

Report of the Director of City Development

Report to Executive Board

Date: 18 December 2013

Subject: Proposals for a Management Board and Future Lease Arrangements for Kirkgate Market

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): City & Hunslet	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

Leeds City Council wishes to deliver a culture change in the way it operates Kirkgate Market. Within the context of the proposed redevelopment and refurbishment of the market, the Council is reviewing its management arrangements and approach to leases. The aim is to foster a more collaborative approach which embraces and builds upon the skills of the management team and the considerable experience of its traders, combined with appropriate input from experts in related fields such as commercial retail.

Kirkgate Market is part of a vibrant retail offer which reflects the city's diverse and varied cultural profile and complements recent step changes in the city's retail landscape with the opening of Trinity Leeds, and the imminent commencement of the new Victoria Gate development. These are both multi-million pound combined retail and leisure destinations which move the city significantly towards its aspiration to be Best City in the UK by 2020, and has helped secure Leeds' position as one of the top 5 retail destinations in the UK¹.

At Executive Board in March 2013, it was agreed that the future management arrangements for Kirkgate Indoor and Open Market would remain with the Council, as this was the option favoured by the public in the extensive consultation exercise conducted as part of the feasibility work during 2012. A separate Board would be established for this purpose, the format of which would encompass membership that included traders and

¹ CACI Retail Rankings

independent advice. Approval was given to work up a detailed proposal for the format and terms of reference of this Board.

In line with its aspiration to be the best market in the UK, and taking account of feedback from traders and markets management, the Council wishes to revise the format and range of leases and licences which form the tenancy agreements offered to and held by tenants of Kirkgate Indoor market. The aim is to ensure that, going forward, tenancy agreements offer adequate protection and ease of administration for both parties; and add value for the tenant as a saleable rather than diminishing asset to the business in terms of the right of assignment. The new agreements would apply to future leases and tenancy agreements granted within Kirkgate Indoor market. The arrangements for the Open Market are not affected by these proposals as these are granted under the Council's Market Rights.

The Council recognises the value of existing leases to its tenants, particularly in terms of the right of assignment and, therefore, the proposed new range of agreements has been designed to offer present and future stall holders as much protection and stability as possible, in order to encourage long term commitment and investment, whilst seeking to ensure a standardised and efficient approach to managing the relationship between the Council as landlord of Kirkgate Market and its tenants.

The proposed introduction of a range of new standard leases and tenancy agreements in Kirkgate Market is consistent with the Best Council Plan in terms of promoting sustainable and inclusive economic growth by improving the economic wellbeing of local people and businesses by encouraging the creation of new businesses, jobs and training opportunities.

This report analyses the possible options for new lease agreements, and for setting up a Management Board for Kirkgate Market, taking into account available options for the Management Board allowable by the Council's Constitution, and makes recommendations to Executive Board on both of the above.

Council Policies and City Priorities

The subject of this report has a direct impact on LCC's aspiration to be 'Best City' and supports its Vision 2030 by helping deliver:

- a) A strong local economy driving sustainable economic growth
- b) A city where:
 - There is a strong community spirit and a shared sense of belonging, where people feel confident about doing things for themselves and others;
 - People from different backgrounds and ages feel comfortable living together in communities;
 - There is a culture of responsibility, respect for each other and the environment;
 - The causes of unfairness are understood.

Recommendations

Executive Board is asked to note the contents of this report and:

In respect of the Management Board:

- i) Approve the establishment of an Advisory Board as set out in Section 3.2 of this report;
- ii) Note the stages required to implement the decision as outlined in 3.2;
- iii) Note the proposed timescales for implementation as outlined in 5.1 and 8.5;
- iv) Note the responsibility for implementation will be delegated to the Director of City Development in consultation with the Executive Member for Development and Economy.

In respect of the new lease agreements:

- i) Approve the introduction of a range of standard leases and tenancy agreements as set out in Section 6.4 of this report to be offered to existing stall holders affected by the proposed works to the refurbished Kirkgate Market and to new traders wanting a stall in Kirkgate Market.
- ii) To note the proposed timescale to implement the decision and that the Markets Manager and the City Solicitor will be responsible for implementation of the decision.

1 Purpose of this report

1.1 This note sets out the possible options for setting up a Management Board for Kirkgate Market which is wholly owned by the Council, and makes a recommendation to Executive Board on the most appropriate format from the options available. It takes into account:

- Available options for the Management Board allowable by the Council's Constitution
- Composition of members
- Nomination to the Board
- Future changes
- Role of the Board
- Timescale for implementation.

1.2 This paper also sets out the recommended range of tenancy agreements to be used at Kirkgate Indoor market going forward, for new businesses coming into the market, and for agreements with tenants relocated as a consequence of the

proposed refurbishment. The new formats will not affect tenants with existing leases that are not terminated on grounds of redevelopment.

Kirkgate Market Management Board: Format and Terms of Reference

2 Background information

2.1 At Executive Board in March 2013, it was agreed that the future management arrangements for Kirkgate Indoor and Open Market would remain with the Council, with a separate Board to be established for this purpose, the format of which would encompass membership that included traders and an independent adviser. This option was favoured by the public consultations exercise that took place. Approval was given to work up a detailed proposal for the format and terms of reference of this Board. A great deal of work took place during 2012 to explore alternative options outside the Council's control (e.g. social enterprise), but when the options were put out to consultation the majority of respondents said they preferred the management of the market to stay with the Council.

3 Main issues

3.1 Options

There are three ways that the Council's constitution allows for an 'LCC Management Board' to be set up (a full description of the different options is set out in Appendix A to this report.), namely:

- Option 1: An Area Committee – not recommended. To set up an Area Committee and functions in relation to the markets for the discrete area of Kirkgate market would require a change to the constitution and a decision of full Council. No elected member other than ward members for this area could serve on the committee. The Committee can make decisions on behalf of the Council but only over a limited range of matters and only Councillors could vote on these.
- Option 2: A Formal Advisory Board – not recommended. A formal Advisory Board does not have decision making powers on behalf of the Council and also has restrictions on its composition including the number of co-optees allowed, and appointments and changes can only be made by full Council. Especially in the early years this would not offer the required flexibility.
- Option 3 (Recommended): An informal Advisory Board. An informal advisory board has the flexibility to achieve the balance of board membership and range of skills which will enable the Board to fulfil its purpose effectively, and is therefore the option recommended. Changes to the terms of reference, if required, can be made easily without reference to full Council. Providing the political balance across all outside bodies is maintained, there is some flexibility to operate outside the rules of proportionality if this is required. This format particularly lends itself to the appointment of a wider range of members with relevant skills in retail, commerce, marketing etc which it is the aspiration of the Council to bring to the future management of Kirkgate Market.

3.2 **Composition of members**

3.2.1 The aspiration is for a Board which has a balance between elected members, trader representatives and commercial expertise.

3.2.2 It should be noted that, other than through the establishment of a formal Advisory Committee trader representatives and independents cannot participate in the Council's formal decision-making processes for market management issues but can of course play a significant role in debating issues and influencing the outcome of these, in the way that large companies often have Non-Executive Directors (NEDs) carrying out an advisory function on their Board of Directors. Membership of the proposed Board would be the channel through which they could participate in this way.

3.3 **Proposed Structure of the (Informal) Advisory Board**

3.3.1 The Board will be established by the Council, and as such, LCC will retain the majority influence and control. The following representation is recommended; all have voting rights.

3.3.2 6 x Elected members, selected through the Council's procedure for appointments to Outside Bodies, which based on the current political balance of the Council would be:

- 4 x Labour, to include Chair who has a casting vote;
- 1 x Conservative; and
- 1 x LD (or other opposition group as agreed by MMC).

3.3.3 3 x democratically elected trader representatives:.

- 2 x Indoor market; and
- 1 x outdoor market.

3.3.4 Up to 3 x independent advisers. The advisers would be drawn from a range of disciplines and would provide expert advice and guidance to the Board. They would be expected to attend meetings, but where relevant, could also provide advice and guidance in other ways, e.g. as mentoring and support to the Chair, or in the form of written advice. Possible disciplines would include:

- Commercial retail advice;
- Lettings advice;
- Legal and governance advice;
- Marketing and PR advice; and
- Systems and facilities management advice.

Following feedback from traders it is suggested that elected members and trader representatives are appointed first, and are able to take part in the recruitment and selection of independent advisers.

3.3.5 The above suggested representation means that the Board will be balanced 6:6 (6 x elected members of the Council and 6 x others, not elected members of the

Council). As the Chair will be an elected member and will have a casting vote in the event of a tie, the majority influence and control remains with its Directors (the elected members) as required for a Board which is wholly-owned by the Council.

3.4 An informal advisory Board does not have to follow the rules of political balance as long as due regard is given to overall political balance across all appointments to outside bodies.

3.4.1 Members would be allocated to the Board in time for the new municipal year which starts at or around the end of May each year. This has the advantage that appointments to the Management Board will be undertaken using the formal process established in the LCC constitution for appointments to outside bodies.

3.4.2 The Director of City Development will be the principal advising officer on the Board. He may delegate this function as he sees fit, to an appropriate LCC officer. The Director will not have voting rights. It should be noted however that, the power to make decisions on behalf of the Council on matters which are within the sphere of influence of the Management Board rests with the Council's Executive Board, or with the Director of City Development through the Scheme of Delegation approved by the Council's Executive Board.

3.5 The Board will consider matters within its sphere of influence as described in this report, and will vote to agree what its advice to the Council should be on these matters.

3.5.1 For voting purposes, the Board must be quorate.

3.5.2 In order to be quorate there must be at least three elected members including the Chair; one trader and one independent adviser present.

3.6 **Description of Roles**

3.6.1 Independent Adviser

- There will always be at least one and up to a maximum of three Independent Adviser(s) on the Board with suitable experience and expertise in disciplines relating to the work of the Board, but in particular retail and commerce. He/she will receive a stipend from LCC to cover expenses but will not be salaried.
- The Adviser(s) will be recruited through advertisement in the regional media and through the Council's websites, and the inaugural appointment will be made by the Director of City Development, in consultation with the Executive Member for Development & the Economy. The Independent Adviser(s) will be appointed for a minimum term of 3 years but will have the right of resignation, and may be re-appointed.

3.6.2 Chair of the Management Board

- The Chair could be an elected member from the ruling Administration, and one of the Administration's elected members on the Board. The appointment

of the Chair will be determined at the time of selection. The Chair will have a second, casting vote in the event of a tie.

3.6.3 Representation by traders

- It is of prime importance that traders' views are represented on the Management Board. 3 seats on the Board will be reserved for trader representatives
- Kirkgate Indoor Market has on average 230 businesses trading at any one time, located in fixed retail units which tenants occupy under a lease or licence requiring them to trade 6 days per week and who invest significantly in their trading operation. By contrast the 201 outdoor market stalls are occupied 5 out of 7 days by different traders, some who attend only one day per week and some who attend all 5 days, bringing their stock with them daily and removing it at night. It is therefore suggested that in recognition of the varying levels of investment and engagement of outdoor traders and indoor tenants a pragmatic approach would be 1 x outdoor trader representative, and 2 x indoor tenant representatives. Representatives will be elected by balloting all tenants in Kirkgate Indoor market (identified by their lease or licence to occupy premises), and separately balloting all regular outdoor traders (ie. not casual traders) who attend Kirkgate outdoor market and pay by direct debit.
- LCC will oversee the ballot.
- Traders will be able to self-nominate, or alternatively may be nominated by at least two of their peers. Indoor representatives can only be nominated by indoor traders, and outdoor traders may only be nominated by their fellow open market traders. A trader who has business interests indoors and outdoors at Kirkgate Market may only stand for election for one or the other (i.e. may not represent indoor and outdoor traders).
- Trader representatives will sit on the Board for a three year term and may serve no more than two terms consecutively, and if a trader with business interests indoors chooses to stand for election to represent outdoor traders or vice versa at the end of their first term of office, this will count as a second, consecutive term of office.

3.6.4 Observers

- The Board could choose to invite non-voting observers to attend the meeting either for a 12 month period, or on an ad hoc basis depending on the reason for their attendance. One such invitation might be, for example to the regional officer of the National Market Traders Federation; another might be the Civic Trust. Any such invitation would be entirely at the Board's discretion and subject to majority vote.

3.6.5 Markets Service

- A representative of the Markets Service management team will always attend meetings of the Management Board to provide information, advise on and discuss operational matters identified on the agenda which fall within the scope of the Board's influence. The management team will attend in the role of observer and will not have a vote. The Markets service, whilst working with and taking account of the views of the Management Board, will continue to report to and take instructions from the Director of City Development.

3.6.6 Administrative support

- The Council will also provide support to the meeting in the form of minute taking and the distribution of papers and agendas.

3.7 **Nomination to the Board**

3.7.1 The number of Board members needs to be enough to ensure that the Board has a good chance of enough attendees at each meeting to be quorate. There is no set quorum for an Advisory committee and clearly an informal Board could set its own. The matter of political balance will also be relevant in determining the number of Board members.

3.7.2 Traders would need to be elected representatives of Kirkgate market traders with a clear remit from their peers to represent the views of traders and to report back to traders on the outcome of meetings. There is currently no formal representative body of traders at Kirkgate market. However, the Council could hold a ballot of all traders at Kirkgate market and ask for people to either self-nominate, or be nominated by a minimum number of his/her peers, to stand for election to the Board. The Council could set a minimum threshold for votes received in order to ensure the process was democratic (e.g. 25% of all traders voting) and could actively encourage diversity of nominees.

3.7.3 Independent members of the Board could be invited by the Board on the basis of, for example, their knowledge and skills, and commercial experience and expertise.

4 **Role**

4.1 **The role of a Kirkgate Market Management Board would be:-**

- 4.1.1 To act as custodian and promoter of the vision and objectives for Kirkgate market;
- 4.1.2 To provide strategic guidance to Council in relation to the operation and management of Kirkgate market;
- 4.1.3 To consider and advise on the continuity of trading during the redevelopment of Kirkgate market;
- 4.1.4 To facilitate productive working between traders and the Council;
- 4.1.5 To be involved in the commissioning of marketing and promotions;

- 4.1.6 Monitoring consultation; and
- 4.1.7 To advise and inform on the development of policies relating to the operation of the market, for example lettings policy (criteria, zones, aspirations), day to day management of the facility.
- 4.2 **The Board's remit would not include:**
 - 4.2.1 The ability to make decisions on behalf of the Council. These remain with Executive Board and any delegated powers held by officers;
 - 4.2.2 Involvement in individual applications for lettings, leases and licences due to confidentiality and data protection;
 - 4.2.3 Involvement in individual Landlord and Tenant Act matters between the Council and its tenant;
 - 4.2.4 Dealing with matters relating to the Council's Market Charter rights including disputes;
 - 4.2.5 Dealing with markets operated or licensed by the Council other than Kirkgate Indoor Market and Kirkgate Open Market.

5 Timescale

- 5.1 Subject to Member approval the Management Board will be set up in time for the next municipal year, for which the Annual Meeting is set for 9 June 2014. This gives sufficient time for a considered and thorough process including the election of trader representatives and the selection of independent Board members. This timescale also has the advantage that its membership in respect of elected members would be managed as part of the Council's normal governance arrangements for appointments to Boards and committees and outside bodies in June, and is timely in respect of the forthcoming development of Kirkgate market in that the Board will be established at the start of any physical changes. It is entirely appropriate that the new Board will have an important advisory role in keeping the market operational during the period of development.

Proposed Leases and Tenancy Agreements, Kirkgate Market

6 Background information

- 6.1 To date, the Council has offered stall holders a number of different lease and tenancy agreements. Executive Board should note that all written leases and tenancy agreements include a right to assign, subject to the Council's consent which is normally given provided the tenant is deemed suitable and financially viable. These include:-
 - 6.1.1 Leases for fixed terms that have been offered to stall holders are of 1, 5, or 15 years in duration. Some, but not all, of these leases are protected by the provisions of the Landlord & Tenant Act 1954 (the 1954 Act). Under this Act, once the stall holder's lease term comes to an end, tenants are given an automatic statutory right to a new lease for which the Council can charge market

rent but otherwise on the same terms as their existing lease. The Council has only limited grounds on which it can terminate. Those not benefiting from this protection are described as 'contracted out' of the Landlord and Tenant Act 1954 and therefore only have a guarantee of the current fixed term or part thereof remaining, for example, at the time of sale or assignment.

- 6.1.2 Periodic tenancies are tenancies which have no fixed end date, but which continue indefinitely until either the Council as landlord or the tenant serves a notice to quit the stall. The tenant may serve a notice to quit for any reason, but the Council's right to terminate is restricted to the same limited grounds as set out in paragraph 6.1.1 above. Periodic tenancies are protected by the 1954 Act. This type of tenancy is common in the Market for tenants who have been in occupation for many years.
- 6.1.3 Short term licences are offered for a period of 6 months and sometimes renewed for a further 6 months. Either the Council or the tenant can terminate the licence on one month's notice, and they are not governed by the provisions of the Landlord and Tenant Act 1954. Short term licences do not provide the stall holder with much security, but they are useful particularly when a business is new to the Market in order to allow the trader flexibility and reduced risk whilst testing their business concept.
- 6.1.4 Implied tenancies have arisen where stall holders have remained in occupation after licences or 'contracted out' fixed term leases have expired and no new written agreement has been entered into. In these circumstances, there is no written agreement setting out the obligations and responsibilities of the tenant. Only limited obligations, such as the payment of rent, can be implied.

6.2 **Recommended Approach**

- 6.2.1 A standardised and efficient range of agreements designed to meet both the Council's and the tenant's needs be offered to stall holders in the future. The agreements would be drafted to offer traders:-
- flexibility;
 - security of tenure;
 - rights of assignment;
 - opportunities for new business start-ups; and
 - a consistent approach.

6.3 **Right of Assignment**

- 6.3.1 A particular concern expressed by the traders in the Market has been to protect the value of their right to assign their lease upon sale of their business. Leases and tenancies which are protected by the 1954 Act will give security of tenure by ensuring that tenants have a statutory right to remain in occupation. A protected lease does not become a diminishing asset because the tenant has an automatic

right of renewal. This right of renewal transfers to the assignee if the business is sold or assigned.

6.3.2 It is, therefore, proposed that the Council grants leases that have 1954 Act protection. This will mean that at the end of the lease term, the tenant remains in occupation on the same terms (save for the rent, which could be increased if appropriate) and either party can request a new lease be granted. As the tenant has a right to a new lease on the same terms, the lease remains a valuable asset to assign should the tenant wish to sell their business. It is proposed that the Council will no longer offer 'contracted out' leases as these have proved both difficult and costly to administer and are not popular with tenants who regard such a lease as a diminishing asset.

6.4 **Future Range of Agreements**

6.4.1 Subject to Executive Board approval the proposed range of lease and tenancy agreements to be offered to traders may be summarised as follows:-

(i) Annual Periodic Tenancy

More than 50% of stall holders currently have annual periodic tenancies. Stall holders are familiar with this form of tenancy which is attractive to many market traders, as they offer the most flexible option for tenants. The tenancy continues indefinitely until either party serves notice that they no longer wish the tenancy to continue. The tenant can terminate the tenancy at any time upon serving 6 months' notice to the Council. The tenant has statutory renewal rights and is, therefore, a valuable asset to assign.

Annual periodic tenancies are of benefit to the Council as they are very straightforward to administer. There is no requirement to register the tenancy at the Land Registry, making the tenancy easier for both parties to administer and reduces the risk of legal complications should the tenant wish to sell or assign the business. In the past tenants have either not registered their lease of a stall in the market, or not applied to remove or update the register when the lease is surrendered or assigned to another party.

Few commercial landlords would offer a periodic tenancy, as they usually require a more secure rental stream and to be more certain of a long term commitment from their tenants.

As annual periodic tenancies have 1954 Act protection, the Council may only terminate the tenancy in very limited circumstances i.e. for a substantial breach of the lease obligations, redevelopment or demolition of the stall, or because the Council needs to occupy the stall itself. However, it is considered that the desire to provide tenants with security for the future outweighs this potential disadvantage.

(ii) Fixed Term Lease

Tenants who wish to make a significant investment (and their lenders) in a stall in the Market may prefer a fixed term lease. The Council encourages investment by

its tenants in their businesses and, therefore, to give tenants comfort that they have security of tenure, it is proposed that fixed term leases would have 1954 Act protection.

It is proposed that fixed term leases of less than 7 years be made available to traders, as such a lease does not require registration at the Land Registry which benefits both parties as outlined in paragraph 6.4.1 above. In theory a longer term offers a more secure rental stream, as tenants are responsible for the payment of rent for the entirety of the lease term even if they decide not to trade from the stall. However this could mean vacated stalls standing empty for the unexpired term of the lease. In practice, if a stallholder ceases trading, the Markets Service (and other tenants on the market) would prefer the lease to be surrendered and the stall re-let as soon as possible. There is a risk that the Council will lose rental income whilst waiting to find a new tenant, but new applications for stalls are received on a regular basis and therefore most stalls are generally easy to re-let. Following refurbishment it is expected that the level of interest in the Market should improve still further.

Members of the Executive Board should note that there may be a perception amongst traders that a longer fixed term lease may provide them with more security whilst tenants planning a significant investment in their stall may also want a longer term to provide more security. The Markets Service will always assess a prospective tenant's needs on a case by case basis, and in exceptional circumstances would consider a longer term lease up to a maximum of 15 years.

(iii) Short Term Licence

Short term licences have been successfully used by the Markets Service to allow prospective traders to try out the Market in a low risk way, as they can terminate the licence on short notice. The Council can also terminate the agreement if the tenant proves unsuitable. Licences must be carefully administered to ensure that tenants are offered a lease or periodic tenancy, or obliged to vacate at the end of the licence period.

Licences are suitable for periods up to a maximum of 6 months.

The proposed revision of the range of agreements also provides an opportunity to rationalise the terms of such agreements and, as far as possible to put them into plain English. It is not proposed to make major revisions, but to standardise the approach to important provisions such as service charge and rent review arrangements.

6.5 Members of Executive Board should note that the following lease options were considered, but discounted:-

- 6.5.1 Fixed term leases 'contracted out' of the 1954 Act. These are considered difficult to administer and there is a risk that at the expiry of the lease term that an implied tenancy is created. They are considered to be unpopular with tenants as at the end of the term the stall holder has no guaranteed right to a new lease. Such a lease is a diminishing asset for a tenant.

- 6.5.2 Fixed term leases for more than 7 years (except in exceptional circumstances). In practice tenants fail to register the lease at the Land Registry, or fail to apply to register a surrender or assignment. Most tenants do not instruct solicitors, and may not fully understand the registration requirements of such a lease which can lead to legal difficulties should they wish to sell or assign the lease.

7 Corporate Considerations

7.1 Consultation and Engagement

- 7.1.1 The Council will oversee a democratic election process for traders to establish trader nominations to the Board. An open session has been held for traders on 18th November 2013) and a newsletter produced, to advise them of the detail of the proposed Management board format and terms of reference and the proposed new lease agreements, and to receive feedback. As a result of this session, the recommendation to appoint independent advisers once the Member and trader representatives are in place and able to participate in the selection process was added to this report. No further amendments to the proposals for tenancy agreements were requested.
- 7.1.2 The Executive Member for Development and the Economy, Development Lead Members and the Kirkgate Market Project Board have been consulted and are supportive of the recommendations contained in this report.

7.2 Equality and Diversity / Cohesion and Integration

- 7.2.1 The proposed Board will have reference to the rules of political balance and proportionality set out in the Council's constitution to ensure equitable political representation. The election process for trader representatives will have due regard for equality and diversity in accordance with the Council's policy and advice has already been sought from the Council's Equalities team on how to encourage diversity of nominees. Independent advisers will be recruited through advertisement in the local media and via the Council's website to ensure the opportunity is promoted fairly and equitably.
- 7.2.2 The recommended lease agreements will, over time, ensure that all traders in the Market have one of the recommended range of lease agreements, thereby standardising the terms and conditions under which they may trade in the Market. This will help ensure greater equality of opportunity for new and existing tenants. Kirkgate Market is diverse in terms of its offer and its tenants, and improving the leases by standardising and simplifying the language used across the range of agreements will help address accessibility for all.

7.3 Council policies and City Priorities

- 7.3.1 The subject of this report has a direct impact on LCC's aspiration to be 'Best City' and supports its Vision 2030 by helping deliver:
- a) A strong local economy driving sustainable economic growth
 - b) A city where:

- there is a strong community spirit and a shared sense of belonging, where people feel confident about doing things for themselves and others;
- people from different backgrounds and ages feel comfortable living together in communities;
- there is a culture of responsibility, respect for each other and the environment;
- the causes of unfairness are understood.

7.3.2 The refurbishment proposals for Kirkgate Market are crucial to supporting the Council's vision for Kirkgate Market which is to be the best market in the UK:-

- Highly successful, profitable and sustainable;
- A Centre of excellence for independent retailers and entrepreneurs;
- A top destination for residents and tourists.

7.3.3 Securing the future of Kirkgate Market is a key element of being the Best City:

- Best City... for business - making sure jobs are created and that local people can access those jobs, making sure new developments create skills and opportunities through apprenticeships. Supporting Leeds to be an attractive place to visit and invest in, with cultural attractions for local people and visitors nationally and internationally.
- Best City... for communities - encourages community spirit and local activity, but recognises that it will take high-quality public services

7.4 **Resources and value for money**

7.4.1 Administrative resources will be required to facilitate the election of members to the Board and also to oversee a ballot to elect trader representatives. Once established, an administrative resource will be required from within City Development to administer the Board.

7.4.2 Offering leases with Landlord and Tenant Act 1954 Act protection would mean that the Council would be required to pay statutory compensation to tenants if the Council served notice to terminate their lease on a 'no fault' ground. Compensation is based on 1 x rateable value of the property for occupation of 14 years or less, or 2 x rateable value of the property for occupation of more than 14 years. In practice, the Council is unlikely to want to terminate leases on the grounds of redevelopment in the Market for the foreseeable future once the proposed refurbishment works have been completed.

7.5 **Legal Implications, Access to Information and Call In**

7.5.1 The appropriate legal processes will be undertaken to establish the Terms of Reference of the Board and its relationship with the Council, including in respect of any liabilities should it be dissolved in the future.

7.5.2 Governance (appointment of Members): Formal governance in respect of the Council's Constitution is undertaken by LCC Governance Services. Member Management Committee will appoint members to the Kirkgate Market Management Board. LCC will advise on, and assist the Board to establish governance processes appropriate to its role and function. (LCC City Development Directorate will assist the Management Board with other appointments, e.g. trader ballots and the recruitment of an Independent Adviser).

7.5.3 The proposed works will require the Council to serve notices on affected tenants of Kirkgate Market under Section 25 of the Landlord & Tenant Act 1954, or termination of contracted out leases or licences as appropriate, depending on the nature of the existing agreement with individual tenants in order to secure vacant possession of areas required for redevelopment. New standard form leases or tenancy agreements will be offered where applicable.

7.6 Risk Management

7.6.1 The key risks are:

- a) The Board will not be able to recruit trader representatives. This will be mitigated by extensive promotion of the opportunity, and working with traders to encourage confidence to apply/be nominated/make nominations. The ballot will be advertised widely within the market and well in advance, the benefits to traders set out clearly, and traders encouraged to vote.
- b) There will be little or no interest from independent advisers to be part of the Board. This will be mitigated by targeting the recruitment campaign at people who live in or have a very close association with Leeds and who, along with the requisite skills set, have a passion for Kirkgate Market; the campaign will set out clearly the benefits that the adviser(s) can bring to enhance and secure the future viability of the market.
- c) Board members will not have the requisite skills or experience to carry out their duties appropriately. Training will be provided for all Board members and mentoring put in place where required.
- d) The Board will not be established in a timely manner. If approved by Executive Board, work will begin immediately on designing the ballot process for trader representatives, and designing an advertising campaign to start early in 2014 to recruit the independent advisers. The application for inclusion as an Outside Body in 2014 can also be commenced immediately.

7.6.2 There is a potential risk, that statutory compensation would be payable by the Council if contracted out leases are granted.

7.6.3 There is a potential risk that existing traders might not want to accept the new standard form of lease. This risk may be mitigated by engaging in appropriate consultation with traders to fully explore the benefit of the range of agreements proposed.

8 Conclusions

- 8.1 An Advisory Board (Outside Body) should be established in June 2014.
- 8.2 A range of tenancy agreements as described in paragraph 6.4 should be introduced with immediate effect to enable effective negotiation with traders affected by the redevelopment of Kirkgate Market, and a standardised approach to leases granted to new tenants of the Indoor market.

9 Recommendations

Executive Board is asked to note the contents of this report and:

In respect of the Management Board:

- i) Approve the establishment of an Advisory Board as set out in Section 3.1 (Option 3) of this report;
- ii) Note the stages required to implement the decision as outlined in 3.2;
- iii) Note the proposed timescales for implementation as outlined in 5.1;
- iv) Note the responsibility for implementation will be delegated to the Director of City Development in consultation with the Executive Member for Development and Economy.

In respect of the new lease agreements:

- i) Approve the introduction of a range of standard leases and tenancy agreements as set out in Section 6.4 of this report to be offered to existing stall holders affected by the proposed works to the refurbished Kirkgate Market and to new traders wanting a stall in Kirkgate Market.
- ii) To note the proposed timescale to implement the decision and that the Markets Manager and the City Solicitor will be responsible for implementation of the decision.

10 Background documents²

- 10.1 None

² The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Appendix A – Available Formats for LCC Boards

1. Option 1 – Area Committee

- 1.1. A committee based on the Area Committee model allows for elected members to have decision making powers over certain matters (for example, spending a small allocated budget on improvements in that area). However, a new area committee would need to be created (Kirkgate Market does not fall within the boundaries of any existing area committee, and the city centre is excluded from the current area committee arrangements) and it may not be possible to define 'Kirkgate Market' as an area for this purpose given that its scope and geographical area would be so small with fairly limited functions. Area functions would need to be redefined to include markets functions. Decisions by full Council would be needed a) to define the area should it be possible to do so; and b) to redefine the functions of an Area and to make the necessary changes to the constitution. In addition, only elected Members for wards in the area determined for the committee would be able to serve on the committee. An area committee can select up to 5 co-opted members, but whilst those members can participate in discussions, they cannot vote.
- 1.2. Summary: There are other available models for the management Board available under the terms of the constitution which are a better fit with the outcome to be achieved. These are described below. The process required to set up an Area Committee for the area of Kirkgate Market is lengthy and administratively burdensome, requiring a change to the Council's constitution, assuming indeed that it can be done.

2. Option 2 – Formal Advisory Committee (part of Council structure)

- 2.1. A formal Advisory Committee is able to advise the executive on the discharge of its functions, and would be part of the Council's formal structure. It is required to comply with the rules on political balance. Currently there is only one Advisory Committee, which deals with the Development Plan although another proposal for a Housing Management Advisory Board is currently being considered.
- 2.2. The main advantages of this model are that elected members and co-optees can vote; a formal Advisory Committee would have more gravitas than an informal Board which could help with recruitment of traders and external parties, it is subject to Access to Information Procedure Rules, and therefore may signal a more formal commitment by the Council to openness and transparency.
- 2.3. The disadvantages are that it can only advise the executive and has no formal decision-making powers, and it has to be appointed and dissolved by full Council meaning it would be difficult to make even small changes to membership and to the terms of reference once set up, (although terms of reference approved could be very general); and political balance rules mean that the number of co-optees could be restricted.
- 2.4. Summary: It is unlikely that this model would be the best way of addressing the requirement for a management Board for the market, given that an Advisory Committee does not have decision making powers, as these are only held by the executive, the matter of political balance is significant and this format would not

allow as much flexibility to appoint co-optees as some other models, and that the process and criteria for appointment of the Committee and its membership is much more formal and prescriptive than other possible models.

3. Option 3 – Non-Formal Advisory Board, not part of the Council’s structure (Outside Body) – Recommended Option

- 3.1. Although it would still have set Terms of Reference (TOR), the advantage of this less formal Board structure is that it would have more flexibility than the other two options, making it easier to develop its role, adapt and make changes to the TOR if needed. It does not have decision making powers as an area committee would have, but it could perform the same advisory role as a formal advisory committee. All members of the Management Board could “vote” on as well as debate issues, and traders and external parties on the Board can play a significant role in debating and influencing discussions.
- 3.2. As it is not part of the Council’s structure it is considered to be an Outside Body. For an Outside Body, under Rule 4 of the Constitution (Appointments to Outside Bodies: Procedure Rules) it is Member Management Committee (MMC) that decides whether the Council should appoint to an outside body which has requested Council appointments. If MMC decide it meets the criteria set out in Rule 2.3 (eg appointment consistent with council’s policy or objectives and/or would add value), MMC would determine whether it would be a strategic and key partnership or a community and local engagement partnership – this board would be the former. Member appointments to it would then be made by MMC in accordance with Rule 4.
- 3.3. Appointments to outside bodies of this type are not required by law to comply with political balance requirements, thus giving the proposed Board much more flexibility over its membership and political representation, potentially allowing it to be wider than the rules of proportionality allow for. (Although Rule 4 requires MMC to “have regard” to “the principle of securing an overall allocation of places which reflects that proportion of Members from each political group on the Council as a whole.).
- 3.4. Summary: An informal advisory board has the flexibility to achieve the balance of board membership and range of skills which will enable the Board to fulfil its purpose effectively, and is therefore the option recommended. Changes to the terms of reference, if required, can be made easily without reference to full Council. Providing the political balance across all outside bodies is maintained, there is some flexibility to operate outside the rules of proportionality if this is required. This format particularly lends itself to the appointment of a wider range of members with relevant skills in retail, commerce, marketing etc which it is the aspiration of the Council to bring to the future management of Kirkgate Market.