APPENDIX B

LANCASTER MARKET – FINANCIAL OPTIONS APPRAISAL

1 INTRODUCTION

1.1 Council has been requested to consider a capital investment proposal for Lancaster market. The Prudential Code for Capital Finance in Local Authorities has been developed to support councils in considering such investment. Under the Local Government Act 2003, authorities are required to have regard to the Code.

1.2 In summary, the objectives of the Code are to ensure, within a clear framework, that the capital investment plans of the authority are affordable, prudent and sustainable and in turn they support local strategic planning, local asset management planning and proper options appraisal. The ultimate aim is to help ensure value for money from capital investment.

1.3 The Council has incorporated these obligations into its Medium Term Financial Strategy, and this options appraisal has been produced in line with those requirements.

1.4 The background to this proposal is complex. In recent years Members have considered various proposals regarding the future of Lancaster market. The most recent specific consideration by Council was in March 2010 (minute 113 refers). The outcome of that meeting can be summarised as follows:

- The single trader option was not pursued, primarily due to risks attached to the newness of the company involved.
- The single floor (upper level) market was not pursued, primarily because of cost.
- The Council desired a thriving indoor market in terms of employment and service to the district, and therefore arrangements to take forward refurbishment and revitalisation of the market were put in place.

1.5 Cabinet’s latest proposals arise from the third bullet point above. It is emphasised, however, that at the time of Cabinet making its latest recommendations to Council, a financial options appraisal had not been undertaken. This work has now been completed and therefore this report incorporates both the financial and non-financial impact of the proposals. It also includes information that could not be made available for the July Cabinet meeting. Cabinet did request this information to be provided to Council to give a fuller picture.

1.6 Council is therefore advised to consider all the information set out in this appraisal and the supporting legal implications set out in Appendix C. It is reiterated that Members need to ensure their decision-making is based on appropriate consideration of relevant factors, including cost, cost benefit, risk, and value for money. This is in recognition of their fiduciary duties to taxpayers as a whole.

2 CURRENT POSITION

2.1 Aims and Objectives of Markets Operation

2.1.1 In terms of formal financial reporting on local authority markets, the facilities are classed as trading operations on the assumption that they should at least break even, if not generate a surplus. This may be considered as a general financial objective, therefore; markets are not considered to form part of the net costs of providing 'services' to the district.

2.1.2 Lancaster market operates at a significant deficit, however, and therefore the Council is effectively subsidising its operation. Typically this is expressed as a subsidy per tenant and whilst it should be recognised that this does not represent a physical cash payment to any tenant, effectively it is considered correct to say that the Council is (or council taxpayers are) indirectly subsiding the provision of market stalls.

2.1.3 Alternatively or in addition, markets may provide wider benefits both from their retail offer or from their appeal as a focus for the community. Indeed the Council has recognised this, in its desire for a vibrant and revitalised market. Whilst not the primary objective of market undertakings, other benefits such as employment can also be delivered.

2.1.4 Currently, however, it is widely accepted that the current offering does not effectively and efficiently contribute to these aims. The impact of different decisions based on the options on this position has also been considered in completing the options appraisal.

2.2 Annual Net Running Cost

2.2.1 The 2011/12 budget for the market was approved at a net cost of £553,400 (excluding internal recharges) by Council on 02 March 2011. Since then, between 31 March and 31 July, eight tenants have left and only three new tenants recruited, of which one has since left and another is still subject to satisfactory references. In total, this is a net reduction of six tenants and reduces the occupancy level to approximately 50% or 24 tenants occupying 35 stalls. Taking account of these reductions, the latest income projections are showing a further shortfall of £80,000 when compared to the original budgeted income.

2.2.2 In addition, provisions for bad and doubtful debts must also be recognised, as set out in section 2.4 below.

2.2.3 Taking on board the reduction in income, bad debt provisions and other minor adjustments, the latest projected cost for 2011/12 is £89,900 more than the comparative approved budget. This revised position has been used as the initial basis for comparison against other options. There is no information currently available to justify a significantly different starting point.

2.3 Stallholder Leases

2.3.1 In accordance with the instructions of Council in March 2010, traders were advised that their leases would be renewed (except in those cases where there were significant arrears) and as a result the renewal process is currently underway, with traders having made a formal application to the court to agree the terms of a new lease. In addition, a small number of traders initiated the renewal process themselves by serving notice on the Council as previously reported. It is not expected that the court hearing will take place before the

Council meeting and therefore the Council decision can inform the process of lease renewal.

2.3.2 The most significant issue for the traders was the inclusion of a break clause in the lease and the outcome of the current debate will identify to what extent such a clause will continue to be needed.

2.3.3 The court would also determine the level of rent that is applicable. Rent levels currently being proposed under the new lease for all traders (and currently being paid by most traders) are in accordance with Member resolutions, being 2.5% higher than in the previous standard lease. However where a trader has a significant floor space and has benefitted from reduced rents in the past, applying these new rent levels could lead to such a trader leaving the market. This has implications for the core assumptions underpinning the financial appraisal, as outlined in section 4.3.

2.4 Arrears and Provisions for Bad or Doubtful Debts

2.4.1 In respect of the current year, the level of income arrears at the end of July was running at just over 10% of the amount due and equates to approximately £13,000. Of the 24 tenants, 6 are currently in arrears as follows:

2011/12 Arrears:

	£	
3 Tenants	7,899.28	(100% in arrears, but one agreement to pay now in place)
1 Tenant	1,791.20	(50% arrears)
1 Tenant	652.83	(35% arrears)
1 Tenant	2,373.62	(24% arrears)
Total	**12,716.93**	

2.4.2 In terms of previous years, outstanding amounts are shown below. Only one current tenant has such arrears and an instalment plan has been agreed; all other amounts relate to former tenants.

Prior Year Arrears:

	£	
1 Tenant	2,212.84	(agreement to pay now in place)
Referrals to Legal	29,405.49	(currently being pursued)
Write Offs	1,369.82	
Total	**32,988.15**	

2.4.3 Whilst the cost of covering and writing off bad debts is provided for centrally, Members need to be aware of the current level of debt and the potential impact from arrears. Whilst the uncertainty regarding the future of the market may cause some tenants to hold off paying their rents and service charges, arrears may also indicate:

- Trading difficulties, increasing the risk that outstanding amounts (and/or potential bad debts) will increase further.

- A lack of commitment to the future of the market. Whilst this could be attributed to the uncertainty of its future arising from the Council’s position, such uncertainties may also be caused by other factors such as changes in shopping habits over the years.

- Blame culture: some may view that the Council is wholly responsible for the market's difficulties, with little collective or individual responsibility being taken by stakeholders.

2.4.4 In operational terms, the Council's position is that legal action will be taken against all tenants who are in arrears. In financial terms, the cost of providing for bad or doubtful debts must be reflected in any options appraisal.

3 IDENTIFICATION OF OPTIONS

3.1 Drawing on the July Cabinet report and the decision not to relocate the Lancaster market into the museum, the initial options identified for appraisal are as follows. To some degree, these are all subject to the resolution or outcome of the application to the court:

A) Move tenants to the ground floor but maintain rents and service charges (as recommended by Cabinet in July and a version of Option 2 within that attached report).

B) Move tenants to the ground floor but charge a commercial rent and full recovery of service charges (another variation of Option 2 within the Cabinet report).

C) Keep the current layout and maintain rents and service charges (effectively Option 3 within the Cabinet report).

D) Keep the current layout but charge a commercial rent and full recovery of service charges (effectively Option 4 within the Cabinet report).

3.2 Options were appraised over the period to March 2015; this being chosen to reflect the expected end date of any new leases agreed.

3.3 In completing this first stage of the appraisal, it became apparent that broadly the options could be categorised into two expected longer term outcomes:

- either a market operation would continue in some form; or
- the market operation would close, either through proactive or passive means.

3.4 Furthermore it became apparent that a number of the options considered by Cabinet in July fell into the category of those that are expected to result in the market closing. The additional two options shown at 3.5 below may therefore be considered as a more proactive approach in this regard, but with the same end result.

3.5 To reflect the need to appraise comparative value for money, particularly over the longer term, these two options are as follows. On face value they represent a different direction to that previously taken by Council in March and by Cabinet in July:

E) Close the market after any new lease term expires and secure an alternative future use for the building, but maintain rents and charges in the interim.

F) Seek to close the market through agreement before any new lease is granted or expires, and secure an alternative use for the building, but maintain rents and service charges in the interim.

3.6 After considering the medium term implications for all options, the second stage of the financial appraisal focuses on the whole life costs estimated over the remaining life of the Council's lease (i.e. around 83 years, to June 2094). The options for this second stage were identified as:

- the market continuing in some form on a leasehold basis; or
- an alternative future for the building being secured; or
- the building remaining empty (as much for comparison).

3.7 In terms of any alternative future for the building, this would cover scenarios such as securing a single tenant or seeking to surrender the Council's leasehold interest.

3.8 The final stage of the appraisal draws together the main considerations to give a summary for each option. In particular, the expected outcome for each option is highlighted, as are other actions that would need taking forward should Council decide on that course at this stage. Any key sensitivities are also included.

4 GENERAL ASSUMPTIONS AND RISKS

4.1 In undertaking such an options appraisal many assumptions and estimates are made; the future cannot be accurately foreseen. Inevitably, differences will arise between estimates and what actually happens over time but it is essential that in making assumptions and in applying professional judgement, the Council can demonstrate that it was being reasonable in doing so and therefore scrutiny and challenge of key assumptions and associated risks is crucial.

4.2 To this end, the key financial, legal and other operational assumptions are highlighted:

- key common assumptions are outlined below;
- other specific assumptions and risks are included within each option appraisal.

4.3 Common Assumptions

Financial

i. Costs in the current year are assumed to be unaffected irrespective of which option is pursued; any actual changes would not have a material impact on the financial appraisal overall.

ii. Future years' costings are based on 2011/12 prices; rent levels include the 2.5% increase previously approved by Members and it is assumed that all traders will pay the same rent per square foot; these assumptions are now subject to the court application. No assumptions have been made regarding inflation or future rent reviews.

iii. To cover bad and doubtful debts, an indicative provision of 5% (of income collectable) has been allowed for.

iv. Reasonable estimates of any one-off costs such as redundancy, tenant compensation or other incentives to secure an alternative future for the building have been used, drawing on previous reports to Members. Any associated borrowing costs have also been factored in.

v. In respect of business rates, once the building is assumed to be empty or half empty then the current total rates bill has been provided for, but a formal revaluation would need to be undertaken at that point in time. Where it is assumed for any option that occupancy reduces over time, however, no increased rates liability has been provided for during that period; many stalls are below the chargeable threshold.

vi. Other running costs are assumed to be broadly static, except where an alternative can be justified, particularly where the building is assumed to be empty or half empty.

vii. When taken as a whole, it is considered that the assumptions have no material bearing on the outcome of the financial appraisal.

Legal

i. All of the options either make assumptions about the progression or otherwise of the existing court action regarding lease terms, or they would require further litigation at some future point in time. Appendix C sets out the implications in much more detail.

Other Operational

i. Where quoted, occupancy percentages represent tenancies rather than stalls or square footage. This is easier, taking account of current and proposed layouts etc.

ii. Basic estimated occupancy levels from 2012/13 onwards have been reduced slightly to reflect all traders paying the same rental and service charge rates per square foot. Where considered appropriate, any recent trends or previous experience has been used to inform other future assumptions, as have comments and responses made by stallholders in recent times, but exact changes in occupancy are impossible to predict with any certainty.

iii. For options that involve seeking an alternative use for the building, whilst currently the retail market is struggling, it is considered reasonable to assume that, for example, it would be possible to attract a single occupier for the whole building in the medium term, say by 2016. Even if there are some years' delay on this, it is not considered material from a whole life costing point of view.

iv. No additional rental income has been assumed for options A and B in relation to letting just the upper floor of the market building. This is based on advice from the Head of Property Services, which is that it is very unlikely that a new retail tenant would take over the upper floor in the current economic climate, and upper floor units can prove very difficult to let even in good market conditions. Furthermore, currently there are restrictions on alternative uses under the terms of the lease and very specific proposals on alternative uses would need to be submitted to the Council's landlord to ascertain whether consent would be forthcoming. In assessing any alternative uses, the prime concern would be to maintain or increase footfall within the adjoining shopping centre. For these reasons, it is considered unrealistic to assume any additional rental income in the main appraisal, but potential financial implications are outlined in the options summary.

v. At this stage no option for acquiring the freehold has been included. This is because in asset management terms, at present there is no case for doing so. It is considered that this position may change in future only if the Council was to take forward the ground floor market option and it proved successful, and it became apparent that a suitable alternative and sustainable use for the first floor could be found. Again though, the indicative financial impact is outlined in the options summary.

5 FINANCIAL OPTIONS APPRAISAL

5.1 Stage 1: Medium Term

5.1.1 The following table provides a summary of the first phase of the options appraisal, over the medium term to March 2015.

MEDIUM TERM FINANCIAL PROJECTIONS

	Approved Budget / Forecast	A	B	C	D	E	F
		Move all tenants to the Ground Floor		Keep Current Layout			
		Current Rents & Service Charge	Increased Rents & Service Charge	Latest Income Projections at Current Rents & Service Charge	Increased Rents & Service Charge	Close after end of leases on 31 March 2015	Buy Out leases before 31 March 2015
	£	£	£	£	£	£	£
Annual Net Cost:							
2011/12	569,100	643,300	643,300	643,300	643,300	643,300	643,300
2012/13	526,000	648,800	700,900	706,500	715,000	706,500	660,000
2013/14	537,500	658,700	828,200	753,000	836,600	753,000	660,000
2014/15	555,600	668,600	661,200	780,900	661,200	799,500	660,000
One-Off Costs:							
2011/12 - Refurbishment Costs		+270,000	+270,000	+0	+0	+0	+0
(Payback Period w.e.f. 2012/13)		*(3 Years)*	*(6 Years)*				
2014/15 - Compensation / Relocation / Redundancy estimates		+0	+111,000	+0	+111,000	+111,000	+286,000
Total Indicative Cost to March 2015	2,188,200	2,889,400	3,214,600	2,883,700	2,967,100	3,013,300	2,909,300
Comparison to Approved Budget / Forecast (for whole period)		+701,200	+1,026,400	+695,500	+778,900	+825,100	+721,100
Comparison to Latest Projection (Option C) (for whole period)		+5,700	+330,900	N/A	+83,400	+129,600	+25,600
2012/13 Average Net Subsidy per tenant based on estimated occupancy		*£28,200*	*£30,500*	*£30,700*	*£31,100*	*£30,700*	*£28,700*

It is reiterated that costs of around £84K equate to a 1% increase in Council Tax.

LONGER TERM SCENARIOS	***Continue Trading***	*Cease Trading*	***Continue** or Cease Trading*	*Cease Trading*	*Cease Trading*	*Cease Trading*

5.1.2 This shows the annual costs of the various options at current prices. They are effectively split over two main themes – either keeping the current layout or moving the tenants to the ground floor.

5.1.3 The cumulative cost to 31 March 2015 is first compared to the current *approved* budget projections, and then to the updated budget projections if the Council continues with the current set up (Option C):

- From this it is apparent that whatever route Council chooses, the market is expected to cost more than approved budget forecasts. Just for next year, the estimated increase ranges from £123K to £189K. Over the full period, the total increase ranges from £696K to £1.026M.

- Option A (Cabinet's recommended option) is estimated to be only very slightly more expensive than Option C. The difference between these two options is not considered significant given the financial assumptions made.

- Option B is the most expensive over the medium term.

- Interestingly, an empty market is estimated to cost around £661K per year (excluding any upfront costs to reach this position). This is virtually lower than all options, with the exception of Option A up to 2014.

5.1.4 The payback of any refurbishment costs is also provided within the table, based on a comparison with the current set up. Option A meets the Council's general 5-year payback requirement, whilst Option B does not.

5.1.5 The average net subsidy per tenant based on estimated occupancy levels is shown. For simplicity, these have not been adjusted for the financing of any capital investment costs; this means that for Options A and B, they could be viewed as slightly understated.

5.1.6 Based on the outcome of this medium term projection two longer term scenarios have been highlighted and they are basically either:

- Continue Trading (Options A & C) or
- Cease Trading (Options C,B,D,E & F)

Note that Option C falls into both categories, as potentially it could result in the market continuing in some form albeit it with a very low occupancy, or eventually the market could end up closing.

5.1.7 At this stage it should be noted both of the options that involve increasing charges to tenants (Options B and D) are expected to result in the market closing in the medium term. This is because the increased charges are considered unaffordable to stallholders.

5.2 Stage 2: Longer Term

5.2.1 The following table therefore draws on the results of the first stage and re-categorises the options into the two longer term scenarios. It then projects the costs over the remaining 83 years of the lease.

	Longer Term : Market Continues Trading			Longer Term : Market Ceases Trading & Alternative Future Use Sought	
	Move all tenants to the Ground Floor		Keep Current Layout		
	Current occupancy maintained	Occupancy reduces over time to leave a core number of tenants	Continue with existing layout but occupancy reduces to leave a core number of tenants	Continue with existing layout then buy out remaining tenants and leave empty	Alternative Future Use Secured
	£	£	£	£	£
Years 1 - 4	2,558,800	2,889,400	2,883,700	2,883,700	**Potentially between £13M and £20M**
Years 5 - 15	7,023,500	7,998,100	8,589,900	7,804,200	
Years 16 - 83	43,418,000	52,196,800	53,101,200	44,961,600	
Total Indicative 83 Year Cost	**53,000,300**	**63,084,300**	**64,574,800**	**55,649,500**	

5.2.2 It is now assumed that for Options B,D,E and F, as a result of either falling occupancy, stallholder leases not being renewed at the end of the lease term or the Council proactively buying them out, the market would no longer continue and therefore would cease trading. For all these options, therefore, the ultimate aim would be to secure an alternative use for the building.

5.2.3 It is felt that Option C, continuing with the current set up, is eventually more likely to result in the market ceasing and an alternative use for the building being required. It could also potentially see the market continuing, however, albeit at a high cost and with occupancy at around say 20% of the total market, to reflect a small core of traders who have sustainable, established businesses in their own right.

5.2.4 If the tenants were moved to the ground floor with no changes in rent or service charges (Option A), there are again two main scenarios envisaged; either it continues at a relatively high occupancy level or again reduces over time.

5.2.5 Should the market cease trading then as mentioned earlier, the Council would need to consider options for its interests in the building and secure an alternative future use. This could include either "white boxing" and sub-letting the whole building to a tenant or negotiating to seek surrender of the lease.

5.2.6 Alternatively, in the worst case the building could remain empty into the future. This is considered unlikely but the indicative cost is shown, not least for comparison purposes.

5.2.7 Even given the inherent difficulties in projecting so far into the future, in summary it is considered that in the long term it would be much cheaper to find an alternative future for the building (with it not being empty). In the worst case, there is a reasonable chance that operating a market in the longer term could be more expensive than simply just having an empty building.

5.2.8 A more comprehensive summary for each option is included in the following section, incorporating the non-financial aspects too and any other key sensitivities.

6 SUMMARY APPRAISAL FOR EACH OPTION

OPTION A	▪ **Move all tenants to the ground floor.** ▪ **Keep market stall rents and service charges at rates proposed in new lease (subject to court application).** ▪ **Undertake capital investment and update Capital Programme / MTFS.** ▪ **Implement other recommendations of Cabinet.**

EXPECTED OUTCOME:

Market operation would continue trading on the ground floor; Council would have surplus upper floor space with no clear use for it nor any clear or immediate opportunities to relet it.

SUPPORTING ACTIONS REQUIRED:

As reflected in Cabinet recommendations. In addition, any emerging legal developments would need to be considered and the ongoing performance of the market would be kept under review.

KEY ASSUMPTIONS:

- The Council would pay for the refurbishment costs of £270K to change the layout of the ground floor to accommodate all current tenants, but only after agreement on layout and relocation costs being reached with tenants.
- Any continuation of the current court action would result in leases being granted to traders that are not significantly different to the terms assumed (e.g. there would be no other changes to current rents or service charges.)
- For the purposes of these projections, it is assumed that the upper floor would remain empty for the reasons stated.
- No cost of borrowing or loss of investment interest has been assumed in connection with the capital investment.
- For the medium term, it is assumed that occupancy would reduce slightly each year, down to 80% by the end of 2014/15.
- Two scenarios have been assumed in terms of longer term occupancy. Firstly, it could continue to reduce gradually over time leaving occupancy levels at about 40% of the lower floor availability, or it could be maintained at a relatively high level at a little over 90%.

SUMMARY APPRAISAL:

- In simple terms, the £270K investment would have a pay back period of 3 years, when compared with Option C (the ‘do nothing’ option).
- At a total cost of £2.889M to 2015, this option is projected to cost virtually the same as keeping the market in the current layout in the medium term, allowing for the £270K investment.
- This equates to an indicative average tenant ‘subsidy’ of around £28K per tenant based on the 2012/13 projected cost of £649K and approximately 90% occupancy.
- In the longer term, this option is expected to cost significantly more than finding an alternative future for the building.
- In terms of supporting employment or providing services or community benefits to the district, this option would, at best, broadly maintain any current contributions to these aims, but at a cost of around £700K per year, allowing for capital investment. There is no real quantitative information to support any such significant benefits, however. The definition of what constitutes a ‘thriving’ market needs careful consideration and clarification.
- There would still be an opportunity to let the upper floor if a single tenant could be found.

- If no tenant was found, in the longer term this option could prove to be more expensive than having an empty market.

The main risks are considered to be:
Strategic / Reputational: It is considered a high risk that investment in the market and not taking an opportunity (albeit long term) to save money may not be in the district's best interests overall. Any future savings would need to be made in other service areas, with the likelihood that other such service provision would be adversely affected – with potentially a greater impact on the wider community than if the market was to close.

Operational: This option would be dependent on all traders agreeing to the proposals prior to implementation and agreeing to meet their own relocation costs; there is the risk that such formal agreement will not be reached. In addition, there is the risk that even with investment, occupancy levels cannot be maintained, thereby reducing any benefits in terms of service to the community but increasing costs at the same time.

The potential opportunities are considered to be:
Any opportunities are dependent on how the Council defines a thriving market and how success would be measured, and how the market operation could perform in future against these aims. Potentially there would be the opportunity to increase occupancy over that assumed. If full occupancy proved possible this could generate around an additional £89K per year, over the better case scenario given.

Key Additional Sensitivities:
There would also be the need to find a single tenant for the upper floor, which could contribute significantly to reducing ongoing net costs. As a broad indication, over the longer term income of say around £11M could be possible.

Furthermore, if the market proved successful and a stable tenant was found for the upper floor, and the landlord was amenable, the Council could consider purchasing the freehold of the building. Again as a broad indication, this could result in savings of say £22M over the longer term. This would increase costs significantly (approaching £400K per annum) over the first 25 years or so, however, before any financial benefits were gained.

If these two scenarios both materialised and high occupancy was maintained, then whilst they could significantly reduce the longer term net costs of £53M down to around £20M for this option, over the 83 years this would still only be on a par with finding an alternative future for the building, and would significantly increase costs over the first 25 years or so.

OPTION B	**- Move all tenants to the ground floor.** **- Charge a commercial rate for market stall charges, subject to court determination.** **- Charge a full recovery rate for service charges.** **- Undertake capital investment and update Capital Programme / MTFS; incorporate into future updates of the Corporate Plan.**

EXPECTED OUTCOME:

Market operation would cease and capital investment of £270K would therefore be wasted. Whilst it is impossible to be accurate regarding timing, it is expected that no tenants would remain by March 2015. An alternative future use for the building would be required.

SUPPORTING ACTIONS REQUIRED:

None given. **Officers advise against this option: it does not represent value for money and does not meet the requirements of the Prudential Code.**

KEY ASSUMPTIONS:

- Current court action would continue and result in full commercial rents applying, and also Members would approve an increase in service charges.
- All stallholders would relocate to the ground floor at a cost of £270K to the Council for refurbishment costs.
- No cost of borrowing or loss of investment interest has been assumed.
- Over the next 2-3 years the market would be empty.
- Tenant compensation would be avoided but provision made for up to £111K potential redundancy costs.

SUMMARY APPRAISAL AND RISK CONSIDERATIONS:

- At a total cost of £3.215M to 2015, the most expensive option in the medium term.
- The investment cost would only repay itself over 6 years, but by then the market operation is expected to have ceased trading.
- Equates to an average tenant 'subsidy' of £30K per tenant per year based on the 2012/13 projected cost of £701K and approximately 90% occupancy.
- More certainty regarding outcome (market closure), as much higher probability that tenants could not afford combined rents and service charges.
- If the market closed ultimately, this would present opportunities to consider alternative uses for the building and save money each year thereafter, but in the meantime the capital investment would have been wasted.
- No significant loss to district in terms of market services or employment, or wider community benefits (outdoor market and other developments may fill any gap).

The main risks are considered to be:
The Council fails in its fiduciary duties and calls into question the legality and rationale of its decision-making. Various other risks and issues would stem from this.

The potential opportunities are considered to be:
None (that override the risks).

OPTION C	**Keep current market layout.** **Keep market stall rents and service charges at rates proposed in new lease (subject to court application).** **Incorporate into future updates of the Corporate Plan and MTFS.** **Authorise Officers to develop future options for consideration by Members in due course.**

EXPECTED OUTCOME:

Market operation still exists by March 2015 but with only core tenants envisaged and therefore market considered unviable in the longer term. Would therefore probably require negotiation / legal action to bring operation to an end, at some point beyond 2015. (A passive approach that would result in closure of the market at some point in the longer term.) An alternative future use for the building would be required.

SUPPORTING ACTIONS TO BE TAKEN:

Support only any short term measures that may improve the market's financial position to March 2015, including short term lettings. Do not undertake take any longer term investment or improvements.

In due course, consider when/how best to end the market operation (including compensation or other incentives) and options for future of building after closure, and associated decision-making. Consideration be given to the staffing implications.

Keep timescales for the above under review, informed by financial and legal positions and occupancy levels.

KEY ASSUMPTIONS:

- Agreement reached on current leases with or without court approval.
- Tenant numbers reduce over time leaving a small core number of tenants (20% occupancy of the full market).
- Any internal stall relocations (initiated by stallholders themselves) would have no material impact on the viability of the market operation.
- The Council would be faced with a decision at some later point on whether / how best to terminate the market operation. With such low occupancy levels, it is not considered that the Council would really seek to maintain an essentially unviable market for the longer term.

SUMMARY APPRAISAL AND RISK CONSIDERATIONS:

- At a total cost of £2.884M to 2015, the option is virtually the same as Option A in the medium term, but the most uncertain option to cost.
- Equates to an average tenant 'subsidy' of £31K per tenant per year based on the 2012/13 projected cost of £706K and approximately 50% occupancy.
- If the market closed ultimately, this would present opportunities to consider alternative uses for the building and save money each year thereafter.
- On any ultimate closure, no significant loss to district in terms of market services or employment, or wider community benefits (outdoor market and other developments may fill any gap).
- If the market continued on but with very low occupancy levels of say 20%, over the life of the lease this would be the most expensive option (approximately £65M as an indication).

The main risks are considered to be:
Strategic / Reputational: This could prove to be a 'slow death' for the market over the medium term, with adverse impact on the Council's image and relationship with stakeholders. The Council could also fail to take a firm decision in future (after 2015), with the risk that any residual market continues at an unacceptably high cost and involving disproportionate Member and Officer time. Alternatively, the Council may fail to find a single occupier or exit from its leasehold and would have to continue to pay the landlord for rent and service charges for an empty building. Legal risks exist regarding the termination of stallholder leases.

Operational / Financial: Collection of rents and service charges and markets management generally may prove more difficult (but in turn this could result in earlier termination of affected tenancies).

The potential opportunities are considered to be:
Significant financial savings over the longer term, with only comparatively small losses in employment or services for the district. Potentially, any sustainable businesses may move into the city centre, and the offer (and employment) opportunities in the Marketgate building could improve depending on future use.

This option could, by default, present an opportunity to seek an alternative use for the building earlier than 2015. If such a use was found, this could reduce also reduce medium term costs. It may also provide an opportunity to consider additional support for traders, if the Council wished to secure an alternative use for the building sooner.

OPTION D	- **Keep current market layout.** - **Charge a commercial rate for market stall charges, subject to court determination.** - **Charge a full recovery rate for service charges.** - **Incorporate into future updates of the Corporate Plan and MTFS** - **Authorise Officers to develop future options for consideration by Members in due course.**

EXPECTED OUTCOME:

Market operation would cease and an alternative future use for the building would be required. Whilst it is impossible to be accurate regarding timing, it is expected that no tenants would remain by March 2015.

SUPPORTING ACTIONS REQUIRED:

Support only any short term measures that may improve the market's financial position to March 2015, including short term lettings. Do not undertake any longer term investment or improvements.

In due course, consider how best to end the market operation (including compensation or other incentives) and options for future of building after closure, and associated decision-making. Consideration be given to the staffing implications.

Keep timescales for the above under review, informed by financial and legal positions and occupancy levels.

KEY ASSUMPTIONS:

- Current court action would continue and result in full commercial rents applying, and also Members would approve an increase in service charges.
- Over a short space of time traders would leave and the market would empty.
- Any internal stall relocations (initiated by stallholders themselves) would have no material impact on the viability of the market operation.
- Tenant compensation would be avoided but provision made for up to £111K potential redundancy costs.

SUMMARY APPRAISAL AND RISK CONSIDERATIONS:

- At a total cost of £2.967M to 2015, the third most expensive option overall in the medium term.
- Equates to an average tenant 'subsidy' of £31K per tenant per year based on the 2012/13 projected cost of £715K and approximately 50% occupancy.
- More certainty regarding outcome (market closure), as much higher probability that tenants could not afford combined rents and service charges.
- If the market closed ultimately, this would present opportunities to consider alternative uses for the building and save money each year thereafter.
- On closure, no significant loss to district in terms of market services or employment, or wider community benefits (outdoor market and other developments may fill any gap).

The main risks are considered to be:
Strategic / Reputational: Whilst charging full commercial rents and requiring tenants to meet their full service charges is not in itself unreasonable, the Council could be portrayed as 'forcing' tenants out of the market and worsen stakeholder relationships. Also the Council may fail to find a single occupier or exit from its leasehold and would have to continue to pay the landlord for rent and service charges for an empty building. Legal risks exist regarding the termination of stallholder leases.

Operational / Financial: Collection of rents and service charges and markets management generally may prove more difficult (but in turn this could result in earlier termination of affected tenancies).

The potential opportunities are considered to be:
Significant financial savings over the longer term, with only small real losses in market employment or services for the district. Potentially, any strong businesses may move into the city centre, and the offer (and employment) opportunities in the Marketgate building could improve depending on future use.

This option may present an opportunity to seek an alternative use for the building earlier than 2015. If such a use was found, this could also reduce medium term costs. It may also provide an opportunity to consider additional support for traders, if the Council wished to secure an alternative use for the building sooner.

OPTION E	■ **Keep current market layout.** ■ **Keep market stall rents and service charges at rates proposed in new lease (subject to court application).** ■ **Leases are not renewed after 31 March 2015, to allow future alternative use for the building thereafter.** ■ **Authorise Officers to develop future options for consideration by Members in due course (from now).**

EXPECTED OUTCOME:

Market operation would cease by 2015, and an alternative future use for the building would be secured.

SUPPORTING ACTIONS REQUIRED:

Support only any short term measures that may improve the market's financial position to March 2015, including short term lettings. Do not undertake any longer term investment or improvements.

Consider (sooner rather than later) how best to end the market operation, including compensation arrangements or other incentives and options for future of building after closure, and associated decision-making. Consideration be given to the staffing implications.

Keep timescales for the above under review, informed by financial and legal positions and occupancy levels.

KEY ASSUMPTIONS:

- Current court action would continue but current leases would not be renegotiated or extended after 31 March 2015. No future increase in rents & service charges assumed, however.
- Over time tenants would leave and the market would empty.
- Any internal stall relocations (initiated by stallholders themselves) would have no material impact on the viability of the market operation.
- Tenant compensation would be avoided but provision made for potential redundancy liabilities.

SUMMARY APPRAISAL AND RISK CONSIDERATIONS:

- At a total cost of £3.013M to 2015, the second most expensive option overall in the medium term.

- Equates to an average tenant 'subsidy' of £31K per tenant per year based on the 2012/13 projected cost of £706K and approximately 50% occupancy.
- More certainty regarding outcome (market closure), and much higher probability that tenants could not afford combined rents and service charges.
- This option would present opportunities to consider alternative uses for the building and save money each year thereafter.
- No significant loss to district in terms of market services or employment, or wider community benefits (outdoor market and other developments may fill any gap).

The main risks are considered to be:
Strategic / Reputational: Legal risks exist regarding the termination of stallholder leases. The Council could be viewed as effectively 'forcing' tenants out of the market by not renewing the leases after 31 March 2015.

Also the Council may fail to find a single occupier or exit from its leasehold and would have to continue to pay the landlord for rent and service charges for an empty building.

The potential opportunities are considered to be:
Significant financial savings over the longer term, with only small real losses in market employment or services for the district. Potentially, any strong businesses may move into the city centre, and the offer (and employment) opportunities in the Marketgate building could improve.

This option may still present an opportunity to seek an alternative use for the building before March 2015. If such a use was found, this could also reduce medium term costs. It may also provide an opportunity to consider additional support for traders, if the Council wished to secure an alternative use for the building sooner.

OPTION F	■ **Keep current market layout.** ■ **Keep market stall rents and service charges at rates proposed in new lease.** ■ **Buy out tenant leases before 31 March 2015, to allow a future alternative use to be secured.** ■ **Authorise Officers to develop future options for consideration by Members in due course (from now).**

EXPECTED OUTCOME:

Market operation would cease before 2015, and an alternative future use for the building secured.

SUPPORTING ACTIONS REQUIRED:

Minimise day to day spending and investment in market.

Commence negotiations with traders to buy out the leases, which would incur compensation costs and potentially relocation costs to assist tenants in setting up in new premises.

Develop options for future of building from 2015/16 onwards or sooner. Consideration be given to the staffing implications.

Determine appropriate decision-making arrangements to effect the above and keep timescales for the above under review, informed by financial and legal positions.

KEY ASSUMPTIONS:
■ It is assumed that there would be no reduction in the current level of tenants as they would seek to achieve maximum compensation and relocation costs from the process, which have been provided for within the costs. ■ Provision made for up to £111K potential redundancy liabilities.
SUMMARY APPRAISAL AND RISK CONSIDERATIONS: ■ At a total cost of £2.909M to 2015, the lowest cost option that clearly aims for closure of the market, but the difference in medium term costs between this and Option C is not considered significant. ■ Equates to an average tenant 'subsidy' of £29K per tenant per year based on the 2012/13 projected cost of £660K and approximately 50% occupancy. ■ Certainty regarding outcome (market closure), as the Council is taking a course of action that would result in an empty market. ■ Opportunities to consider alternative uses for the building and save money each year thereafter. ■ No significant loss to district in terms of market services or employment, or wider community benefits (outdoor market and other developments may fill any gap). **The main risks are considered to be:** Strategic / Reputational: Legal risks exist regarding the termination of stallholder leases. The Council could be viewed as effectively 'forcing' tenants out of the market by not renewing the leases after 31 March 2015. Also the Council may fail to find a single occupier or exit from its leasehold and would have to continue to pay the landlord for rent and service charges for an empty building. **The potential opportunities are considered to be:** Significant financial savings over the longer term, with only small real losses in market employment or services for the district. Potentially, any strong businesses may move into the city centre, and the offer (and employment) opportunities in the Marketgate building would improve. This option should present an opportunity to seek an alternative use for the building before March 2015. If such a use was found, this could also reduce medium term costs. It may also provide an opportunity to consider additional support for traders.

7 CONCLUSIONS

7.1 Decisions for the market should be informed by longer term considerations, particularly given the nature of the Council's leasehold interest.

7.2 Whichever option is chosen, in the medium term the market is expected to cost more than is currently provided within approved budget forecasts.

7.3 Of the options appraised, only Option A, the preferred option of Cabinet, is expected to result in the market operation continuing much beyond 2015.

7.4 Option A is expected to be virtually the same as Option C in the medium term, but it is expected to prove much more costly in the longer term, when compared with an option that involves closing the market and securing a future alternative use. Its financial implications could be improved by letting the upper floor and potentially by considering any opportunity to buy the freehold, but even then, it is not expected to be the lowest cost option.

7.5 Option A is considered to make at best only small contributions to the previously desired aims of supporting employment and service to the district. The ‘returns’ on the annual investment or net operating cost are therefore considered very small for the community or taxpayers as a whole.

7.6 Accordingly Option A is considered to be of greater benefit to market traders than for the community or local taxpayers. This is because of the subsidised nature of the market undertaking.

7.7 All other options, even that of Option C (the current set up, or “doing nothing”) are reasonably expected to result in the closure of the market at some point with the need to secure an alternative future use for the building. Some of these (Options E and F) are proactive, whereas others may be viewed as more passive.

7.8 Officers advise against Option B, as it is expected that any capital investment would prove to be a waste.

7.9 Whilst not without risk, it is considered that options that result in closure of the market and provide an opportunity to secure an alternative future for the building, represent a better deal for the community and taxpayers as a whole, with opportunities to make significant financial savings.

7.10 Whilst there would be a cost to the community for as long as the market building is empty, this is comparable to the cost of the current operation and therefore is not considered a significantly worse deal than that currently experienced.

7.11 Of the options that result in the market’s closure and require an alternative use to be secured for the building, Option F (the lowest cost option) is considered to be clearest in terms of setting future direction, with opportunities to assist current stallholders in exiting the market, thereby helping to minimise any employment / service losses.