Market traders. (Options should be assessed in terms of risk to the Council, sustainability, protecting local businesses and value for money for the taxpayer. Cabinet Members should consider the business plan from the existing Market traders, the alternative of a single storey market, alternative market sites and the single trader option. The working group should be requested to invite evidence from existing market traders, the

National Federation of Market Traders, National Association of British Market Authorities and the Chamber of Commerce.) Cabinet should make a report and recommendations to a Special Council Meeting before the 31 March 2010.

2.0 Proposal Details

2.1 Following the Council meeting on 3 March 2010, an informal Cabinet Working Group was established and met on four occasions to gather information and consult with various relevant stakeholders, groups and organisations as detailed in the report to Cabinet.

2.2 A report was then drafted and presented to Cabinet at its reconvened meeting on 23 March 2010. Cabinet Members resolved:-

- (1) That the report be referred to full Council on 31st March 2010 for consideration and decision.

The report is therefore attached for full Council's consideration and decision (Appendix 1).

2.3 Members should note that Section 3.6 of the attached report advises that the earlier report to Cabinet on 16 February had identified that the company was a new company. The Section indicates that Cabinet were informed of the rating score, but this was by implication rather than being explicit. Mindful of the risks associated with dealing with such a newly established company and the need to demonstrate due diligence, the February Cabinet report highlighted various steps that have been taken to mitigate risk. The attached report to Cabinet does make it clear that company searches identify a rating score of one out of a hundred and this would be expected of a new company.

3.0 Details of Consultation

3.1 Details of consultation are provided in the attached report to Cabinet.

4.0 Options and Options Analysis (including risk assessment)

4.1 The options and options analysis are as shown in the attached report to Cabinet (Appendix 1).

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

As shown in the attached report to Cabinet (Appendix 1).

FINANCIAL IMPLICATIONS

In addition to the financial implications as set out in the attached report to Cabinet (Appendix 1), Members should note that Option 3, and the variation to Options 1 and 2 referred to under Officer Advice (section 4) of the attached Cabinet report, make reference to additional costs provisionally estimated at £150K. Should Members approve either of these options, these costs would need to be met from the Capital Support Reserve - no other alternative sources have been identified at this time. This would leave an estimated £350K unallocated within that reserve; subsequently the financial implications and funding arrangements of

completing any option would need to be reviewed and reported back to Members for further consideration, once detailed costing work etc. had been undertaken.

DEPUTY SECTION 151 OFFICER'S COMMENTS

As shown on the attached report to Cabinet (Appendix 1).

LEGAL IMPLICATIONS

As shown on the attached report to Cabinet (Appendix 1).

MONITORING OFFICER'S COMMENTS

As shown on the attached report to Cabinet (Appendix 1).

BACKGROUND PAPERS

Cabinet and Council minutes referred to in Appendix 1.

Additional papers exempt by virtue of Paragraph 3 of Schedule 12A of the Local Government Act 1972.

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CABINET

**Lancaster Market
23 March 2010**

Report of Corporate Director (Regeneration)

PURPOSE OF REPORT			
To report on the findings of the Cabinet Working Group set up to consider the future of Lancaster Market in order to report to Council on 31 March 2010			
Key Decision	X	Non-Key Decision	Referral from Officer
			X
Date Included in Forward Plan	Agreement of the Chairman of Overview & Scrutiny has been obtained in accordance with Access to Information Procedure Rule 16 that a decision on this matter cannot reasonably be deferred		
This report is public, with the exception of Appendices A, B, C and D (Appendix D was circulated at the meeting) which are exempt from publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972.			

RECOMMENDATIONS OF CORPORATE DIRECTOR (REGENERATION):

- (1) That Cabinet consider the options set out in this report, produced as a result of an informal working group of Cabinet, and refer such option to Full Council for consideration and decision.

1.0 Introduction

- 1.1 Cabinet has previously considered a number of items relating to the future of Lancaster Market.
- 1.2 In January 2008, a report was considered by cabinet that contained seven separate options:
- a) No change
 - b) The Council to acquire the freehold of the market.
 - c) Increase Income
 - d) Reduced expenditure
 - e) Consider increasing the occupation by including the Assembly Rooms Market and Charter Market (street market) in the main market building.
 - f) Consider whether the market should be handed over to the Market Traders
 - g) Consider whether the market should close.

No recommendation was included in the report and there was no officer preferred option.

1.3 Cabinet resolved:

(1) That Officers investigate the feasibility of surrendering the lease, subletting to a single tenant or assigning the lease of the Market to a single tenant, all with effect from 1st April 2009, and report back to Cabinet on these options within three months, with a view to eliminating or substantially reducing the current annual deficit of around £400,000 per annum, which is equivalent to approximately 6% of the City's current Council Tax.

(2) That another report be presented to Cabinet at the same time, to outline options open to the Council to advise, support and assist market tenants affected by the proposals to relocate their businesses with effect from any closure.

1.4 Cabinet then considered an update report in May 2008 advising that the work to find a new occupier for the market was ongoing. Cabinet resolved:

(1) That Cabinet note the current position and receive a further report when details are available subject to compliance with the requirements of the Forward Plan and the Council wishes it to be made clear that the operation of the Market continues until such time as another report be presented to Cabinet to outline options open to the Council.

1.5 A further report was made to cabinet in December 2008 in which it was identified that work was still ongoing to find a single retailer whilst also pointing out that the effect of the council resolution to find a retailer was that traders had not been able to sell or expand their businesses if required. It also meant that some had been considering relocation and that some had left since the resolution was passed. In addition, new traders had not been attracted to the Market because they were concerned about its future.

1.6 At that time the options were to continue operating the market or to continue with the existing cabinet resolution to search for a single occupier. There was no specific recommendation and no officer preferred option. A representative of the Market Traders' Association addressed the meeting. Cabinet resolved:

(1) Notes the comments received from the Lancaster Market Tenants Association

(2) Resolves that approval be given to Officers to negotiate directly with retailers to try and procure a single retailer for the Market Hall on the basis that the preferred option would be that the current deficit is reduced to zero or, as an alternative, to report back to Cabinet should a single retailer be prepared to take up occupation of the Market Hall on the basis of the Council contributing an amount that is less than the deficit currently being faced by the Council.

(3) Requests a further report on Lancaster Market as soon as possible as part of the budget process from 2009/10, (a) identifying the financial obligations under the lease from Allied, in particular the frequency, basis and mechanism of rent reviews, and the mechanism of termination and (b) identifying the same information in respect of the leases to current sub tenants and (c) setting out options, including any firm proposal from Cooltrader, and in addition to any options resulting from resolution 2 above, and the possibility of using part of the space in the market for City Council Purposes, for mitigating the loss of £518,100 that is shown in the estimates for 2009/10 and exceeds the rent of £409,000 due to Allied.

- 1.7 A further report was considered in March 2009. That report, whilst exempt, provided information on the previous cabinet resolution. Cabinet resolved that options 1 and 2, as set out in the exempt report, be approved, the options being to continue with the existing resolution to find a single retailer or if this was not possible, then to consider alternative companies who can operate a market type operation as a retail use within the building.
- 1.8 The final report in this series was an exempt report considered by cabinet on 16 February 2010.
- 1.9 Cabinet resolved:
- (1) That approval be given to a letting of the Market Hall, Lancaster to a single retailer on the basis set out in the report, subject to the revenue and capital implications identified within the report being approved by Full Council as part of the 2010/11 budget process. Such report (to Full Council) to include a cashflow forecast.*
- (2) That, subject to that approval by Full Council, in order to facilitate the letting to a single retailer, whether in accordance with the proposal in recommendation (1) or to any alternative single trader should that proposal fail to materialise, approval be given to serve notices to terminate the leases/licences to existing market traders.*
- (3) That subject to recommendation (1) being approved, further reports be made on the staffing implications of operating the markets.*
- (4) That the opportunity to increase the number of days on which the Charter Market operates be investigated.*
- (5) That subject to recommendation (1) being approved, in accordance with the council's Financial Regulations, approval be given to an exception to the Contract Procedure Regulations to enable the appointment of Cushman and Wakefield to undertake the design/project management work on the Market Hall building.*
- 1.10 Council then considered the budget report at its meeting on 3 March 2010, including reference to Lancaster Market, and, following a representation on behalf of the Market Traders' Association, resolved that in relation to Lancaster Market:
- (a) Council desires a thriving indoor market in Lancaster, and wishes to allow Cabinet to carefully consider this issue in the context of the recent proposal from the Market traders and involve those who wish to make a contribution, enabling all alternatives to be tested before being brought for debate at full Council.*
- (b) Council therefore defers its decision on Lancaster Market and refers it back to Cabinet for urgent decision.*
- (c) A working group of Cabinet Members nominated by the Leader and reporting to Cabinet, be established to consider all the options available on the market and the business plan from the Market traders. (Options should be assessed in terms of risk to the Council, sustainability, protecting local businesses and value for money for the taxpayer. Cabinet Members should consider the business plan from the existing Market traders, the alternative of a single storey market, alternative market sites and the single trader option. The working group should be requested to invite evidence from existing market traders, the National Federation of Market Traders, National Association of British Market Authorities and the Chamber of Commerce.) Cabinet should make a report and recommendations to a Special Council Meeting before the 31 March 2010.*

- 1.11 The informal working group open to all Cabinet members has now met on three occasions and has received information from:
- a) The market traders
 - b) The National Federation of Market Traders (with the market traders present)
 - c) Quarterbridge Project Management (private sector market consultants as an alternative to the National Association of British Market Authorities who required payment of fees and were uncertain as to whether they could meet the timescales involved)
 - d) Blackburn with Darwen BC who are experiencing changes with their markets
 - e) Cushman and Wakefield as the council's appointed retail agents
 - f) The Lancaster Chamber of Commerce

2.0 Details of Consultation

- 2.1 Consultation has taken place with the following groups:

- a) The market traders
- b) The National Federation of Market Traders (with the market traders present)
- c) Quarterbridge Project Management (private sector market consultants as an alternative to the National Association of British Market Authorities who required payment of fees and were uncertain as to whether they could meet the timescales involved)
- d) Blackburn with Darwen BC who are experiencing changes with their markets
- e) Cushman and Wakefield as the council's appointed retail agents
- f) The Lancaster Chamber of Commerce

3.0 Options and Options Analysis (including risk assessment)

- 3.1 Arising from the consultations undertaken by the informal working group of Cabinet members, three options have arisen. Each of these options is identified below, and in each case the financial and legal implications are identified separately.

3.2 Option 1: Single Retailer

This option is that considered by Cabinet in their exempt report on 16 February 2010, the budget implications of which were considered by Council on 3 March 2010 (see paragraph 1.10 above). The option of a single retailer has not changed and all of the risk and legal implications are as detailed in the exempt Cabinet report (see Appendix A).

- 3.3 Since the report was considered by Cabinet, there has been considerable speculation via the press, the intranet and other "interested parties" as to whether the council should proceed with this option on the basis of the February Cabinet report.
- 3.4 The council considers reports of this nature as being exempt because the details are commercially sensitive. Should the council publish all such details in the press, it is likely that those businesses involved in commercial transactions in the Lancaster District would not want to deal with the council. This would be to the detriment of the district as a whole.
- 3.5 The particular concerns that have been raised in the public debate relate to the credit rating of the company, concerns about a former company director and court judgements against the company.
- 3.6 The report to Cabinet identified that the company was a new company, and identified that the credit ratings were at the lowest rating – company searches identify a rating

score of one out of one hundred. In the report, it was made clear that there were risks in proceeding because it was a new company, going as far as indicating what the outcome would be if the company failed. The potential failure of the new company remains a risk associated with the single retailer option, although the working group was advised during the consultation, that it is likely that there would be wider interest in the building from occupiers, if the conversion to a white box had been completed. However, if this was to be the case, it is likely that the revenue stream from a retail letting would be delayed and account would need to be taken of the potential lost income.

- 3.7 Since consideration of the previous report to Cabinet, the company has already entered into legal arrangements to develop four more stores besides Lancaster. The company now has credit ratings with major suppliers. However, it is still a fledgling company with the risks associated with this. Further information has recently been received from the new company which is detailed in Appendix B.
- 3.8 Much detail has been provided about a former company director, but it is considered that the information is no longer relevant as the director is no longer present at the company.
- 3.9 In addition it is not unusual for county court judgements to be made against a company and for those that have been made, assurances have been given that they have been dealt with and are in the process of being removed from the register.
- 3.10 Whilst the details of the agreement with the council remain commercially sensitive, members are reminded that the overall arrangements would result in a payback period of three years and eleven months. At that point, provided that the company continues to trade, the council would have no deficit.
- 3.11 This compares with published costs of Lancaster Market since 1996 which are as follows:

1996/97	42,611
1997/98	186,610
1998/99	193,145
1999/2000	190,786
2000/01	207,767
2001/02	256,827
2002/03	243,316
2003/04	294,224
2004/05	242,756
2005/06	347,070
2006/07	358,964
2007/08	381,460
2008/09	726,530 *
2009/10	460,700 Estimate
2010/11	501,700 Estimate

* The figure for 2008/09 reflects the extra rental costs associated with the delayed rent review to the landlord.

4,634,466

- 3.12 In considering whether to proceed with the single trader option, the consultation process raised the possibility of relocating the market. Some members may recall that prior to the market moving into the current market hall, the market was located in a temporary building adjacent to the bus station.
- 3.13 Finding a suitable site in Lancaster is not straight forward. Discussions with the traders have indicated that any site would need to be central and crossing a major

road would not be acceptable. Local agents had suggested that buildings on North Road could be adapted, but they are on the eastern side of the one-way system and would therefore not be suitable from the traders' perspective.

- 3.14 The only land in the council's control is currently used for parking, with a small car park on Wood Street/Cable Street and a larger one at the junction of Cable Street/North Road. Whilst both are close to the bus station, they are not convenient for the remainder of the shopping centre.
- 3.15 If such land was to be used for the creation of a market, the cost to the council would comprise:
- a) Loss of parking income
 - b) Capital costs associated with constructing and fitting out a new market hall
 - c) The costs associated with the deal to create a unit for a single retailer
- 3.16 At this stage no design work has been undertaken for a new market and it is therefore impossible to provide the costs associated with a relocation of the market. There are also risks associated with this, particularly in so far as the success of a relocated market. It is unclear how many traders would relocate and whether there would be a full market. It is possible that the council could end up in a similar position in a new market to that which is currently being experienced. However, if members prefer this option details could be worked up.
- 3.17 This option does require the council to agree to serve a counter notice on traders who have asked for a new tenancy. This is imperative and one of the main reasons why the council has to determine the future direction in this matter by 31 March 2010. However, since the cabinet considered the report on 16 February a further notice has been served on the council requesting a new tenancy from 25 February 2011. The effect of this is to increase the period for which the council must operate the market and as a result the current deficit would continue for a longer period prior to possession being obtained to create a single retail unit.
- 3.18 Members are reminded that the council has no choice but to respond to the notices served by the traders. If they do not do so, new tenancies will automatically be granted for a further period of 4 years. The council can agree to grant new tenancies in a specific response to the notices and if either of these two situations takes place, then it is likely that the deficit situation will continue as indicated in the cabinet report dated 16 February 2010.
- 3.19 The alternative is to serve a counter notice which indicates that the council will require possession of the market hall and to proceed to take possession of the building with a view to entering into an agreement with a single retailer.
- 3.20 The consultation raised one potential course of action associated with this option which was to serve notice on the traders to gain possession of the building, but to defer entering into an agreement with the single trader until the trader had opened more retail units. This could reduce the risk associated with this option. If the council felt that the level of risk remained too high, then it need not contest a court hearing regarding the renewal of leases and the leases would automatically renew with the continuing issue of deficits. The council would then face all of the risks identified in option 3 of this report.
- 3.21 **Financial Implications**
The full revenue details of the scheme are included in Appendix C which is exempt. This information is based on that which was in the previous report to Council

although has been updated to re-profile the scheme based on the change to timings caused by the information in paragraph 3.17 above, namely that the Council will not be able to take possession of the Market until February 25th 2011 at the earliest.

The Capital costs linked to the scheme are as follows:

Capital Costs	2009/10 £	2010/11 £	2011/12 £
Refurbishment Works	0	250,000	250,000
12% Contract Mgt Fees	0	30,000	30,000
Stamp Duty	0	0	45,000
Total Capital cost	0	280,000	325,000

There is an ongoing revenue impact of £90K for provision to repay borrowing and finance charges.

It is important to note that the capital costs involved in the scheme relate to the improvement of our asset. Any scheme within the Market would likely involve this investment and so it is worth considering that the payback period on the scheme without the capital element is 2 years and 4 months. This means that considering revenue impact alone, the additional revenue costs would have been met half way through the third year of the scheme.

Beyond this period the scheme will have broken even. This means that the additional revenue costs relating to the scheme, such as trader compensation and any employee redundancy costs, will have been recovered through the saving of the annual deficit. If the repayment of capital is also included the figure increases to around 4 years and 3 months. Beyond this point, the underlying relationship is essentially a recharge between the prospective sub tenant, the Council and the Council's Landlord, leading to an annual saving relating to the majority of the projected deficit and an overall saving of £4.9M over the life of the sub lease, compared to the projected, ongoing, annual deficit.

The financial implication is that although this option requires capital input, over a medium time frame, given the risks highlighted over the proposed counterparty, the scheme could relieve a significant budgetary pressure.

3.22 **Deputy Section 151 Officer's Comments**

In relation to option 1, the comments made by the Section 151 Officer in the report to Cabinet on 16th February 2010 continue to apply. The risks associated with entering into an agreement with a single trader must be considered in relation to the opportunities that this option presents to both remedy the ongoing deficit situation on the market and contribute to the council's need to achieve budget savings in future years.

As with the other options, the council would need to incur up-front costs if it pursues this proposal; this would need to stack up as an invest-to-save initiative.

3.23 **Legal Implications**

If the council wishes to proceed with this option for a single trader, it would need to serve counter notices on those traders who have requested new tenancies and section 25 notices on all other market traders. The only grounds available to the Council would be under section 30(1)(f) "intention to demolish or reconstruct" and would be on the basis that there is a clear intention to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry

out substantial works of construction on the market and that the Council could not reasonably do so without impacting on the tenants.

The time at which the Council will be required to prove ground (f) is the date of the court hearing (which could be sometime after the service of any notice). It is therefore not necessary to have everything in place at the date of the service of the notice.

The Council's intentions under ground (f) is composed of 2 ingredients:- a fixed and settled desire to do that which the Landlord intends to do and reasonable prospect of being able to bring about the desired result.

This decision would support those intentions.

3.24 Monitoring Officer's Comments

The Deputy Monitoring Officer has been consulted and has no further comments to add.

3.25 Recommendations required to Council to achieve Option 1:

(1) That approval be given to a letting of the Market Hall, Lancaster to a single retailer on the basis set out in the report, subject to the revenue and capital implications identified within the report being approved by Full Council.

(2) That, subject to that approval by Full Council, in order to facilitate the letting to a single retailer, whether in accordance with the proposal in recommendation (1) or to any alternative single trader should that proposal fail to materialise, approval be given to serve notices to terminate the leases/licences to existing market traders.

(3) That subject to recommendation (1) being approved, further reports be made on the staffing implications of operating the markets.

(4) That the opportunity to increase the number of days on which the Charter Market operates be investigated.

(5) That subject to recommendation (1) being approved, in accordance with the council's Financial Regulations, approval be given to an exception to the Contract Procedure Regulations to enable the appointment of Cushman and Wakefield to undertake the design/project management work on the Market Hall building.

(6) That the option to tax the market should be re-affirmed, should this be necessary, to protect the Council from any VAT liability on any of the proposed capital works.

3.26 Option 2: Market Trader Proposals

In representations to the council, the Market Traders' Association suggested that the market should continue to trade but on the upper floor only, with the ground floor let to a single retailer.

3.27 As part of this suggestion, the traders indicated that they would consider taking over management of the market and in addition indicated that "many traders would consider paying an additional £50 per week per trader in the interim to assist LCC with their rent deficit".

3.28 To enable the council to have as much information to consider this proposal, letters were sent to all 29 current traders and responses have been received from 18 traders. However in most instances the questions have all been answered on the

basis that the individual traders do not understand the full implications of the questions, they have advised that the Lancaster Market Traders' Association act on their behalf.

- 3.29 However, within the responses there was information in five cases that provided further detail. Only one trader confirmed that they would be willing to pay an additional £50 per week, another indicated that they would do so if it was on a temporary basis. However this does not mean that others would not if the overall figure was approved by the Traders' Association. Members are reminded however, that each trader runs an individual business and may well act as required in the best interests of that business.
- 3.30 Another aspect of the letter sent to traders related to whether they would be prepared to relocate their business. Responses were slightly better in this instance although views are mixed. Of the four traders who commented, there is one interest in relocating to the Festival Market, no interest in the Charter Market, three interested in individual shop units in Lancaster and three interested in the option of relocating to a single floor in the market. However, two responses indicated that they would relocate within the market provided the right location was agreed.
- 3.31 Bearing in mind that the legal process of serving notice on the traders would only apply to traders on the ground floor, the council is unlikely to get possession of any other units on the first floor into which to relocate ground floor traders. In effect the better stalls are already occupied, and there is a risk that ground floor traders would not find suitable first floor locations and leave the market.
- 3.32 Information received during the consultation process, indicates that trader organisations running their own market do not work well and are, therefore, rare. The responses received from traders indicated that one trader would join such an organisation, whilst the only other trader to respond to this question said no. Effectively, if a new organisation was to be created it would be a new organisation with no experience of the work that is required and is therefore likely to have the lowest possible credit rating.
- 3.33 To achieve the market traders' proposals, it will be necessary to undertake various works of refurbishment to the market, and costs would be required for this. Estimates in April 2009, identified that to create two separate floors with escalators moved from the centre of the building to a point adjacent to a main entrance, would cost approximately £428,000. However, there are likely to be additional costs to create a complete "white box specification after allowing for stall demolition etc.
- 3.34 These works would create a further floor area in the centre of the market at first floor level for traders to trade from and design work would need to identify how much work would need to undertaken to adapt existing stalls, whilst the construction of new stalls would be required.
- 3.35 It is inevitable that this would cause severe disruption to the operation of the market. It is likely that closure would be required for a period of time, during which time it is unlikely that the council could provide an alternative location, other than the Charter Market, from which to continue trade. The effect that this would have on individual traders is unknown, and would depend upon the period and the timing of the closure.
- 3.36 This proposal also relies on the council being able to successfully let the ground floor of the building to a single retailer. Advice from the council's retail agents has indicated that this will not be straight forward. The rental income received would be

less than 50% of the rent paid by the council to Allied (Lancaster) Ltd – the council's landlord.

- 3.37 To achieve a break even position, rental levels from market stalls would need to reflect this. At this stage, there has been no detailed design undertaken to provide a stall layout, but previous reports have estimated that there would need to be an increase in the level of rent per square foot payable by the traders. The limited responses from traders indicated that they would not be prepared to pay increased or market rents.
- 3.38 In addition costs for a service charge would have to be worked out if the council was to retain management responsibilities. Although the traders have indicated that they would consider taking over this responsibility, anecdotal information received from the market management indicates that this will not be straight forward to achieve. This is supported by evidence gained during the consultation process.
- 3.39 In legal terms it is considered that it would be possible to obtain vacant possession of the ground floor for a single retailer provided that there is no objection from traders. If the matter is taken to the courts by traders, then the council would need to satisfy the court that it had the appropriate grounds for possession. The advice from Cushman and Wakefield (see above) indicates that this will not be easy and there is therefore a serious risk that the council may fail to obtain vacant possession of the ground floor of the building. Should this be the case, the Council would revert to Option 3 of this report, and needs to take into account the associated risks.
- 3.40 There is a further risk related to this option in that it is likely that there would be a need for possession to be obtained of some of the stalls/units on the upper floor to carry out alterations to improve the vitality of the market. There does not appear to be a legal ground to do so and therefore this could only be achieved by agreement with the traders concerned. There is a risk that the traders would look at their own business case and therefore not agree to the alterations.
- 3.41 In terms of overall income, if the market was to be fully occupied on the first floor at an income similar to the existing level, and the ground floor unit was immediately let at, say, £150K per annum, then the deficit to the council would be reduced from £461K to £236K per annum if no further reduction in costs was made. It is quite possible that other costs could be reduced but the full detail would need to be calculated when design work was undertaken for this option. It is likely that this option would still result in a deficit for the foreseeable future, the amount depending on market occupation levels and the ability to let the ground floor unit.
- 3.42 **Financial Implications**
In relation to the proposal to split the current Market so that traders operate from the top floor with a single trader taking up the lower floor, there are several unknowns that generate a risk in terms of the financial decision making. The two main ones being:
- It is unclear how likely or how long it would take to attract a single trader.
 - It is unclear how the potential movement of traders to the upper level could affect uptake of stalls.

As for the single retailer option above, this would require significant capital investment; the current estimate of £428K is £180K less than the single retailer option but requires a detailed specification and costing exercise; little weight should be placed on these estimates at the present time.

The projected figures in paragraph 3.41 suggest that the Council would be left with a significant deficit, albeit considerably smaller than the current budget.

Should this option be preferred, further work should be done to quantify the financial risks prior to a final decision to proceed. This work will need to be completed prior to any possible court hearing following the serving of landlord and tenant notices.

It is impossible at this stage to accurately quantify the financial risks regarding future income.

3.43 Deputy Section 151 Officer's Comments

In considering this option, members must weigh the forecast reduction in the market deficit against the financial risks identified in the report, bearing in mind that these are at present not clearly or accurately quantified and will need further development.

As with the other options, the council would need to incur up-front costs in the proposed re-configuration of the market building and the service provided – this proposal would need to stack up as an invest-to-save initiative.

3.44 Legal Implications

To enlarge upon the comments made in clause 3.39, the grounds for obtaining possession are the same as in the first option it would be difficult to rely on these grounds without any prospective retailer in place or any firm proposals in place as to how this would be achieved in terms of remodelling the market. Also, the ability to gain vacant possession of the first floor to accommodate these arrangements could be challenged if it could be demonstrated that the works to the ground floor could be undertaken without impacting on the first floor traders.

3.45 Monitoring Officer's Comments

The Deputy Monitoring Officer has been consulted and has no further comments to add.

3.46 Recommendations required to Council to achieve Option 2:

- 1) That approval been given to letting the ground floor of the market to a single retailer with the first floor being retained for market traders' use.
- 2) That, subject to the approval of Full Council, in order to facilitate the letting of the ground floor, approval be given to serving notices to terminate the leases/licenses to existing traders on the ground floor.
- 3) That approval be given to develop further a detailed cost of undertaking the design/project work of remodelling the Market Hall building to facilitate a single retailer and future market provision.
- 4) That full revenue and capital implications of the proposals are worked up and reported to Full Council for approval.
- 5) That a provisional sum of approximately £500,000 is made available within the 2010/11 capital programme, with a further detailed budget to be submitted to Full Council once all the necessary design project management issues have been resolved.
- 6) That, in line with Recommendation 1), Cushman and Wakefield be appointed to seek a single retailer for the ground floor accommodation.
- 7) That the option to tax the market should be re-affirmed, should this be necessary, to protect the Council from any VAT liability on any of the proposed capital works.

3.47 Option 3: Refurbish Existing Market

Previous reports to cabinet have considered a "no change" situation at the market. In view of the substantial deficits over many years, this has not been seen as the

preferred option. Indeed the market trader's proposal to move to a single floor indicates that traders do not see a two storey market as being viable into the future.

- 3.48 Advice received during the consultation from many parties including the market traders, indicates that the market would need major refurbishment to achieve a more vibrant market. Stall layouts would need revising, whilst stall heights would need lowering to ensure a greater view across the market to other stalls to ensure that customers are encouraged to browse further into the market. Capital for this work would need to be identified.
- 3.49 There are significant risks associated with this refurbishment process to achieve a consensus. Individual businesses have differing requirements in terms of stall layouts, and change to the heights of stalls is likely to have an effect of the amount of stock that can be kept. For example the majority of traders use the back of their unit to display/store stock. Flatter stalls would not allow this to happen yet would improve visibility across the market - a point made by a number of those in the consultation process including some traders.
- 3.50 However, the costs of operating the market are unlikely to reduce considerably unless the traders want to manage the whole market. Alternatively it might be possible for the council to invite external providers to operate the market, but it is likely that such an operator would wish to have some form of guarantee against loss.
- 3.51 There would remain a high risk that the market would never reach 100% occupancy. During the consultation process, information obtained indicates that in locations where there is a high number of independent traders within a town centre generally results in lower market trader numbers, whilst those towns with limited independent retailers tend to have a thriving market.
- 3.52 In legal terms this option does not carry any risk in that the council would respond to the traders' notices accepting the creation of new tenancies and the process of trying to agree new rents and service charges would commence. The reaction from traders does indicate that many would not pay increased levels of rent and service charge and there is therefore a significant risk that traders would leave the market if this increase were pursued. This would result in an increase in the deficit. If significant sums are spent on refurbishment, this would be undermined by the market not being fully occupied.

3.53 **Financial Implications**

Similar to the other two options discussed above, this scheme would require significant capital investment by the Council. However, there are no estimates currently available to support this.

In addition, there is little quantitative information to assist Members in assessing the risks associated to this option. The main risk is that once a refurbishment had been done, demand for the Market would need to increase to the point where the Council was breaking even in respect of service charge and rent.

Should this option be preferred, further work should be done to quantify the financial risks prior to a final decision to proceed.

3.54 **Deputy Section 151 Officer's Comments**

Whilst this option may involve less immediate risk to the council, there is little information currently available in relation to the future risks it presents. In considering this option, members should be mindful of this fact and consider the extent to which the option presents a realistic opportunity for the council to manage the markets deficit and improve the council's overall financial position.

As with the other options, the council would need to incur up-front capital costs in the proposed re-configuration of the market building and the service provided – this proposal would need to stack up as an invest-to-save initiative.

3.55 Legal Implications

The present occupancy of the market is a mix of tenures based upon traders holding over on previous leases or mere licences. Any continuation of the market would require formal leases to be entered into by all the market traders; an arrangement that is not attractive to some traders who prefer the more flexible arrangement of a licence. However, to ensure the protection of the rental income stream, it is essential that formal leases are in place, if this option is preferred.

With regard to negotiating new leases, it may be possible to agree a break clause provision that enables the Council to determine the lease earlier than the contractual term, if there are circumstances that warrant such action.

3.56 Monitoring Officer's Comments

The Deputy Monitoring Officer has been consulted and has no further comments to add.

3.57 Recommendations required to Council to achieve Option 3:

- 1) That the City Council renews all existing tenancy agreements as in accordance with the landlord and tenant act.
- 2) That the City Council endeavours to negotiate by agreement an amendment to the terms and conditions which would permit the City Council to consider its options of fully refurbishing Market Hall.
- 3) That an initial budgetary provision of £150,000 is allocated to appoint suitably qualified professional advisers to draft up a detailed refurbishment scheme for the council to be brought back for further consideration.
- 4) That the option to tax the market should be re-affirmed, should this be necessary, to protect the Council from any VAT liability on any of the proposed capital works.

4.0 Officer Advice

- 4.1 The informal working group has scoped three options which are considered in detail in this report. However, as a consequence of the evidence provided to the working group, officers advise that there is possible variation of options 1 and 2.
- 4.2 Such a proposal would provide for the City Council serving the necessary notices (or counter notices as appropriate) on the tenants under section 30(1)(f) of the Landlord and Tenant Act, advising that occupation is required to carry out demolition or reconstruction to the premises comprised in the holding or a substantial part of those premises or carry out substantial work of construction on the holding or part of it.
- 4.3 The City Council could then make funds available to develop further the option of providing a retailer on the ground floor, and instruct agents to address the detailed costs of such a proposal, along with an instruction to seek a retailer for the ground floor.
- 4.4 The City Council would then have the opportunity of time, up until either the court hearing, to address the tenants' appeal against the notice to terminate, or the effective date of termination of notice which could be up to 12 months.

4.5 At the time of the court hearing (if the tenants dispute the notice), the City Council will then have either i) a more detailed view of the current trading position of the single occupier or ii) a single trader who would be willing to take occupation of the ground floor, plus detailed costs of conversion.

4.6 The risks associated with such a proposal are that the City Council are not comfortable with the trading position of the single trader, or no tenant can be found, in which case, members could revert to option 3 of this report and grant new tenancies. There is also a possibility that the current single retailer may walk away from the deal.

4.7 **Financial Implications**

Pursuing this variation to options 1 and 2 would involve additional revenue costs associated with engaging agents to address the detailed costs of developing a single retailer option for the ground floor of the building, and seeking a retailer for that space. These costs are currently referred to under option 3 and provisionally estimated at £150,000.

Otherwise, the variation does not alter the financial information provided elsewhere in the report.

4.8 **Section 151 Officer Comments**

This variation would provide the time and opportunity for more in-depth evaluation of options 1 and 2 to be carried out, but would not necessarily reduce (and might even increase the likelihood of) the risks associated with either option. Members would need to consider the balance between taking this opportunity and the additional costs and risks it presents.

4.9 **Legal Implications**

To emphasise what has previously been said in relation to service of notices under Section 30(1)(f), it would be necessary for an Agreement for Lease to be in place with the proposed retailer all consents to be in place and for a tender process to have been undertaken and a building contractor to have been identified by the time of any court hearing, to have a realistic prospect of gaining possession under these grounds if either of these options is pursued.

4.10 **Monitoring Officer Comments**

The Deputy Monitoring Officer has been consulted and has no comments to add.

RELATIONSHIP TO POLICY FRAMEWORK

The City Council's key priority areas recently approved are:

- (1) Economic Regeneration - supporting our local economy:
 - Energy coast and environmental technology
 - Heritage and cultural tourism for the district
- (2) Climate Change – implementing the City Council's Climate Change Strategy
- (3) Statutory services – clean and green – achieving at least minimum statutory standards in, for example, housing, environmental health, street cleaning and refuse collection.
- (4) Partnership working and Community Leadership.

The provision of a market could be aligned to the cultural agenda depending on the retail offer made available within the market. The City Council already provides a market offer at both the 2 day Charter Market, the Assembly Rooms and the Morecambe Festival Market.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The City Council wishes to maintain an economically sustainable town centre and the provision of the markets, both indoor and outdoor, can help to facilitate this.

FINANCIAL IMPLICATIONS

The financial implications for each option have been discussed above. A more detailed discussion of the financial implications of option 1 have already been made in the previous exempt reports to Cabinet and Council.

Should option 1 be selected, Members need to authorise the relevant updates to the Capital and Revenue budgets, with reference to the risks raised in both this and the previous reports to Council and Cabinet and the information in Appendix C.

Should option 2 be preferred, further work should be done to quantify the financial risks prior to a final decision to proceed.

Should option 3 be preferred, further work should be done to quantify the financial risks prior to a final decision to proceed.

In all circumstances, the option to tax the market should be re-affirmed, should this be necessary, to protect the Council from any VAT liability on any of the proposed capital works.

SECTION 151 OFFICER'S COMMENTS

The Deputy Section 151 Officer's has been consulted on each of the options and commented on each within the report. The comments made by the Section 151 Officer on the report to Cabinet on 16th February 2010 remain relevant.

As is set out in the report, there are significant risks associated with all three options being considered. In deliberating these options, members must be mindful both of the current position regarding those risks and the extent to which they can be managed in the future. Members should also give due consideration to the level of opportunity that each of the options presents, weighed against the likelihood of any of the risks occurring.

For all options, members should take account of the council's wider financial position and consider where operating a market fits in relation to corporate priorities and the provision of other services. If savings are not made on the markets operation, they will need to come from other areas.

As set out in the report, it is considered inevitable, particularly given current economic conditions, that the council would need to incur up-front costs in any course of action involving a re-configuration of the market building and the service provided. In all cases, therefore, it is essential that such proposals stack up as an invest-to-save initiative.

LEGAL IMPLICATIONS

The legal implications have been detailed under each of the separate options within the report.

MONITORING OFFICER'S COMMENTS

The Deputy Monitoring Officer has been consulted on each of the options as set out in the report and has no further comment.

BACKGROUND PAPERS

Exempt by virtue of paragraph 3 of Schedule 12a of the Local government Act 1972.

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