

Kirkgate Market Management Options Appraisal

Project Title:	Kirkgate Market Strategy
Project Stage:	Project Initiation

Directorate / Service:	City Development
Responsible Officer:	Martin Farrington

Document Version and Status:	V1.00 FINAL
Author:	Craig Taylor

Date:	07 February 2013
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1.0 PURPOSE

- 1.1 The purpose of this Options Appraisal Report is to explore the advantages and disadvantages of the different types of management arrangements that could be employed at Kirkgate Market.
- 1.2 The conclusions from this Options Appraisal Report will be incorporated in to the overall recommendations for the Kirkgate Market Strategy Executive Board report that will be presented on 13 March 2013.

2.0 BACKGROUND

- 2.1 On 10 February 2012 the Executive Board approved the recommendation to instruct officers to explore the advantages and disadvantages of a commercial partnership against the option of the market remaining in the Council's sole ownership and management.
- 2.2 Subsequently, the Council agreed to a request from the National Market Traders Federation (NMTF) to consider a social enterprise run by the traders as an alternative form of management of the market. Four meetings have now taken place with the NMTF representatives to set out the terms of any transfer and identify the structure, social purpose, investment and membership of the social enterprise. Other management options have also been discussed.
- 2.3 Leeds markets are currently wholly owned and managed by Leeds City Council through its Markets service. Leeds City Council owns the Market Charter rights.
- 2.4 The Markets service is currently responsible for managing and developing all the council's retail markets, street trading and licensing commercial markets in the Leeds district. Its flagship is the Kirkgate Market which is located in the city centre and attracts over 10 million visitors annually.

3.0 STRATEGIC CONTEXT AND IDENTIFYING BUSINESS NEED AND OBJECTIVES

- 3.1 The Council's vision for the market is to be the best market in the UK:
 - Highly successful, profitable and sustainable;
 - A centre for excellence for independent retailers and entrepreneurs;
 - A top destination for residents and tourists.
- 3.2 There are a number of clear objectives to help realise this vision:
 - Increase footfall;
 - Increase new customers to the market;
 - Increase frequency and duration of customers' visits;
 - Increase income through new lets and business expansions;
 - Increase the range of and value for money of goods and services;
 - Reduce costs;

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- Reduce number of empty units in the indoor market hall;
- Reduce tenant turnover.

3.3 To address the issues Kirkgate Market faces and realise its vision requires:

- Significantly increased investment in the buildings and stalls, whilst keeping and enhancing the distinct character of the market;
- Significantly increased marketing and promotion so all Leeds residents and visitors to Leeds know where it is and what its offer is;
- An improved overall offer on the market in terms of the range and quality of goods and services sold;
- A shorter chain of command to ensure faster decision-making and implementation;
- An improved overall customer experience by ensuring the market is the optimum size, improving the 'legibility' of the market through signage, wayfinding and improved layout;
- Better opening hours; improving customer service and customer satisfaction;
- Better promotion of available units, flexible terms and better business support.

4.0 THE FRAMEWORK

4.1 The following framework has been agreed in terms of the future management of the market, in the context of the Council's vision and objectives for the market:

- The asset remains in Leeds City Council ownership.
- The site remains open and operates as a market, including the open market.
- Supports Leeds City Council's vision and objectives.
- Leeds City Council will operate its Market Charter obligations; not transfer them to a new company.
- The management options are for managing Kirkgate Market (indoor and open market) only. This means that a markets service still needs to be retained within the Council in order to operate the full range of its Market Charter obligations if a new company is formed.
- Trader tenancies will remain with the Council.

5.0 OPTIONS IDENTIFIED

5.1 Option 1 – No change – Managed by Leeds City Council.

5.2 Option 2 – Alternative Leeds City Council management model:

- Management board or committee put in place. The Board would include councillors, traders, local authority nominees and independent members with relevant experience in commercial retail.

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Trader members would be elected by their fellow traders to ensure that they are genuinely representative. There could also be co-opted members as required, e.g. English Heritage or Civic Trust during the period of redevelopment.

- Ring-fenced operational budget, therefore there would be a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.
- The current delegation arrangements for formal decisions will remain unchanged.

5.3 Option 3 – Wholly Owned Management Company

- A Wholly Owned Management Company is a company set up and wholly owned by a local authority to manage an element of the services it provides, in this case the market. This leaves the local authority free to concentrate on wider strategic issues.
- The Wholly Owned Management Company would be a company which is 100% controlled by Leeds City Council, and would be constituted as a company limited by guarantee, with an “asset lock” so that there are no dividends or other distributions of “profit”.
- The relationship between a local authority and a Wholly Owned Management Company would be defined in an agreement which sets out the obligations of each party.
- The Wholly Owned Management Company would be managed by a Board of Directors, usually of 12 to 15 people. The Board would include traders, local authority nominees and independent members with relevant experience in commercial retail. They may include local business people or other representatives of the community. No one group would be in a majority on the Board. Trader members would be elected by their fellow traders to ensure that they are genuinely representative.
- The Wholly Owned Management Company would require an operational budget, therefore there would be a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.

5.4 Option 4 - Civic Enterprise

- As Option 3 above (Company Limited by Guarantee) but with traders having up to 25% of a stake in the company. Each trader could secure a stake in the new company at the commencement of their tenancy and once the tenancy ceases, the stake reverts back to the Council.
- An alternative company structure would be a company with a share capital rather than a company limited by guarantee. However, this has been discounted as a procurement exercise would be required to select a partner and the perceived benefits would not outweigh the expense of a procurement exercise.

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5.5 Option 5 - Management Contract

- The Council would undertake a procurement exercise for a company to manage Kirkgate Market. The term of the contract would be for a set period, e.g. 10 years, or potentially longer depending on the level of private investment provided.
- The third party would manage the market and therefore determine the management structure, be responsible for marketing and promotion using relevant experience and retail skills.
- An annual management fee would be paid to the management company (determined by the procurement exercise), with performance related payments / penalties on an annual basis, therefore there would be a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.

5.6 Option 6 – Social Enterprise

- There is no legal definition of a social enterprise, nor is there a single legal form through which social enterprises are registered. The most widely used definition of social enterprise is provided by the DTI Social Enterprise strategy (2002):

Social enterprises:

- Trade - their main income source is goods and services, openly traded.
- Have a social purpose - to do some good for society, or for the environment - and are not simply vehicles to produce an income stream.
- Are socially-owned - not a sole trader, not a private limited company, not owned by the public sector, profits returned to the community.
- The Council would undertake a procurement exercise for a social enterprise to manage Kirkgate Market and is therefore similar to Option 5 – Management Contract.
- An annual management fee would be paid to the social enterprise (determined by the procurement exercise), therefore there would be a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.

5.7 Option 7 - Limited Liability Partnership

- A limited liability partnership (LLP) is similar to a normal partnership, but it also offers reduced personal responsibility for business debts. The LLP itself - not the individual members - is responsible for any debts that it runs up, unless individual members have personally guaranteed a loan to the business.
- The Council would undertake a procurement exercise for a partner, who would manage Kirkgate Market, but differs from Options 5 and 6 in that:

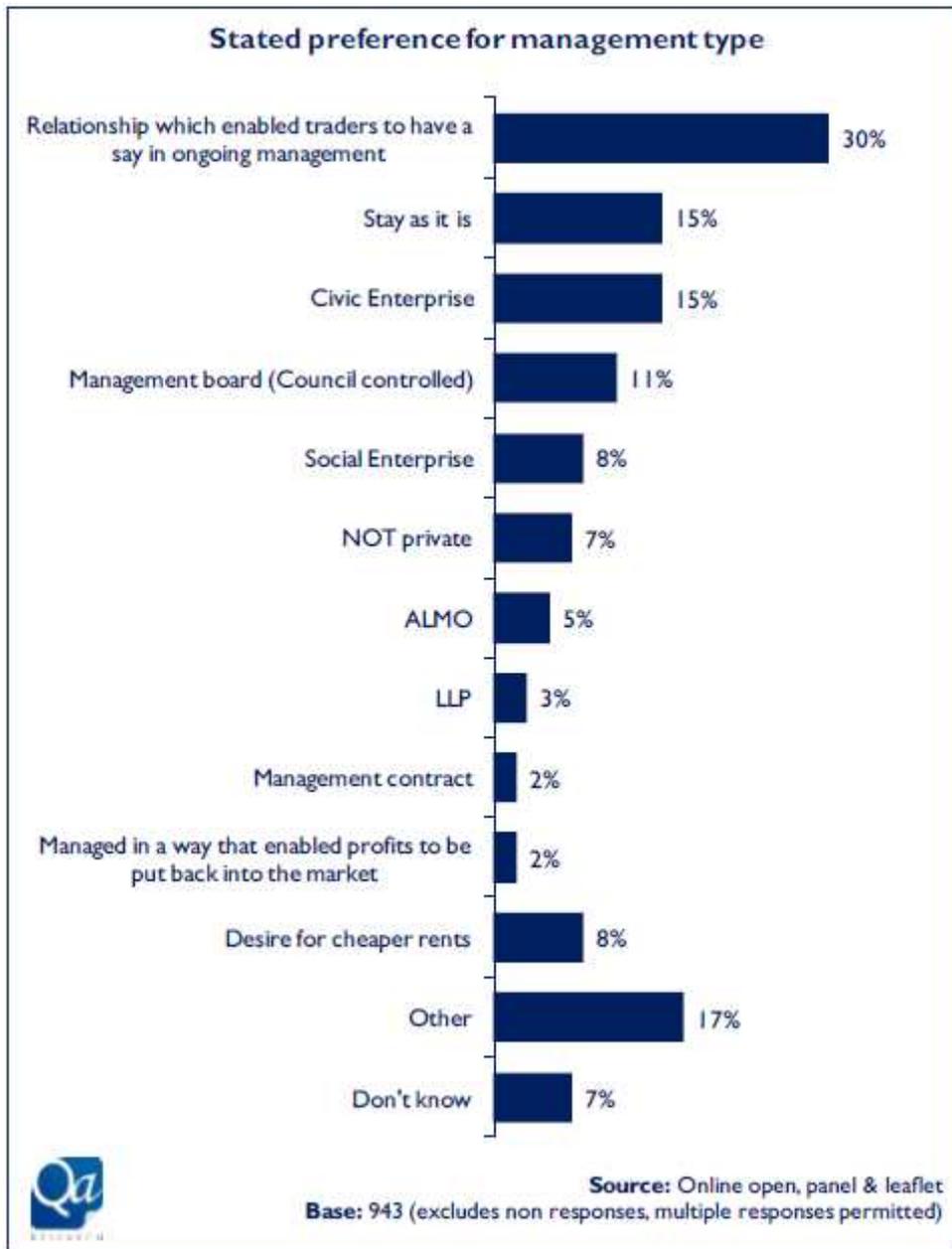
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- The members of an LLP share in both the responsibilities of running the business and the profits that it makes. Exactly how their rights and responsibilities are defined and divided depends on the LLP's partnership agreement or 'deed of partnership'. Designated members have some extra responsibilities on top of those of ordinary members, in that they have to ensure that the LLP meets its legal obligations and are legally accountable if they fail to carry out their duties properly.
- Each partner contributes capital to the business.
- Profits or losses are shared between the partners.
- The deed of partnership would require detailed negotiations and therefore could take many forms but all profits are shared and therefore there would be a significant reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.

6.0 CONSULTATION

- 6.1 The management options have been consulted on as part of the Stage 2 Engagement / Feedback process, which commenced on Monday 15 October and finished on 14 December.
- 6.2 Just over half (55%) of all those individuals asked indicated they had a preference on the future management arrangements of the Market. Unsurprisingly, more frequent visitors were those most likely to have a preference.
- 6.3 Respondents were asked to indicate their preference for the future management of the Market:

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6.4 The key conclusions from the stage 2 engagement feedback were as follows:

- The general overriding viewpoints were for ongoing management focused on increased involvement by stakeholders in the continued running and management of the market, a resistance against private ownership, and the continued involvement of the Council in the management of the market in some form or another.
- The specific approaches to future management mentioned most often by respondents were a preference for continuation of the current management arrangements (i.e. Council led) Civic Enterprise or a Management Board.
- The need to bring in external expertise was mentioned, particularly by those respondents who felt that there was a need to maximise the value that Leeds City Council get from the market, however most of these respondents maintained the need to ensure that any profit

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made from the market should be re-invested in continued market development.

7.0 EVALUATION CRITERIA

7.1 The following evaluation criteria have been used to assess each of the options:

- Operational Sustainability
 - Ensures trader, community and business involvement in the management of the market.
 - Retains strategic control by Leeds City Council.
 - Transfers day to day control away from Leeds City Council.
 - Management company has experience in developing and operating retail markets.
- Financial Sustainability:
 - Ensures the retention of a proportion of any surplus made for reinvestment in Kirkgate Market.
 - Creates the ability to generate significant external capital investment for redevelopment.
 - All surpluses from Kirkgate Market are retained by Leeds City Council.
 - Has the potential to reduce operational costs.
- Deliverability:
 - Minimises time, resources and costs to set up and administer.
 - Minimises the risk of non-delivery of the management change.

8.0 EVALUATION TEAM

8.1 The options have been appraised by the following:

- Craig Taylor, Public Private Partnerships Unit, Resources
- Kieron Dennett, Public Private Partnerships Unit, Resources;
- Graham Fisher, Financial Management, Resources;
- Mark Turnbull, Legal, Licensing and Registration Services, Resources;
- Simon Brereton, Economic Development, City Development.

8.2 Officers, traders and Members with a direct interest in the future of Kirkgate Market have not been involved in the appraisal.

9.0 INITIAL OPTIONS APPRAISAL

9.1 The initial options appraisal has taken account of the Stage 2 Engagement / Feedback and the appraisal by the evaluation team against each of the evaluation criteria agreed and set out in Section 7.0 above. The purpose of the initial options appraisal is to determine the strongest options so that they can be appraised in more detail.

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9.2 The scores (out of 100) for the initial option appraisal by the evaluation team against each of the evaluation criteria agreed are as follows:

- Option 1 – No change – Managed by Leeds City Council - 59.
- Option 2 – Alternative Leeds City Council management model - 63.
- Option 3 - Wholly Owned Management Company - 78.
- Option 4 - Civic Enterprise - 74.
- Option 5 - Management Contract - 59.
- Option 6 – Social Enterprise - 56.
- Option 7 - Limited Liability Partnership - 50.

For more detail refer to Appendix A.

9.3 Based on the above scores it can be concluded that:

- Options 3 and 4 score highly and therefore will be further evaluated.
- Options 5, 6 and 7 would not be acceptable to the Council due to their low scores, below 60%. This is supported by the Stage 2 Engagement / Feedback. Therefore they will not be further evaluated.
- Option 1 would not be acceptable to the Council due to its low scores, below 60%. This though, is not supported by the Stage 2 Engagement / Feedback as Option 1 is 2nd preference. However, “Managed to give traders a say” is 1st preference and Option 1 would not ensure trader, community and business involvement in the management of the market. Therefore Option 1 will not be further evaluated.

9.4 Although Option 2 is much lower scoring than option 3 and 4 and is only marginally higher than option 1 and 5, it will be further evaluated because of the Stage 2 Engagement / Feedback:

- Option 1 is 2nd preference in the Stage 2 Engagement / Feedback.
- However, “Managed to give traders a say” is 1st preference and Option 1 would not ensure trader, community and business involvement in the management of the market.
- Therefore option 2 will be further evaluated as the council continue to manage Kirkgate Market, but also ensure trader, community and business involvement.

10.0 DETAILED OPTIONS APPRAISAL

10.1 The advantages and disadvantages of the remaining options are discussed below. Further detail of the option is also provided where necessary:

10.2 Option 2 – Alternative Leeds City Council management model:

Advantages:

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- A management committee would be put in place, which would include councillors, traders, local authority nominees and independent members with relevant experience in commercial retail, therefore ensuring their involvement in the management of the market. It also ensures transparency and openness in all issues relating to Kirkgate Market.
- Trader members would be elected by their fellow traders ensuring that they are genuinely representative.
- The Council would retain strategic control.
- The existing management team would remain. They have extensive experience in developing and operating a retail market. They would continue to do this, with the advantage of further expertise and experience from the management committee.
- All surpluses from the operation of Kirkgate Market would remain with the Council.
- Kirkgate Market would continue to be managed by the existing markets management team, who would also continue to manage the other Leeds markets and operate the full range of its Market Charter obligations, therefore no additional resources required to split these functions.
- The only change to the existing situation is the formation of a management committee. This would be quick and inexpensive to set up. A procurement or TUPE exercise would not be required.
- The risk of non-delivery of the management change is very low as change is minimal and within the power of the Council.
- This option is the preferred option from the Stage 2 Engagement / Feedback.

Although the 1st preference was option 1 – Council managed / continuation of current arrangements, this does not fulfil the main criteria that came from the Stage 2 Engagement / Feedback - “Managed to give traders a say”.

Therefore it is logical that option 1 and option 2 preferences can be amalgamated, which results in 39% of respondents preferring option 2.

Disadvantages:

- Trader involvement in the management of Kirkgate Market would not be formalised, as a new company is not being formed and therefore their influence could be limited.
- Day to day control would remain with the Council as the current delegation arrangements for formal decisions will remain unchanged and therefore the management committee would be advisory only and have no decision making powers.
- A proportion of the surplus generated from Kirkgate Market could be ring-fenced for reinvestment and to finance the prudential borrowing

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required for the capital investment. This would result in a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets. Furthermore, this ring-fencing is at risk to change, dependent upon the Council's priorities year on year and changes in the Administration.

- There would be limited scope for significant external capital investment for any redevelopment and therefore the Council would be reliant on prudential borrowing.
- The potential for reducing operational costs would be limited as control remains with the Council and therefore opportunities are limited. For example, procurement of goods and services would still be subject to the Council's policies and rules. This is a significant concern of the traders who believe that this lack of competition may not be driving best value.

10.3 Option 3 - Wholly Owned Management Company

Further Detail:

- The Council would remain the legal landlord.
- Tenants would remain tenants of the Council.
- The Wholly Owned Management Company, being a separate legal body from the Council, would need to apply for licences.
- The relationship between the Council and the Wholly Owned Management Company would be defined in an agreement which sets out the obligations of each party and would cover:
 - The functions to be delegated to and carried out by the Wholly Owned Management Company;
 - The standards to which they are to be carried out;
 - Arrangements for reporting on and monitoring performance;
 - Requirements for involvement of traders in decision making;
 - The financial relationship and obligations of each party;
 - Arrangements for liaison and consultation between the Council and the Wholly Owned Management Company;
 - The Wholly Owned Management Company's role in helping to deliver the authority's markets strategy.
- The length of the agreement would likely be for 10 years, renewable, with provision for a break after 5 years.
- Board members would not be paid but may receive expenses.
- The Board would operate as openly as possible, with meetings and papers accessible to the public, subject to safeguards for personnel and commercially sensitive issues.
- In relation to procurement, it is lawful for a "contracting authority" such as the Council to appoint a company to undertake services without competition, when the Teckal, or "in-house", exemption from

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the EU public procurement regime applies to the company. The Teckal conditions are that:

- The authority must exercise no less control over the company than it exercises over its own departments; and
- The company must carry out the essential part of its activities with the authority.

In particular, there must be no element of private equity or investment, and the authority must have the power of decisive influence over the strategic objectives and significant decisions of the company. In order for the Council to have the necessary “power of decisive influence”, it would be necessary to make any company decisions on a specified range of matters subject to the separate prior written consent of the Council. The range of matters which have been approved by Counsel for these purposes in another case, are set out in Appendix B.

Advantages:

- The management board would include councillors, traders, local authority nominees and independent members with relevant experience in commercial retail, therefore ensuring their involvement in the management of the market. It also ensures transparency and openness in all issues relating to Kirkgate Market. Trader involvement in the management of Kirkgate Market would also be formalised through the agreement with the Council.
- Trader members would be elected by their fellow traders ensuring that they are genuinely representative.
- The Council would retain strategic control.
- Day to day control would transfer to the Wholly Owned Management Company.
- The existing management team would remain, as they would transfer under the TUPE regulations. They have extensive experience in developing and operating a retail market. They would continue to do this, with the advantage of further expertise and experience from the management board.
- Although the Wholly Owned Management Company would require an operational budget, the majority of the surpluses from the operation of Kirkgate Market would remain with the Council.
- A proportion of the surplus generated from Kirkgate Market would be ring-fenced for reinvestment and to finance the prudential borrowing required for the capital investment for the life of the contract. This would result in a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.
- There would be potential for reducing operational costs as the Wholly Owned Management Company would not be subject to all of the

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Council's policies and rules and may therefore procure outside of the Council.

- A costly and lengthy procurement exercise would not be required.
- The risk of non-delivery of the management change is low as the new company will be wholly owned by the Council.

Disadvantages:

- There would be some scope for external capital investment for any redevelopment, but this would be limited, and therefore the Council would be predominantly reliant on prudential borrowing.
- The Wholly Owned Management Company would not manage the other Leeds markets and operate the full range of its Market Charter obligations. Therefore additional resources would be required to split these functions from the Wholly Owned Management Company.
- Time and resource would be required to form the new company and draft the agreement between the Wholly Owned Management Company and the Council. A TUPE exercise would also be required.
- Only 6% of respondents to the Stage 2 Engagement / Feedback stated a preference for the Wholly Owned Management Company option.

10.4 Option 4 - Civic Enterprise

Further Detail:

- The Civic Enterprise would be set up as Option 3, i.e. as a Company Limited by Guarantee, but with traders having up to 25% of a stake in the company.
- However, the following should be noted:
 - it is a general principle of public law that unless expressly permitted by statute, or by order made under Section 70 of the Deregulation and Contracting Out Act 1994, authorities may not delegate their functions to a third party.
 - Therefore, it is clear that whilst the general power can be used for arrangements which increase participation and involvement in the management of the Market by traders and others, (and indeed the Council could rely on its duty to involve representatives of local people under Section 3A of the Local Government Act 1999 for these purposes), these arrangements must not go so far as to constitute a delegation of any of the Council's functions beyond the "usual" statutory scheme for delegation in the Local Government Acts 1972 and 2000.
 - In *Sea Srl v Comune di Ponte Nossa*, Case C-573/07, the ECJ decided that the holding, even a minority holding, of a private undertaking in the capital of a company meant that it was impossible for the contracting authority to exercise over that company control similar to which it exercises over its own departments. In *Brent LBC & Others v Risk Management Partners*

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Ltd, the Supreme Court found that it is essential that any body established by the authority did not involve any private investment. Therefore, if a share company were established for these purposes, even if the Council held 75% or more of the shares and so controlled all of the important decisions of the company, there would still be an element of “private investment” in the company, and so the arrangements would be unlikely to satisfy the “control” test.

- However, where a company is limited by guarantee, rather than by shares, the guarantee contribution by individual members is not “capital” in the same sense as share capital. There is a fixed sum (usually £1) liability on members towards the debts of the company. This will be kept in reserve, and unlike the uncalled share capital of a company limited by shares, this will not be deemed to be an asset of the company, and cannot be used to repay or secure any of the company’s debts. The guarantee may only be called upon in the event of the company’s liquidation. As there is no shareholding, there is no distribution of profits to members by way of dividend payments. Therefore, the Civic Enterprise, established as a company limited by guarantee, with the Council holding 75% of the voting rights at general meetings, and with the remaining 25% of the votes being held collectively by traders in the Markets, then this may not be regarded as a private holding of “capital” or as “private investment”, and so may satisfy the “control” test.

Advantages:

- The management board would include councillors, traders, local authority nominees and independent members with relevant experience in commercial retail, therefore ensuring their involvement in the management of the market. It also ensures transparency and openness in all issues relating to Kirkgate Market. Trader involvement in the management of Kirkgate Market would also be formalised through the agreement with the Council.
- Trader members would be elected by their fellow traders ensuring that they are genuinely representative.
- The Council would retain strategic control.
- Day to day control would transfer to the Civic Enterprise.
- The existing management team would remain, as they would transfer under the TUPE regulations. They have extensive experience in developing and operating a retail market. They would continue to do this, with the advantage of further expertise and experience from the management board.
- Although the Civic Enterprise would require an operational budget, the majority of the surpluses from the operation of Kirkgate Market would remain with the Council.

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- A proportion of the surplus generated from Kirkgate Market would be ring-fenced for reinvestment and to finance the prudential borrowing required for the capital investment for the life of the Civic Enterprise contract. This would result in a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.
- There would potential for reducing operational costs as the Civic Enterprise would not be subject to all of the Council's policies and rules and may therefore procure outside of the Council.
- A costly and lengthy procurement exercise would not be required.
- The risk of non-delivery of the management change is low as the new company will be wholly owned by the Council.
- 12% of respondents to the Stage 2 Engagement / Feedback stated a preference for the Civic Enterprise option.

Disadvantages:

- There would be some scope for external capital investment for any redevelopment, but this would be limited, and therefore the Council would be predominantly reliant on prudential borrowing.
- The Civic Enterprise would not manage the other Leeds markets and operate the full range of its Market Charter obligations. Therefore additional resources would be required to split these functions from the Civic Enterprise.
- Extending membership of the company is only really a perceived advantage over option 3, as membership of the company will likely be restricted to voting representatives onto the Board, and under option 3 the traders could still have proper election arrangements for their Board representatives without doing this at general meetings.
- It is highly unlikely that the Council could reasonably make membership of the company by a trader a condition of taking a tenancy or licence. Therefore, only a small group of traders may become members, and as only they could vote at general meetings (including voting for trader representatives on the Board), the democratic arrangement could be less than under Option 2 or 3.
- The Civic Enterprise carries more legal risk, as there is no clear case-law on whether allowing traders to have up to 25% of a stake in the company meets the "control" test for the Teckal exemption. A confirmatory view from Counsel will be required.
- Time and resource would be required to form the new company and draft the agreement between the Wholly Owned Management Company and the Council. A TUPE exercise would also be required.
- Administration of the company could become time consuming and resource intensive. For example, with such a high turnover of membership (reflecting the turnover of tenants generally experienced in the market) there will be an additional onerous

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obligation to continually update the register of members of the company with Companies House.

11.0 CONCLUSIONS

- 11.1 The chosen option needs to have the stability to achieve the Council's vision for Kirkgate Market to be the best market in the UK, to give traders more of a say in the management of the market and to ensure that the substantial investment required can be sustained.
- 11.2 The appraisal of the options against the set of agreed evaluation criteria concludes that in principle there is merit in Option 3 – Wholly Owned Management Company, because:
- Its high scores for operational sustainability and deliverability.
 - Trader involvement in the management of Kirkgate Market would be formalised through the agreement with the Council.
 - The Council would retain strategic control, whilst day to day control would transfer to the Wholly Owned Management Company.
 - The experienced existing management team would remain, as they would transfer under the TUPE regulations with the advantage of further expertise and experience from the management board.
 - A proportion of the surplus generated from Kirkgate Market would be ring-fenced for reinvestment and to finance the prudential borrowing required for the capital investment for the life of the contract.
 - There would be potential for reducing operational costs as the Wholly Owned Management Company would not be subject to all of the Council's policies and rules and may therefore procure outside of the Council.
 - The risk of non-delivery of the management change is low as the new company will be wholly owned by the Council.
- 11.3 Option 5 - Management Contract, Option 6 – Social Enterprise and Option 7 - Limited Liability Partnership would not be acceptable to the Council due to their low scores, below 60%. This is supported by the stage 2 engagement feedback.
- 11.4 Option 1 – No Change is the 1st preference from the stage 2 engagement feedback ("continuation of current arrangements"). However, "Managed to give traders a say" is the most stated comment from the stage 2 engagement feedback and Option 1 would not ensure trader involvement in the management of the market. Therefore, together with its low score, below 60%, Option 1 would not be acceptable to the Council.
- 11.5 Although Option 2 – Alternative Leeds City Council Management Model is the 2nd preference from the stage 2 engagement feedback, the following disadvantages are important:

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- Trader involvement in the management of Kirkgate Market would be formalised but in an advisory capacity only, as a new company with a Board of Directors is not being formed;
- The ring-fencing of a proportion of the surplus generated from Kirkgate Market is at higher risk to change than with a Wholly Owned Management Company, dependent upon the Council's priorities year on year and possible future changes in the Administration.
- The potential for reducing operational costs could be limited as control remains with the Council and therefore opportunities are limited. For example, procurement of goods and services would still be subject to the Council's policies and rules. This is a significant concern of the traders who believe that this lack of competition may not be driving best value for goods and services which are then wholly or partly recharged to them. However, a variation to this can be authorised by the Director of City Development on a contract by contract basis if this is deemed appropriate.

11.6 Although Option 4 – Civic Enterprise is 3rd preference from the stage 2 engagement feedback, the following disadvantages are important:

- Extending membership of the company is only really a perceived advantage over option 3, as membership of the company will likely be restricted to voting representatives onto the Board, whilst under option 3 the traders could still have proper election arrangements for their Board representatives without doing this at general meetings.
- It is highly unlikely that the Council could reasonably make membership of the company by a trader a condition of taking a tenancy or licence. Therefore, not all traders may become members, and as only they could vote at general meetings (including voting for trader representatives on the Board), the democratic arrangement could be less than under Option 2 or 3.
- The Civic Enterprise carries more legal risk, as there is no clear case-law on whether allowing traders to have up to 25% of a stake in the company meets the "control" test for the Teckal exemption. A confirmatory view from Counsel will be required.
- Administration of the company could become time consuming and resource intensive. For example, with such a high turnover of membership (reflecting the turnover of tenants generally experienced in the market) there will be an additional onerous obligation to continually update the register of members of the company with Companies House.
- Therefore a Civic Enterprise adds very little over the Wholly Owned Management Company option, which has little risk attached to it.

11.7 The following should be noted:

- Only 6% of respondents to the stage 2 engagement / Feedback stated a preference for the Wholly Owned Management Company option. However, as the Civic Enterprise is very similar to a Wholly

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Owned Management Company, it can be reasoned that together the Wholly Owned Management Company (6%) and Civic Enterprise (12%) are 2nd preference (18%).

- The Wholly Owned Management Company would not manage the other Leeds markets and operate the full range of its Market Charter obligations. Therefore additional resources would be required to split these functions from the Wholly Owned Management Company.
- Time and resource would be required to draft the agreement between the Wholly Owned Management Company and the Council and for on-going company administration. A TUPE exercise would also be required, including costs arising from pensions arrangements.
- Careful consideration must be given when drafting the Articles for the Wholly Owned Management Company or Civic Enterprise or terms of reference for a management committee to ensure that additional bureaucracy is not created, which slows down the day to day management of Kirkgate Market. For example, day to day management would be hindered if the management board were required to approve new lettings, rather than as now, where the Markets Manager uses her delegated authority to make that decision instantly.
- With careful planning, there will be no VAT implications to the Council with any of the options. However, with the Civic Enterprise, Management Contract, Social Enterprise and Limited Liability Partnership options, the more of a move towards private sector involvement, the more risk there is with regards corporation tax implications. Although, with careful planning this can be minimised and would not be substantial.
- All options will result in a reduction in the surplus that the Council currently uses as a per annum contribution to its core budgets.

12.0 RECOMMENDATIONS

- 12.1 As the Alternative Leeds City Council Management Model is preferred over the Wholly Owned Management Company in the stage 2 engagement feedback and the cost and risk of non-delivery of the management change is very low, the recommended practical solution is that to provide a point of stability during the redevelopment and refurbishment of Kirkgate market the Alternative Leeds City Council Management Model is employed and tested.
- 12.2 A further appraisal at the end of the development could help decide whether a Wholly Owned Management Company would provide further benefits.
- 12.3 The Alternative Leeds City Council Management Model is the recommended option to deliver the required benefits. This would entail a management board being set up. The Board would include councillors, traders, local authority nominees and independent members with

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relevant experience in commercial retail. Trader members would be elected by their fellow traders to ensure that they are genuinely representative. There could also be co-opted members as required; A ring-fenced operational budget would be required, that needs to be determined at the next stage of the project, if approved. The main difference between this model and the Wholly Owned Management Company is that current delegation arrangements for formal decisions will remain unchanged (i.e. Executive Board and officer delegation) and the markets management team would continue to manage all of the Leeds markets and operate the full range of its Market Charter obligations.

13.0 APPENDICES

APPENDIX A – EVALUATION CRITERIA & SCORING

Kirkgate Market Strategy								
Management Options Appraisal								
Options Appraisal - Evaluation Criteria								
Quality Evaluation Criteria	Option 1 – No change – Managed by Leeds City Council	Option 2 – Alternative Leeds City Council management model	Option 3 - Wholly Owned Management Company	Option 4 - Civic Enterprise	Option 5 - Management Contract	Option 6 – Social Enterprise	Option 7 - Limited Liability Partnership	
Operational Sustainability								
A	Ensures trader, community and business involvement in the management of the market.	No change, but there is existing, although limited, engagement - only traders, no community or business	Management board set up with traders etc. so involvement - but not formalised and therefore influence limited	Management board set up with traders etc. so involvement - formalised but influence limited to certain areas	Management board set up with traders etc. so involvement - formalised but influence limited to certain areas	Although it could be specified in any procurement exercise, this would potentially limit competition and therefore formal involvement of traders etc. is unlikely	Social ownership is at the heart of a social enterprise - this assumes that the trader led social enterprise is successful	Although it could be specified in any procurement exercise, this would potentially limit competition and therefore formal involvement of traders etc. is unlikely
B	Retains strategic control by Leeds City Council	No change therefore LCC retain strategic control	Management of the market stays within LCC, therefore LCC retain strategic control	Separate company set up so LCC retain strategic control, although the management board would require some influence	Separate company set up so LCC retain strategic control, although the management board would require some influence	LCC retain strategic control through the contract with the new management company. But the management board would require some influence	LCC retain strategic control through the contract with the social enterprise. But the management board would require some influence	LCC retain some strategic control through the contract, but the LLP would want limits on this
C	Transfers day to day control away from Leeds City Council	No change therefore LCC retain day to day control (no transfer)	Management of the market stays within LCC, therefore LCC retain day to day control, although the management committee would require some influence	Day to day management is transferred	Day to day management is transferred	Day to day management is transferred	Day to day management is transferred	Day to day management is transferred
D	Management company has experience in developing and operating retail markets.	No change therefore the existing experienced management team continue to manage the market, but no benefit of experience from a management board	The existing experienced management team continue to manage the market with the benefit of additional experience from the management committee	The existing experienced management team continue to manage the market (TUPE) with the benefit of additional experience from the ALMO management board	The existing experienced management team continue to manage the market (TUPE) with the benefit of additional experience from the Civic Enterprise management board	The existing experienced management team continue to manage the market (TUPE) with the benefit of additional experience from the new management company	The existing experienced management team continue to manage the market (TUPE) but a new management company put in place, who are likely to have little retail market experience	The existing experienced management team continue to manage the market (TUPE) with the benefit of additional experience from the new management company
Financial Sustainability								
A	Ensures the retention of a proportion of any surplus made for reinvestment in Kirkgate Market	No change therefore surplus not ring-fenced for reinvestment	A proportion of the surplus could be ring-fenced for reinvestment, but this is at risk to change, dependent on LCC priorities and changes in the Administration	A proportion of the surplus would be ring-fenced for reinvestment for the life of the ALMO contract. However, there is a risk to change, dependent on LCC priorities and changes in the Administration	A proportion of the surplus would be ring-fenced for reinvestment for the life of the ALMO contract. However, there is a risk to change, dependent on LCC priorities and changes in the Administration	A proportion of the surplus would be ring-fenced for reinvestment for the life of the management contract	A proportion of the surplus would be ring-fenced for reinvestment for the life of the contract with the Social Enterprise	A proportion of the surplus would be ring-fenced for reinvestment for the life of the contract with the LLP
B	Creates the ability to generate external capital investment for redevelopment.	Does not create the ability to generate capital investment, other than prudential borrowing	Does not create the ability to generate capital investment, other than prudential borrowing	Limited opportunities not open to LCC to generate capital investment would be available	Limited opportunities not open to LCC to generate capital investment would be available	Limited opportunities not open to LCC to generate capital investment would be available	Limited opportunities not open to LCC to generate capital investment would be available	Limited opportunities not open to LCC to generate capital investment would be available, but more importantly the joint venture partner would be expected to match the capital allocated by LCC
C	All surpluses from Kirkgate Market retained are by Leeds City Council.	No change therefore all surpluses retained by LCC	Control of the market is retained by LCC, therefore all surpluses retained by LCC	Although strategic control is retained by LCC, an operational budget would be required by the ALMO, therefore slightly reducing any surpluses	Although strategic control is retained by LCC, an operational budget would be required by the Civic Enterprise therefore slightly reducing any surpluses	Although strategic control is retained by LCC, a profit share would be required by the management company therefore reducing any surpluses	Although strategic control is retained by LCC, a profit share would be required by the social enterprise therefore reducing any surpluses	As the joint venture partner will inject capital into the market, they will expect a profit share to match this
D	Has the potential to reduce operational costs	No change therefore no opportunity to reduce costs	Limited opportunities would be available to reduce costs as control remains with LCC	Some opportunities to reduce operational costs, but potential additional costs due to the need to deliver the remainder of the markets service separately	Some opportunities to reduce operational costs, but potential additional costs due to the need to deliver the remainder of the markets service separately	Opportunities to reduce costs, e.g. through procurement of services. However, potential additional costs due to the need to deliver the remainder of the markets service separately	Opportunities to reduce costs, e.g. through procurement of services. However, potential additional costs due to the need to deliver the remainder of the markets service separately	Opportunities to reduce costs, e.g. through procurement of services. However, potential additional costs due to the need to deliver the remainder of the markets service separately
Deliverability.								
A	Minimises time, resources and costs to set up and administer	No change therefore no set up or administration costs	Minimal time and costs to set up the management board and agree terms of reference and administer	Procurement exercise not required, but some time and resources required to form the new company, agree the obligations of each party and coordinate transfer of staff under TUPE. Minimal time and costs required to administer	Procurement exercise not required, but time and resource required to form the new company, agree the obligations of each party including roles and responsibilities of traders in the new company and coordinate transfer of staff under TUPE. Time and costs required to administer	Time and resource required to undertake a procurement exercise and coordinate transfer of staff under TUPE. Minimal time and costs required to administer	Complicated procurement exercise required. Time and resource required to agree and detail requirements and evaluation criteria, coordinate transfer of staff under TUPE and to support capacity building of the social enterprise. Minimal time and costs required to administer	Reasonably complicated procurement exercise required. Time and resource required to agree and detail requirements and evaluation criteria and coordinate transfer of staff under TUPE. Minimal time and costs required to administer
B	Minimises the risk of non-delivery of the management change	No change therefore no risk	Management board terms of reference to agree but minimal risk	Agreement to the obligations of each party required, but minimal risk as new company wholly owned by LCC	Agreement to the obligations of each party required. Some risk as agreement required to roles and responsibilities of traders in the new company, which is not wholly owned by LCC	Procurement exercise required with medium risk of no interest and unsuccessful outcome	Complicated procurement exercise required, with high risk of no interest and unsuccessful outcome	Reasonably complicated procurement exercise required, with high risk of no interest and unsuccessful outcome

APPENDIX A – EVALUATION CRITERIA & SCORING

Kirkgate Market Strategy		SCORE	Level		SCORE	Level		SCORE	Level							
Management Options Appraisal		0	Does not meet the Criteria		5	Some reservations in meeting the Criteria		10	Meets the Criteria							
Options Appraisal - Evaluation Criteria		2.5	Major reservations in meeting the Criteria		7.5	Mostly meets the Criteria										
Quality Evaluation Criteria		Weighting	Option 1 – No change – Managed by Leeds City Council		Option 2 – Alternative Leeds City Council management model		Option 3 - Wholly Owned Management Company		Option 4 - Civic Enterprise		Option 5 - Management Contract		Option 6 – Social Enterprise		Option 7 - Limited Liability Partnership	
			Score (1-10)	Weighted Score	Score (1-10)	Weighted Score	Score (1-10)	Weighted Score	Score (1-10)	Weighted Score	Score (1-10)	Weighted Score	Score (1-10)	Weighted Score	Score (1-10)	Weighted Score
1	Operational Sustainability	33.33	5	15.83	7	22.91	10	32.08	10	32.08	6	18.75	7	24.58	6	20.83
2	Financial Sustainability	33.33	3	10.00	5	15.00	6	20.83	6	20.83	7	23.33	7	23.33	6	20.83
3	Deliverability	33.33	10	33.33	8	25.00	8	25.00	6	20.83	5	16.67	3	8.33	3	8.33
Final Quality Score		100	-	59	-	63	-	78	-	74	-	59	-	56	-	50
Ranking		-	-	4	-	3	-	1	-	2	-	4	-	6	-	7
Operational Sustainability																
A	Ensures trader, community and business involvement in the management of the market.	4.00	2.5	1.00	5	2.00	10	4.00	10	4.00	0	0.00	10	4.00	2.5	1.00
B	Retains strategic control by Leeds City Council	1.50	10	1.50	10	1.50	7.5	1.13	7.5	1.13	7.5	1.13	7.5	1.13	5	0.75
C	Transfers day to day control away from Leeds City Council	1.50	0	0.00	2.5	0.38	10	1.50	10	1.50	10	1.50	10	1.50	10	1.50
D	Management company has experience in developing and operating retail markets.	3.00	7.5	2.25	10	3.00	10	3.00	10	3.00	10	3.00	2.5	0.75	10	3.00
Final Quality Score		10	-	5	-	7	-	10	-	10	-	6	-	7	-	6
Financial Sustainability																
A	Ensures the retention of a proportion of any surplus made for reinvestment in Kirkgate Market	3.00	0	0.00	2.5	0.75	7.5	2.25	7.5	2.25	10	3.00	10	3.00	10	3.00
B	Creates the ability to generate external capital investment for redevelopment.	1.00	0	0.00	0	0.00	2.5	0.25	2.5	0.25	2.5	0.25	2.5	0.25	10	1.00
C	All surpluses from Kirkgate Market retained are by Leeds City Council.	3.00	10	3.00	10	3.00	7.5	2.25	7.5	2.25	5	1.50	5	1.50	0	0.00
D	Has the potential to reduce operational costs	3.00	0	0.00	2.5	0.75	5	1.50	5	1.50	7.5	2.25	7.5	2.25	7.5	2.25
Final Quality Score		10	-	3	-	5	-	6	-	6	-	7	-	7	-	6
Deliverability.																
A	Minimises time, resources and costs to set up and administer	5.00	10	5.00	7.5	3.75	7.5	3.75	5	2.50	5	2.50	2.5	1.25	2.5	1.25
B	Minimises the risk of non-delivery of the management change	5.00	10	5.00	7.5	3.75	7.5	3.75	7.5	3.75	5	2.50	2.5	1.25	2.5	1.25
Final Quality Score		10	-	10	-	8	-	8	-	6	-	5	-	3	-	3

APPENDIX B – POWER OF DECISIVE INFLUENCE – RANGE OF MATTERS

In order for the Council to have the necessary “power of decisive influence”, it would be necessary to make any company decisions on a specified range of matters subject to the separate prior written consent of the Council. The range of matters which have been approved by Counsel for these purposes in another case, is set out below:

- “Not to:
 - Take any action, including entering into any contract which is not within the parameters of a business plan approved by the Council;
 - Mortgage or charge the company’s undertaking, property or any part thereof, nor issue debentures, debenture stock or any other securities whether outright or as security for any debt, liability or obligation of the company or of any third party, for the benefit of any third party lender;
 - Sell, lease, transfer or otherwise dispose of the whole or any substantial part of the undertaking or property of the company (and for the purposes of this article, "substantial" means having an aggregate book value of more than 20% of the net asset value of the company);
 - Form, acquire or dispose of any subsidiary or amalgamate or merge with any other company or concern or acquire any shares of any other company or participate in any partnership or joint venture;
 - Lend or advance to any person, firm or company any monies exceeding in aggregate £15,000 or more in any Financial Year;
 - Make any change in the company’s business;
 - Enter into any personal favourable contract or arrangement with any member or officer of the Council;
 - Apply for any European Community grant;
 - Make any change in the company’s accounting reference date;
 - Make any change in the company’s registered office;
 - Remove or vary any of the terms of appointment of the company’s auditors;
 - Participate in any scheme of arrangement or petition or pass any resolution to wind up the company or make application for an administrative order;
 - Change the name of the company;
 - Make any amendment to the articles of association of the company;
 - Capitalise, repay or otherwise distribute any amount standing to the credit of any reserve of the company;
 - Admit any person as a member of the company;

APPENDIX B – POWER OF DECISIVE INFLUENCE – RANGE OF MATTERS

- Borrow any money from any person (other than pursuant to the business plan) or make any change in the banking arrangements or facilities (including changes to bank mandates) of the company;
- Factor or assign any of the book debts of the company;
- Carry on any business outside the United Kingdom;
- Enter into any contract or arrangement of a material nature outside the normal course of business including, without limitation, a contract or arrangement which cannot be terminated by the company without penalty or compensation within 12 months of its commencement;
- Enter into any contract or arrangement with any third party (whether legally binding or not) otherwise than on arm's length market terms;
- Commence, settle or compromise any material legal dispute or proceeding to which the company is a party;
- Enter into any transaction or series of related transactions (whether at one time or over a period of time) involving the incurring of any capital expenditure of more than £50,000;
- Make any claim, disclaimer, surrender, election or consent of a material nature for tax purposes;
- Pass any resolution whereby the classification or status of the company may change”.

In addition, following dicta in the “Brent” case, the Articles will need to provide:

- For the Chair to be appointed by those directors nominated by the Council;
- That no Board meeting is to be quorate without those directors;
- That the Board is subject to direction by ordinary resolutions passed at general meetings.