

# Finance and Resources Committee

10.00am, Thursday, 1 December 2016

## Proposed Assignment and Lease Restructure – 36-39 and 45 Market Street, Edinburgh

Item number	8.7
Report number	
Executive/routine	Routine
Wards	11 – City Centre

### Executive Summary

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The Council own the properties situated at 31 to 45 Market Street, Edinburgh. The properties at the east end of the block are leased to the Fruitmarket Gallery (45 Market Street) and Waverley Leisure Limited (nightclub at 36-39 Market Street).

The Fruitmarket Gallery has developed a proposal for a new expanded gallery facility which will extend into 36-39 Market Street, subject to significant grant funding.

Working with a design team, the Fruitmarket Gallery has developed a £10.5m scheme to link and refurbish both 36-39 and 45 Market Street to provide a premier cultural space.

This report seeks approval, in principle, to assign the existing leases on 36-39 Market Street to Fruitmarket Gallery and thereafter vary the lease to provide the Gallery with a single lease to allow the development to proceed.

### Links

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Coalition Pledges	<a href="#">P15</a> , <a href="#">P17</a> , <a href="#">P31</a>
Council Priorities	<a href="#">CP5</a> , <a href="#">CP6</a> , <a href="#">CP8</a> , <a href="#">CP9</a>
Single Outcome Agreement	<a href="#">SO1</a>

## Proposed Assignment and Lease Restructure – 36-39 and 45 Market Street, Edinburgh

### 1. Recommendations

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That Committee:

- 1.1 Approves the principle of the assignment and variation of the existing leases at 36-39 and 45 Market Street on the terms outlined in this report and on other terms and conditions to be agreed by the Acting Executive Director of Resources.

### 2. Background

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- 2.1 The Council own the properties situated at 31 to 45 Market Street, Edinburgh. The properties at the east end of the block are leased to the Fruitmarket Gallery (45 Market Street) and Waverley Leisure Limited (trading as a nightclub at 36-39 Market Street), as shown outlined in red on the attached plan.
- 2.2 The Fruitmarket Gallery lease expires on 30 September 2025 and has a current passing rent of £49,500 per annum exclusive.
- 2.3 The nightclub premises are held on two leases which run concurrently until 31 March 2030 at a combined annual rental of £60,385 per annum exclusive.
- 2.4 The existing Fruitmarket Gallery premises is no longer fit for purpose and the building is a key risk threatening the gallery's continued existence. The gallery requires urgent attention in at least three areas: the quality of the gallery spaces; access and facilities for audience; artworks and staff; and environmental sustainability.
- 2.5 The Heritage Lottery Fund has invited the Fruitmarket Gallery to apply for a major grant (between £2m and £5m) towards the redevelopment of the gallery. A condition of that funding is that the Fruitmarket Gallery has a long lease in place. The terms set out in the Main report below show an additional 35 year lease term on top of the existing termination date of 2030 providing the Fruitmarket Gallery with a 49 year unexpired term from the point a new lease is in place.
- 2.6 The tenant of the nightclub has indicated that they wish to cease trading at the facility and has been offering a proposed assignment. Consequently, both tenants have been in discussion regarding a proposed assignment and have reached in principle agreement, subject to Council approval.

### 3. Main report

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- 3.1 Following negotiations between the Council, the Fruitmarket Gallery and Waverley Leisure Limited, the following terms have provisionally agreed:
- Subjects: 36-39 and 45 Market Street;
  - Lease term: Current lease expiries of 30 September 2025 and 31 March 2030 to be extended to provide a single lease expiry on 31 March 2065 providing the Fruitmarket Gallery a 35 year extension from the current latest expiry;
  - Rent: £112,500 per annum;
  - Incentives: Fruitmarket Gallery will be granted a 24 month rent free and then a further 48 months at half rent (£56,500) in acknowledgment of the £10.5m investment they are making in the property;
  - Rent reviews: Reviewed on each fifth anniversary to open market value;
  - Use: Gallery with ancillary use (to include cafe and offices);
  - Assignment: The proposed assignment of the lease of 36-39 Market Street will only be permitted on condition that the larger redevelopment obtains funding;
  - Costs: Fruitmarket Gallery to meet all legal costs; and
  - Other terms: Subject to Fruitmarket Gallery obtaining all necessary funding and statutory consents.

### 4. Measures of success

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- 4.1 The project will create a world class exhibition gallery space to attract the best local and international art and artists.

### 5. Financial impact

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- 5.1 The existing combined annual rental for 36-39 and 45 Market Street is £109,885. This proposal will generate rental income of £112,500 per annum payable to the General Property Account.
- 5.2 The two years rent free are to reflect the period when the buildings are unlikely to be in use due to the construction work for redevelopment. This, together with the half rent proposal for the following 48 months, are to reflect the £10.5m investment

in a Council owned building and will also secure the rental income for an additional 35 years.

## **6. Risk, policy, compliance and governance impact**

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- 6.1 Should Committee not approve this proposal there is a risk that the Fruitmarket Gallery will not be able to raise the necessary funding through the Heritage Lottery Fund.

## **7. Equalities impact**

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- 7.1 An Equality and Rights Impact Assessment has been carried out.
- 7.2 This proposal will allow the Fruitmarket Gallery to greatly improve and enhance the gallery space and associated cafe, library and bookshop enhancing the right of productive and valued activities.
- 7.3 The gallery will continue to enhance the right of education and learning through the cultural space they provide.
- 7.4 The extension of the lease term and the longer term commitment to the property by both the Council and the Fruitmarket Gallery will also enhance the right of legal security.
- 7.5 In many property or lease transactions an infringement of rights can often be claims by parties who were not given the opportunity to lease or make an offer for the property. The existing leases do not expire until 2025 and 2030 so even if this proposal was not being considered there is no infringement of rights.

## **8. Sustainability impact**

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- 8.1 There are no sustainability issues arising from this report

## **9. Consultation and engagement**

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- 9.1 N/A

## **10. Background reading/external references**

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- 10.1 N/A

## Hugh Dunn

Acting Executive Director of Resources

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## 11. Links

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<b>Coalition Pledges</b>	P15 – Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors. P17 – Continue efforts to develop the city's gap sites and encourage regeneration. P31 – Maintain our City's reputation as the cultural capital of the world by continuing to support and invest in our cultural infrastructure.
<b>Council Priorities</b>	CP5 – Business growth and investment. CP6 – A creative, cultural capital. CP8 – A vibrant, sustainable local economy. CP9 – An attractive city.
<b>Single Outcome Agreement</b>	SO1 – Edinburgh's economy delivers increased investment, jobs and opportunities for all.
<b>Appendices</b>	32 Market Street Plan



LOCATION PLAN

PHOTOGRAPHICALLY REDUCED NOT TO SCALE

SITE PLAN

• EDINBURGH •  
THE CITY OF EDINBURGH COUNCIL

SERVICES FOR COMMUNITIES  
EDINBURGH

32 MARKET STREET  
EDINBURGH

DATE 14/10/16

SURVEYED BY

DRAWN BY Mark Ballantyne

SCALE N.T.S.

NEG. NO. A3/1549