

# CABINET

## Lancaster Market 26 July 2011

### Report of Head of Property Services

PURPOSE OF REPORT			
To consider options for the future of Lancaster Market including the opportunity to integrate with the City Museum.			
Key Decision	<input checked="" type="checkbox"/>	Non-Key Decision	Referral from Cabinet Member
Date Included in Forward Plan	6 July 2011		
This report is public			

#### RECOMMENDATIONS OF COUNCILLOR JON BARRY

- (1) To not move the market to the museum.
- (2) To move all market traders onto the ground floor and not to increase rents or service charges at this point.
- (3) That the move in 2. be done with some urgency to protect existing businesses on the top floor and to protect the Council's future rental income.
- (4) To seek alternative tenants for the upper floor.
- (5) To carry out the recommendations in terms of improved marketing and management recommended to Council in the NCS report received in December 2010.
- (6) To examine the Council's costs of running the market and to consider whether these can be reduced.
- (7) That recommendations 2 to 4 above be referred on to Council for consideration and that they be subject to the outcome of a financial appraisal which would also be reported to Council for consideration to inform its final decision making.

#### 1.0 Introduction

1.1 At their meeting on 15 February 2011, Cabinet resolved:

- (a) That approval be granted to undertake further investigations into the conversion of the City Museum to accommodate Lancaster Market and that a further report is made to cabinet in due course with the costs being funded from the proposed reserve.

- (b) To confirm the importance of the King's Own Royal Regimental Museum in the heritage offer of the district and to seek to improve that offer as part of any change to the City Museum.
  - (c) That officers be instructed to enter into leases with traders at Lancaster Market Hall that would allow for the potential relocation to new premises or a break or redevelopment clause for the purpose of refurbishing and revitalising the market hall (should transfer into alternative premises not prove feasible).
  - (d) That whilst investigations are undertaken into the conversion of the City Museum, measures continue to be implemented within Lancaster Market to improve its appearance and to continue with improved management and marketing of the market, with any costs funded from the proposed reserve.
- 1.2 Since that meeting various items of work have been undertaken to provide a report to members on the options involved.

## **2.0 Issues**

### **Museum report**

- 2.1 As a consequence of the consultancy work carried out in accordance with the resolution of cabinet identified in 1.1 (a) and 1.1 (b) above, the consultants have now reported the findings of their work which are summarised via the executive summary in **Appendix A**.
- 2.2 The report clearly identifies the important role that the museum provision can contribute to the heritage offer of the city centre, and that it is currently not being utilised to its full capacity. It also identifies that the retail offer could be improved, however, this could be accommodated within the square and complement the existing 'outdoor' market.
- 2.3 There is clearly further discussion needed on the outcomes of the museums report, and this will be reported to members in early autumn as part of the museum partnership review and implementation of the cultural strategy.
- 2.4 With regard to the future of the market, clarity has now been sought that it would not be possible to move the existing market offer and upgrade the museum.

### **Market issues**

- 2.5 Members are also advised that with regard to resolution (3) of the 15 February report (see 1(c) above), traders have now been offered new four year leases, with a break clause to allow for potential relocation to new premises or redevelopment of the existing market which would require relocation.
- 2.6 Members should note that whilst this offer has been put to the tenants, not all the tenants are prepared to accept the break clause for relocation, and have subsequently referred the new leases to the courts for determination.
- 2.8 A further issue which needs to be addressed is the level of rent that members

agree to set for the units. At a previous cabinet meeting in June 2010, members resolved to set a rent at the previous level plus 2.5% and to leave the service charge at the previous level. The proposal was that this would be reviewed 12 months into the lease arrangements on 1 April 2012 (or such other date as may be determined by the courts). Due to the amount of time that has elapsed, and the information now available, members may wish to review this position.

- 2.9 In addition, it should be noted that if traders were to move to the ground floor as referred to in option 2, new leases would need to be provided for those traders that take new spaces and in such circumstances the leases determined by the courts would be redundant.
- 2.10 Members will be aware that in considering the future direction of the market, the Lancaster Market Cabinet Liaison Group considered evidence from other markets in the region where total occupation costs were generally higher than adjacent commercial premises because of the additional services required. Such information could be produced for the court to consider, but the conclusion is entirely in the hands of the courts.
- 2.11 In considering the options set out below, it would be necessary to consider what the council wishes to achieve. Although the council has a further 84 years to run on its lease from the owner of Marketgate, the council is now committed to operating the existing market in the building for a further period until at least 31 March 2015. This follows the council resolution from March 2010 as reinforced by the cabinet resolution of February 2011 (see paragraph 1.1 above). In accordance with those resolutions the council has served notice on the traders to terminate their leases and to offer them new lease terms. The council cannot unilaterally withdraw those notices.
- 2.12 As a result, the council has options below under which it could consider investing in the market as per the NCS review (option 1); relocating the traders within the market (option 2); leaving the market as it is and renewing leases at existing levels (option 3); leave the market as it is but increase rents and service charge levels (option 4). It should be noted that options 1 and 2 support the Council resolution from March 2010 to refurbish and revitalise the market. Regardless of which option is chosen, the rent and service charge levels on a per square foot basis relating to each individual stall would not reduce, although it should be pointed out that there is a high chance that the council's overall income would reduce if the council does not invest in the market or chooses to increase rents and service charges – see the details of each option in section 3 below.
- 2.13 Dependent on the option chosen, a further appraisal can be undertaken if required. However, it should be noted that in any further option appraisal, it is not possible to undertake any meaningful assessment of the future income to set against the capital costs of works.

### **3.0 Options and Options Analysis (including risk assessment)**

- 3.1 Considering all the above issues the council has several options on how it might move the market forward. These options are based on the decision taken by Council in March 2010 to retain a refurbished and revitalised market in Lancaster.

	<p><b>Option 1:</b></p> <ul style="list-style-type: none"> <li>To implement the finding of the NCS review which would require the following investment</li> </ul> <table border="1"> <thead> <tr> <th></th> <th>Budget Figure (£)</th> </tr> </thead> <tbody> <tr> <td><b>Entrance doors</b></td> <td>40K per entrance</td> </tr> <tr> <td><b>Internal layout changes</b></td> <td>400K</td> </tr> <tr> <td><b>Drop down banners</b></td> <td>1K</td> </tr> <tr> <td><b>External glazing vinyl transfers</b></td> <td>12K (+ original images)</td> </tr> <tr> <td><b>Demountable stalls</b></td> <td>1K each</td> </tr> <tr> <td><b>Part-time business development manager</b></td> <td>20K per annum</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>Review the rents to market value once the refurbishment works are completed</li> </ul>		Budget Figure (£)	<b>Entrance doors</b>	40K per entrance	<b>Internal layout changes</b>	400K	<b>Drop down banners</b>	1K	<b>External glazing vinyl transfers</b>	12K (+ original images)	<b>Demountable stalls</b>	1K each	<b>Part-time business development manager</b>	20K per annum
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Advantages	<ul style="list-style-type: none"> <li>The NCS proposals would provide an opportunity to reinvigorate the market and potentially bring in new tenants.</li> </ul>														
Disadvantages	<ul style="list-style-type: none"> <li>There would be a substantial cost to the council and no guarantee that the scheme would be a success or that the existing deficit, currently estimated at £619,500 for 2011/12 would be reduced.</li> </ul>														
Risks	<ul style="list-style-type: none"> <li>There is a risk that reduced number of traders would continue in the market as a result of the increased rents. This could lead to a further spiralling down of the market prior to refurbishment works being undertaken.</li> </ul>														

	<p><b>Option 2:</b></p> <p>As a consequence of discussions held with the market traders there is a proposal to move all tenants down to the ground floor, and retain first floor accommodation for either a single let or a let at some other use, e.g. exhibition space. Costs of the works, including a plan of the proposal, are show at Appendix B.</p> <ul style="list-style-type: none"> <li>The costs of refurbishing the ground floor to accommodate such usage, with minimal refurbishment to the first floor are estimated at £270K including fees. However, it should be noted that this does not include the cost of any particular fitting out requirements in individual stalls other than specialist works to relocate café kitchen equipment. Market traders have expressed the view that the council should be responsible for all costs of any move, although cabinet may wish to indicate whether they feel that traders should contribute to fit out costs as part of this agreement</li> <li>Consideration could be given under this arrangement to increase rents to full market value on completion of works.</li> </ul>
Advantages	<ul style="list-style-type: none"> <li>The move of all units to the ground floor will give the traders more visibility and create a greater sense of vitality to the market</li> <li>Traders appear to be in agreement with the option, and</li> </ul>

	<p>this cooperation of the traders may well encourage a quicker resolution to current underutilisation.</p> <ul style="list-style-type: none"> <li>• The option would cost less than full refurbishment</li> </ul>
Disadvantages	<ul style="list-style-type: none"> <li>• There would still be a substantial cost to the council, with no guarantee that the scheme would be a success</li> <li>• There would be limited assurance that the deficit would be reduced as there is currently no confirmed tenant to take the upper floor at a market rent and no absolute guarantee that all existing traders would remain in the market after a move to the ground floor.</li> <li>• Tenants may find the new rents and service charges on the ground floor unaffordable, and the council would still have a significant deficit, currently estimated at £619,500 for 2011/12, with reducing numbers of stalls</li> </ul>
Risks	<ul style="list-style-type: none"> <li>• Increased rents and service charges may reduce stall holder numbers</li> <li>• Significant investment with no guaranteed return</li> <li>• The Landlord and Tenant process will result in new leases being granted, without a break/redevelopment clause, and if this was to happen, any move by the tenant would need to be by agreement of <u>all</u> the tenants. <b>Should a single tenant not wish to relocate, the proposal could not be implemented.</b></li> </ul>

However, should the council wish to consider the option of not retaining a refurbished and revitalised market in Lancaster, the following options are appropriate:

	<p><b>Option 3:</b></p> <ul style="list-style-type: none"> <li>• To renew the existing tenancies on a four year lease (subject to the outcome of the application to court)</li> <li>• Not to invest any further funds in remodelling the market building</li> <li>• Keep rents at the level set by cabinet on the 22 June 2010. (subject to court determination)</li> </ul>
Advantages	<ul style="list-style-type: none"> <li>• Certainty will be given to the tenants regarding the future of the indoor market, which may encourage new tenants to take units and prevent stall holders leaving</li> <li>• No capital allocations will be required other than the repair and maintenance funds needed to implement the conditions of the lease.</li> </ul>
Disadvantages	<ul style="list-style-type: none"> <li>• Stall holders will continue to leave because no investment has been made</li> <li>• The market will continue to run at a significant financial loss to the council, which may increase should further stall holders leave</li> <li>• There will be no significant change programme for the market, and as identified in the NCS report, such change is required to try and achieve a vibrant and vital market for the future.</li> </ul>
Risks	<ul style="list-style-type: none"> <li>• Ongoing general deterioration of the market hall</li> <li>• Tenants will continue to leave</li> <li>• Landlord/Headlease costs are fixed, and the revenue losses to the market, currently estimated at £619,500 for</li> </ul>

	2011/12, may increase
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	<p><b>Option 4:</b></p> <ul style="list-style-type: none"> <li>• Renew the existing tenancies on a four year lease (subject to the outcome of the application to court)</li> <li>• Provide no further investment in to the premises for remodelling purposes</li> <li>• Increase the rent and service charges to the full market value (subject to court determination)</li> </ul>
Advantages	<ul style="list-style-type: none"> <li>• Certainty will be given to the tenants regarding the future of the indoor market, which may encourage new tenants to take units and prevent stall holders leaving</li> <li>• No capital allocations will be required other than the repair and maintenance funds needed to implement the conditions of the lease.</li> </ul>
Disadvantages	<ul style="list-style-type: none"> <li>• Tenants may continue to leave due to lack of investment</li> <li>• The increased rent may encourage tenants to leave at a greater pace</li> <li>• The 'net' cost of holding the building will increase and revenue/rent decreases.</li> </ul>
Risks	<ul style="list-style-type: none"> <li>• Ongoing general deterioration of the market hall</li> <li>• Tenants will continue to leave</li> <li>• Landlord/Headlease costs are fixed, and the revenue losses to the market, currently estimated at £619,500 for 2011/12 may increase</li> </ul>

## 5.0 Officer Preferred Option (and comments)

5.1 In light of the findings of this report, and on the assumption that the council still desires a thriving indoor market in line with cabinet and council decisions, it is evident that investment of some sort is needed in the market but achieving that desire is by no means guaranteed. It would be normal to carry out some form of cost benefit analysis to determine the benefits of investment in the market. However, it is impossible to predict the future income of the market due to the uncertainty of whether all existing traders would remain in the market and whether there would be any additional take up of stalls. As a result, whilst the main conversion cost for the ground floor of the market is known, any meaningful assessment of future income is not possible. However, the council is committed to the market until at least March 2015 and a view needs to be taken as to the operation of the market during that period.

5.2 It is considered that, taking into account all known risks, option 2 would provide the best resolution to the very difficult, complicated and complex issues that surround the market.

### RELATIONSHIP TO POLICY FRAMEWORK

Economic Regeneration – supporting our economy is one of the City Council's key priority areas. It includes heritage and cultural tourism for the district including creative industries and employment.

The improvement of the Lancaster indoor market could attract more food-based businesses

(particularly local food), attracting key businesses, such as a bakery, and marketing the market as a visitor attraction for the city centre. Looking at improving the provision of the market could therefore be aligned to supporting our local economy and the cultural agenda, depending on the retail offer made available within the market.

Nonetheless, as well as being in line with priorities the Council's Medium Term Financial Strategy (MTFS) requires that options for capital investment must be appraised to meet the requirement of the Prudential Code namely that investment is affordable, prudent, and sustainable, and that such investment represents real value for money for people in the district.

### **CONCLUSION OF IMPACT ASSESSMENT**

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

The City Council wishes to maintain an economically sustainable city centre and retaining and improving the provision of the indoor market can help to facilitate this.

### **LEGAL IMPLICATIONS**

Legal Services have been consulted and option 2 could only be implemented by agreement unless the courts rule in the council's favour and approves the break clause for relocation/refurbishment.

Should the court approve the council's request for a break clause, the council would have to take further steps to bring this into effect. If all the tenants agree to move to the ground floor then it may not be necessary for a redevelopment/relocation break clause to be inserted into the new lease. Members may wish to stipulate whether such a break clause will be required in the event that all the tenants agree to the move. Without the break clause the Council would not be able to bring the lease to an end (other than in the event leading to forfeiture) until the stipulated end term date.

As this report highlights, all of the remaining tenants have brought a claim for lease renewal. The Council has filed with the court its acknowledgement of services setting out the basis on which it will agree to a new lease.

It is expected that the Court will list the cases for a directions hearing shortly. At the directions hearing it is expected that the Court will set the matter down for trial. It is difficult to give a precise indication of when the matter will finally be resolved by the Court. However, as a rough estimate (and bearing in mind the number of claims issued and the arguments in dispute) one would expect the Court to set the matter down for a final hearing within three to four months after a directions hearing has been heard.

### **FINANCIAL IMPLICATIONS**

All the costings identified within this report are 'estimated' costs and they are by no means complete. Should Cabinet wish to take forward any option involving capital investment, this would require consideration by Council as it would fall outside of the current budget framework. Any such Council referral report would include a full capital investment appraisal and estimated revenue implications together with associated sensitivity analysis.

Members are reminded that the current market is being operated at an estimated annual deficit of £619,500 subject to the number of vacant stalls arising during any given year.

Should members wish to invest capital into this scheme, this must be balanced against other priorities the council may have for its capital expenditure or other council priorities.

#### **OTHER RESOURCE IMPLICATIONS**

**Human Resources:**

There are no direct implications within this report although depending on the resolution of cabinet, consideration does need to be given to future management of the market in line with the NCS report

**Information Services:**

There are no IS implications within this report.

**Property:**

The property implications are included within the body of the report.

**Open Spaces:**

Not applicable.

#### **SECTION 151 OFFICER'S COMMENTS**

Members need to ensure that their decision-making is based on appropriate consideration of relevant factors, including cost, risk, value for money and other finance related matters as outlined in the report. This is in recognition of their fiduciary duties to local taxpayers as a whole.

Clearly at this stage the options presented do not take account of any investment appraisal and therefore information is incomplete.

Should Cabinet wish to take forward any capital investment options therefore, at this stage this would be in principle only, subject to further consideration and a final decision by Council. A full options appraisal would be produced and included in the referral report. To ensure appropriate comparison, this may include options that are not necessarily preferred by Cabinet at this stage. This is to protect the Council in its future decision-making; care needs to be taken in the reasoning for discounting any potentially viable options at this stage, given that full information is not currently available. In the body of this report references are made to the difficulties in undertaking cost benefit analyses and it being impossible to predict future income levels etc. Nonetheless, officers have responsibilities to make reasonable estimates based on a range of potential outcomes or scenarios using sensitivity analysis and other techniques, as well as highlighting the inherent risks attached.

Should Cabinet wish to take forward options not involving capital investment (such as options 3 and 4), clearly the financial implications and the extent of any discretion available to Members in terms of setting rents and service charges would be dependent on the decision of the court.

Overall, in considering outline options and as in previous years the s151 Officer would advise Members to consider whether and to what extent the market facility achieves (or could achieve) value for money for local taxpayers as a whole. From an accounting viewpoint, markets are currently classed as a trading undertaking, albeit that Lancaster market operates at a substantial deficit.



In addition it should be noted that recommendations 2 to 4 above should be referred on to Council for consideration and that they be subject to the outcome of a financial appraisal which would also be reported to Council for consideration to inform its final decision making.

Any further comments will be fed into the meeting.

#### **MONITORING OFFICER'S COMMENTS**

The Monitoring Officer concurs with the views of the Section 151 Officer, and would reiterate the need to take into account all relevant considerations in making a decision. In this respect a full financial appraisal will be essential. The Monitoring Officer is also mindful that because of the current court proceedings, the final terms of any lease may be ordered by the court and would thus be outside the control of the Council. Further, any move to the ground floor relies on the consent of all tenants, which again is outside the control of the Council.

#### **BACKGROUND PAPERS**

Previous council and cabinet reports and minutes

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