

**Report of :** The Director of City Development

**Report to:** Executive Board

**Date:** 15 July 2015

**Subject::** Design & Cost Report for the Proposed Improvement and Refurbishment of Kirkgate Market

**Capital Scheme Number:** 16811

Are specific electoral Wards affected?

☒ Yes

☐ No

If relevant, name(s) of Ward(s):

City & Hunslet

Are there implications for equality and diversity and cohesion and integration?

☒ Yes

☐ No

Is the decision eligible for Call-In?

☒ Yes

☐ No

Does the report contain confidential or exempt information?

☒ Yes

☐ No

If relevant, Access to Information Procedure Rule number:

10.4(3)

Appendix number:

1

## Summary of main issues

1. The proposed improvement and refurbishment of Kirkgate Market is consistent with the Best Council Plan 2013 – 17 in terms of promoting sustainable and inclusive economic growth by maximising employment opportunities for local residents. Kirkgate Market is in a prime retail location in the heart of the city centre. It is a Grade 1 Listed building and is the oldest and largest retail destination in Leeds, having a significant impact on the economy of the city.
2. It is essential to improve Kirkgate Market to make it more attractive to today's customers and traders, securing its growth for the future by investing to address its long term maintenance and capital investment requirements in order to meet customer expectations and expand its customer base, by attracting some of the millions of shoppers that will visit the adjacent Victoria Gate development when it opens in Autumn 2016. When complete, the improvements to Kirkgate Market, combined with the opening of the adjacent Victoria Gate development will transform the retail offer of the City.
3. This report details progress made to date on the project and, advises that the capital budget of £12.3m as advised to Executive Board in March 2013 as being required to

implement the proposed improvement and refurbishment works (the Proposed Works) does not align with the forecast total project cost. The report seeks authority to inject £1.35m into the Capital Programme (Capital Scheme No. 16811), to meet additional construction costs and, additional funding as detailed in Appendix 1 to the report to provide a level of contingency provision required to address residual risks that remain the Council's responsibility to address, with such additional funding to be financed by prudential borrowing supported from the current Kirkgate Market operating revenue surplus and, seeks Authority to Spend the additional funding on the Proposed Works at Kirkgate Market.

## **Recommendations**

4. Executive Board is requested to:-

- (i) Authorise an injection of £1.35m into existing Capital Scheme No.16811 to meet additional construction costs associated with the proposed improvement and refurbishment works at Kirkgate Market.
- (ii) Authorise an injection of additional funding as detailed in Appendix 1 to the report into existing Capital Scheme No.16811 to provide contingency provision to address residual risks associated with the proposed improvement and refurbishment works at Kirkgate Market that remain the Council's responsibility to address.
- (iii) Approve Authority to Spend the additional funding detailed in the report on the proposed improvement and refurbishment works at Kirkgate Market.
- (iv) Note the actions required to implement the decisions, the proposed timescale to progress the project as detailed in paragraph 3.2.1 of the report and that the Chief Economic Development Officer will be responsible for the implementation of the decision.

## **1 Purpose of this report**

- 1.1 The purpose of the report is to seek Executive Board's approval to inject additional funding into existing Capital Scheme No. 16811 and Authority to Spend on the proposed improvement and refurbishment works at Kirkgate Market.

## **2 Background information**

- 2.1 Kirkgate Market is in a prime retail location in the heart of the city centre. It is a Grade 1 Listed building with five interconnected halls and an open daily market at the rear of the building. The Market is an important landmark in the city, not just in terms of the building but also in its importance to the people of Leeds and its international importance as the birthplace of Marks and Spencer. It is one of the most important heritage buildings in the city. It is an important part of the retail offer in the city being the location for around 200 permanent businesses in the indoor market, with around 150 more trading on its Open Market, providing direct employment for around 1,750 people. The Market faces the same challenges as other traditional markets across the country, with price competition from large retailers, rising customer expectations aligned to changing shopping habits and a changing customer base. However, there is a unique opportunity to increase customer numbers and spending in the Market by attracting some of the estimated

10 million customers per annum that will visit the adjacent Victoria Gate development when it opens in Autumn 2016.

- 2.2 In July 2011, Executive Board approved the vision for the Market namely; to be the best market in the UK; to be highly successful, profitable and sustainable; to be a centre of excellence for independent retailers and entrepreneurs and a top destination for residents and tourists. Subsequently, in February 2012, the Executive Board approved recommendations to undertake a feasibility study to improve and refurbish the Market.
- 2.3 At its meeting in December 2013, the Council's Executive Board was advised that the preferred procurement route for the appointment of a contractor to undertake the Proposed Works had yet to be determined, but that the choice would be likely to be either two stage traditional (scheme fully designed) or two stage develop and construct, with both approaches seeking early contractor involvement in the project.
- 2.4 In April 2014, Executive Board authorised budget provision of £12.3m inclusive of fees, inflation, promotions, contingency and tenant compensation for the Proposed Works, authorised expenditure of £10.8m as the balance of the funding required to undertake Proposed Works and, authorised the Director of City Development in consultation with the Executive Member for Transport and Economy to take the decisions that facilitate the works to improve and refurbish Kirkgate Market.
- 2.5 In accordance with the Council's Contract Procedure Rules, the Chief Economic Development Officer approved the selection of a competitive, two stage develop and construct procurement approach via the YORbuild Framework for the procurement of a contractor to undertake the Proposed Works and, subsequently in October 2014, the Director of City Development approved the appointment of Interserve Construction Ltd (ICL) as the preferred contractor to develop the scheme proposals and tender documentation through Stage One of the tender process for the Proposed Works. Since their appointment to Stage One, ICL and their retained design team have worked with the Council's project team to clarify and develop the scheme design proposals and detailed phasing arrangements sufficient to submit their second stage tender on 13 May 2015.
- 2.6 In anticipation of works starting on site, businesses occupying stalls in the 1976 and 1875 market halls affected by the phase 1 works were served a Section 25 Notice (Landlord and Tenant Act 1954) to quit their business premises on 31 January 2015. Members of Executive Board should note that since the beginning of February 2015, the 1976 market hall has been vacant, with all traders either relocated elsewhere in the market or deciding to cease trading and accept the compensation available. Separately, at the date of report preparation, discussions with traders in Fish and Game Row who are required to temporarily decant whilst works are undertaken in and around their stalls, concluded that they would temporarily relocate to Butcher's Row from mid June 2015, until early in the new year when they along with the butchers would move back to Fish and Game Row to create a new fresh produce area for the market.
- 2.7 In February 2015, in order to minimise potential delay to the development programme for the Proposed Works, the Director of City Development approved a package of enabling works to be undertaken by ICL in advance of the main contract works starting on site. The enabling works comprised pre-refurbishment/demolition asbestos surveys of stalls in the phase 1 works area, underground drainage surveys, structural surveys, the demolition of a number of outdoor market stalls to create the contractor's compound area and site establishment works.

### **3 Main issues**

#### **3.1 Design Proposals and Full Scheme Description.**

- 3.1.1 ICL's second stage tender the details of which are contained in Appendix 1 of the report is inclusive of their fees, risk items that remain their responsibility to address, a provisional sum allowance for works that remain to be fully defined, the initial package of enabling works (instructed in February 2015, reference paragraph 2.7 above), preliminaries and assumed value engineering savings, but excludes ICL's Stage 2 fee and costs for preparing a Bill of Quantities.
- 3.1.2 Faithful and Gould (F&G), the Council's retained cost consultant has undertaken an evaluation of ICL's second stage tender submission and has concluded that the tender is competitive, in line with current market expectations for a project of this size, type and specification and, that the Proposed Works equate to expenditure of £841/m<sup>2</sup>, which is within expectations for a project of this nature.
- 3.1.3 F&G advise that projects of a nature as proposed at Kirkgate Market generally have a higher propensity for risk and, have commented that due to the complexity of the Proposed Works, ICL has been unable to competitively tender all works and, therefore, a number of items have been included within their tender as provisional sums. F&G has reviewed the allowances and comment that they appear reasonable for the Proposed Works. In conclusion and, subject to the final agreement of the contract documentation (the intended contract for the Proposed Works being NEC3 Option A) F&G advise that the tender submitted by ICL is accepted for the sum detailed in the Appendix to the report.
- 3.1.4 Members of Executive Board should note that allowing for ICL's tendered sum and additional works that are proposed to be undertaken as part of the main contract works, the construction costs exceed the budget provision by £1.35m, due primarily to;

\* Changes in the scheme proposals required by English Heritage i.e. changes to the ventilation strategy for the 1875 blockshops and the design of the new blockshop.

\* Revised working practices and approaches to comply with Health and Safety requirements, given that the contractor has to work in a live retail environment, with traders and members of the public in close proximity throughout the duration of the contract. As a direct consequence of the market remaining open and continuing to trade throughout the contract period, ICL has increased its allowance for preliminaries to take into account the additional out of hours work to be undertaken throughout the duration of the contract in order to minimize disruption to both traders and customers of the market.

\* An increase in construction costs arising from tender price inflation above the level originally calculated. It should be noted that the construction market has become very competitive as the economy and, the development sector in particular has recovered. Members will be aware that there are currently a number of large new build projects on site in the city centre and, in this context, the refurbishment of a Grade 1 Listed Building in a live retail environment is not considered to be a particularly easy project to undertake. In addition, on the back of the recession, there remains instability in the market, particularly with respect to a number of specialist sub-contractors who have entered into administration and, as a consequence, ICL has in some instances encountered difficulty in competitively tendering all individual work packages.

\* The inclusion of a provisional sum allowance to cover the cost of works that remain to be fully scoped/designed and, therefore, fully market tested.

\* Additional works to the Market's sprinkler system. Whilst ICL has allowed and priced for work to the existing sprinkler system as detailed in the tender documentation, since the issue of such documentation the Council is in receipt of a '25 year report' as required by the Council's insurers on the sprinkler system, which requires the Council to undertake additional work to the system in a timescale to be agreed with the insurer. The Kirkgate Market Project Team is of the view that the additional works to the sprinkler system as required by the insurer should be undertaken as part of the main capital scheme, as the work can be progressed with the benefit of scaffolding in place and when parts of the Market are vacant, as opposed to a later date when the Proposed Works are complete and the market fully operational. ICL has provided a budget estimate of £355,000 for the proposed additional sprinkler works which is considered to offer value for money.

3.1.5 Given that £10.5m (rounded) of the £12.3m project budget remained uncommitted, in order to minimise further delay to the development programme, on 1 June 2015, the Director of City Development following consultation with the Executive Member for Regeneration, Transport and Planning and the Council's Deputy Chief Executive authorised the appointment of ICL to undertake the Proposed Works at Kirkgate Market for the tendered sum detailed in the Appendix to this report. In authorising the appointment of ICL to undertake the Proposed Works, the Director of City Development instructed that a 'cap' on expenditure be set at £10.5m pending determination by Executive Board of an increase in the project budget to align with the total forecast project cost for the Proposed Works, at which time ICL would be advised that the 'cap' had been removed. In progressing in the manner detailed above, the Director of City Development advised that if the Council's Executive Board was minded not to authorise an injection of funds, then the scope of works would need to be revised to align the scheme proposals with the budget available.

## **3.2 Programme**

3.2.1 ICL's tender programme for the proposed works based on a start on site on 15 June 2015 for the main works contract may be summarised as follows:

- |   |                |
|---|----------------|
| • Start on site                                       | 15 June 2015   |
| • Complete new covered daily market                   | January 2016   |
| • Complete new blockshop                              | January 2016   |
| • Complete new fresh produce area (Fish and Game Row) | January 2016   |
| • Complete works to the central toilet area           | May 2016       |
| • Complete works to the 1981 hall                     | June 2016      |
| • Complete works to 1904 hall                         | September 2016 |

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The Executive Member for Regeneration, Transport and Planning has been consulted and is supportive of the recommendations contained in the report.
- 4.1.2 The Deputy Chief Executive was consulted on the award of the contract to ICL and the recommendations detailed in this report
- 4.1.3 The Kirkgate Market Project Board has been consulted and is supportive of the recommendations contained in the report.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An Equality and Diversity, Cohesion and Integration screening document and Equality, Diversity Cohesion Impact Assessment has been completed and implemented (refer to Appendix 2).
- 4.2.2 It is considered there will likely to be impact to all equality characteristics. The equality impacts of the proposed improvement and refurbishment works to Kirkgate Market are in the main positive, due to the major improvements the project delivers in terms of future sustainability of a Grade 1 Listed Building by addressing long term maintenance issues and improvements to the general market environment.
- 4.2.3 Improvements to accessibility will also be an important feature of the proposed works. Further positive impacts include the proposed installation of a Changing Places WC and the introduction of a covered daily market which will provide the opportunity for small businesses to trade on a daily licence.

### **4.3 Council Policies and the Best Council Plan**

- 4.3.1 The proposed improvement and refurbishment of Kirkgate Market is consistent with the Best Council Plan 2013-17 in terms of promoting sustainable and inclusive economic growth by maximising employment opportunities for local residents.

### **4.4 Resources and Value for Money**

- 4.4.1 Details of ICL's second stage tender submission are contained in Appendix 1 of this report.
- 4.4.2 The proposed injection of £1.35m to meet additional construction costs would be financed by prudential borrowing. This would increase the borrowing costs to be met from a proportion of the current Kirkgate Market operating revenue surplus by approximately £83,000 per annum, assuming a 30 year borrowing period. Based on the current business plan forecasts, the additional borrowing costs can be funded from the existing Kirkgate Market surplus.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 This is a key decision, which is subject to Call In.
- 4.5.2 The Proposed Works to the Market requires Notice to be served on tenants of the Market under Section 25 of the Landlord and 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

premises required for the Proposed Works. Notices have been and will be served on traders to align with the proposed phasing of the works.

- 4.5.3 The information contained in Appendix 1 of this report relates to the financial or business affairs of a particular company and of the Council. This information is not publicly available from the statutory registers of information kept in relation to certain companies and it relates to a tendered fee proposal submitted to the Council as part of a competitive tender process. In line with Access to Information Procedure Rules 10.4(3), it is considered that the public interest in maintaining the content of the Appendix as Exempt/Confidential outweighs the public interest in disclosing the information contained in the Appendix, as disclosure would prejudice the financial / business affairs of an individual company.

## **4.6 Risk Management**

- 4.6.1 A risk register has been prepared for the project and will continually be reviewed during the lifetime of the project and the key risks will be reviewed at meetings of the Kirkgate Market Project Board.
- 4.6.2 There is a risk that the proposed level of client contingency provision detailed in the Appendix to the report may not address the unknown risks that only become apparent once works commence on site. This risk cannot be completely mitigated as regard has to be given to the fact that ICL will be working in a constrained city centre site, in a live retail environment, within a Grade 1 Listed Building and that it has not been possible to undertake intrusive surveys in all areas of the Market where works are proposed. Whilst there can be no guarantee that unknown risks can be controlled within the proposed contingency sum, the intention will be to put in place a robust change control process during the construction stage in order to control costs within the budget available
- 4.6.3 There is a risk of programme delays should vacant possession of areas of the Market not be secured in a timely manner. The risk where present will be mitigated by initiating early dialogue with affected tenants to address issues, by seeking to minimise the number of stalls directly affected by the proposed works and, ensuring timely provision of information to enable tenants to make informed decisions about their business. Whilst the risk cannot be completely mitigated, if necessary, the phasing of the Proposed Works would need to be reviewed.

## **5 Conclusion**

- 5.1 In order to deliver the scope of works endorsed by Executive Board at its meeting in March 2013 that aim to reinforce existing business activity in the Market; encourages the growth and development of new businesses and facilitates the expansion of the customer base using the Market, an increase in the current budget provision is required to align with the total forecast cost for the Proposed Works. Accordingly, the recommendation is that Executive Board authorise an injection of £1.35m into capital scheme no. 16811 to meet additional construction costs and, additional funding as detailed in Appendix 1 of the report in order to provide a level of contingency provision required to address the Council's residual risks, with such additional funding to be financed by prudential borrowing, the cost of which would be met from the current Kirkgate Market operating revenue surplus.

## **6 Recommendations**

### **6.1 Executive Board is requested to:-**

- (i) Authorise an injection of £1.35m into existing Capital Scheme No.16811 to meet additional construction costs associated with the proposed improvement and refurbishment works at Kirkgate Market
- (ii) Authorise an injection of additional funding as detailed in Appendix 1 to the report into existing Capital Scheme No. 16811 to provide contingency provision to address residual risks associated with the proposed improvement and refurbishment works at Kirkgate Market that remain the Council's responsibility to address.
- (iii) Approve Authority to Spend the additional funding detailed in the report on the proposed improvement and refurbishment works at Kirkgate Market.
- (iv) Note the actions required to implement the decisions, the proposed timescale to progress the project as detailed in paragraph 3.2.1 of the report and that the Chief Economic Development Officer and the Head of Markets will be responsible for the implementation of the decision.

## **7 Background documents<sup>1</sup>**

### **7.1 None**

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<sup>1</sup> 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.