Body: Cabinet

Date: 21st March 2018

Subject: Update on the Devonshire Park Redevelopment and proposals

for the refurbishment of the Winter Garden

Report of: Director of Tourism & Enterprise

Cabinet member: Cllr M Bannister

Ward(s): Meads

Purpose of the report:

To provide an update on the redevelopment of Devonshire Park including the budget position.

To obtain agreement for the refurbishment of the Winter Garden, in order that the relevant part of the construction contract with

Vinci Construction UK (Vinci) can be finalised.

Decision type: Key

Recommendation: Cabinet is recommended to:

- a) note the progress to date of the scheme
- approve the proposed works to the Winter Garden and instruct the Director of Tourism & Enterprise and the Asst. Director, Legal & Democratic Services to complete the relevant contract terms with Vinci Construction UK
- c) approve a revision to the capital programme for this scheme to £53.8m gross (£48.2m net of guaranteed contributions) in order to deliver the whole scheme as recommended by the Project Board
- d) note the business plan is expected to meet target
- e) note that the Council can take advantage of a VAT exemption which will increase revenues by a minimum of £250,000 per annum.

Reasons for recommendations:

When the contract for the redevelopment was let to Vinci the work to the Winter Garden was reserved to allow more detailed investigations of the structure and an evaluation of the options. The contract with Vinci provides for this work at the Council's discretion and it is now appropriate to finalise this element of the contract.

For the reasons set out in this report the costs of the overall scheme have increased and it is necessary to make an allowance for this in the capital programme.

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Executive Summary

This report addresses two issues:

- the need to agree the works to be carried out in the Winter Garden;
- the need to increase the capital programme because of cost increases;
- it also provides an update on the progress of the overall programme and the business case.

The programme has already delivered:

- the external refurbishment of the Devonshire Park Theatre and the installation of modern boilers;
- a new building for players at the International tennis Tournament the building was ready in time for the 2017 tournament and was well received by the players and the LTA;
- a new show court which will be played on at the 2018 International Tournament and a new irrigation system serving all the courts;
- finally, construction of two practice courts will commence in September 2018.

This investment has secured the women's tournament for 10 years and the return of the men's tournament to Eastbourne.

The major contract with Vinci for the refurbishment of the Congress Theatre and the construction of the Welcome Building is well underway. The new mechanical and electrical systems are now being fitted in the Congress and the new seats procured. The basement of the Welcome Building is complete and the steel frame will start to be erected soon. Both these buildings will open March 2019.

This work will address the long term issues of overheating, poor lift access and limited acoustics in the Congress and provide a new 1,00m2 conference/exhibition hall with associated break out and reception spaces in the Welcome Building. The scheme will provide pedestrian access through all 3 buildings and a new Plaza which will unify and enhance the entrance to the site.

The original Business Case supporting the Council's investment in this scheme has been reviewed and indicates that the planned return can be achieved.

In terms of benefit to the wider Eastbourne economy the economic analysis in support of the SELEP funding application identified:

- the investment would support almost 100 additional FTE jobs in the local economy and generate some 250 temporary construction jobs;
- the SELEP area would see an additional £4.6m pa spending by visitors from a site which already generates £18m pa spend in the local economy;
- the investment in retaining international tennis at Devonshire Park would secure some 36,000 visitors pa;
- the economic value of conferences to Eastbourne is £10m pa but in recent years some £800k of business had been lost due to the poor quality of the facilities.

The Winter Garden was included within the contract with Vinci on the basis of a high level design and budget allowance. The works were to address the need to

replace the fascia with a more appropriate design, provide a link to the Welcome Building, create more lettable space, improve access and refresh the interior.

Investigations of the building structure revealed that the new fascia could be installed more simply than originally thought. However, the structural frame within the Western Apse (the side facing the Welcome Building) is severely dilapidated and requires complete replacement.

Given the budget pressures facing the overall scheme and the cost of replacing the Western Apse the proposed Winter Garden scheme has been reduced. The revised scheme will not provide a lift nor refurbish the toilets. Redecorations will be carried out over a number of years.

An in depth review of the costs of the overall scheme has shown a cost increase to £53.8m compared to the original budget of £44m. The council has achieved £5.6m additional income through bids for grant income which reduce the net cost to £48.2m.

Should Cabinet decide to increase the capital programme by £4.1m in order to deliver the whole scheme then to the extent that contributions cannot be obtained externally the Council will need to borrow this sum. This will cause a total additional cost of £ 180k per annum. The Council can take advantage of a VAT exemption which will increase revenues by a minimum of £250k per annum.

1.0 Introduction

- 1.1 At the Cabinet of 9th December 2015, the Council approved a scheme to create a cultural destination at Devonshire Park. To achieve this required a number of objectives to be met:
 - Deal with all the necessary essential repairs to those buildings that are being retained in the new development;
 - Understand the significance of the three listed buildings and carry out sensitive renovations;
 - Upgrade the facilities in the buildings to enable them to be better and more fully used;
 - Preserve the future of the international tennis tournament;
 - Create better conference facilities;
 - Create a new entrance to 'Welcome' the visitors and users and make the site more inclusive;
 - Create significant new public realm to provide an appropriate civic setting for the new complex;
 - Develop a more sustainable future for the site, reducing subsidy and increasing income.
- 1.2 These objectives have been met by means of a series of contracts to:
 - refurbish the exterior and foyer of the Devonshire Park Theatre and install a new heating system;
 - construct a new player facility, layout a new Show Court and install a new irrigation system. As a result of this investment a new 10 year agreement

- has been signed with the WTA and a rolling 3 year agreement with the APT securing top class international tennis for Eastbourne;
- refurbish the Congress Theatre and in particular address the issues of overheating and poor sound quality and replace the seats;
- construct the Welcome Building, which will provide the new entrance to the site, together with two exhibition halls totalling 1,000 m2 and associated break out and catering space. The Welcome Building will also provide lift access to all floors of the Congress Theatre and internal pedestrian access to the Winter Garden, allowing the site to operate as a whole when required by hirers;
- construct a new plaza at the front of the Towner Art Gallery/Congress
 Theatre and Welcome Building. This will provide an appropriate setting
 for the buildings, address the access needs of all users and allow informal
 catering and performances;
- finally, the refurbishment of the Winter Garden which is considered later in this report.
- 1.3 In developing the designs for all the above work much of the decision making has been steered by the need to meet the requirements of a Business Case which projected an £814k pa improvement in the financial performance of the site by Year 3 from opening.
- 1.4 In terms of benefit to the wider Eastbourne economy the economic analysis in support of the SELEP funding application identified:
 - the investment would support almost 100 additional FTE jobs in the local economy and generate some 250 temporary construction jobs;
 - the SELEP area would see an additional £4.6m pa spending by visitors from a site which already generates £18m pa spend in the local economy;
 - the investment in retaining international tennis at Devonshire Park would secure some 36,000 visitors pa;
 - the economic value of conferences to Eastbourne is some £10m pa but records show some £800k pa of business had been lost due to the poor quality of the facilities.

2.0 Progress to date

2.1 As set out above this programme has been achieved through a series of projects.

2.2 Devonshire Park Theatre

The refurbishment the exterior of the Devonshire Park Theatre and the replacement of the heating system was to ensure that the theatre could be operated continuously and intensively during the main construction period, whilst the Congress Theatre and Winter Garden were closed. The theatre re-opened on time in November 2016 and has traded very successfully, achieving the highest ever audience figures and box office receipts.

2.3 Tennis

As noted above the work to secure the international tennis for Eastbourne has

included a new building, replacing the obsolete irrigation system and constructing 3 new courts. The new player facilities were used for the 2017 tournament and judged a great success by both the players and the LTA. The new Show Court will be played on in summer 2018 and in the final stage of this project two practice courts will be constructed in autumn 2018.

2.4 Congress Theatre, Welcome Building and Plaza

Following preparatory works in late autumn 2016 to divert a number of utility services, the contract with Vinci to construct the Welcome Building and Plaza and refurbish to Congress Theatre commenced in January 2017. At the time of writing:

- Congress the heating, power and ventilation systems have been removed and the new systems are in the early stages of installation. The seats have been removed and a very experienced supplier appointed to design and install the new seating. The back-of-house areas are being prepared for redecoration and all the heritage items have been protected. The surface water drainage at the rear of the Congress and the Towner has been substantially improved to address historic problems with flooding;
- Welcome Building the basement has been excavated and bulk of the concrete structure has been constructed. The steel frame will start to be erected in March, followed by the glazed facade;
- the design of the Plaza has now been completed;

This contract will be completed by February 2019, followed by fit out works by specialist sub contractors and council staff, with the first performance planned for late March.

3.0 Proposals for the Winter Garden

- 3.1 The proposed works to the Winter Garden retain the key elements of the original design:
 - replace the poor quality glazed facade at the front of the building and return the appearance of the building to that of its early period;
 - enable internal pedestrian access to the Welcome Building;
 - provide further lettable space on the first floor;
 - limited electrical, mechanical and plumbing works;
 - replace the damaged floor coverings.
- 3.2 Due to the budget pressure on the overall scheme and the need to replace the severely dilapidated steel frame supporting the western apse of the Winter Garden (immediately facing the Welcome Building), works to the toilets and redecoration of the building will be deferred and carried out from the regular maintenance programme.
- There is an allowance of £2.15m for this reduced scheme. The final figure will be provided to Cabinet by means of a written update at the meeting, as the tendered price from Vinci will not be available until after the publication of this report.

- 3.4 It was proposed within the reduced scheme that there will not be any works to the toilets and a new lift should not be installed. The Project Board did not support the loss of the lift. This has now been added to the Winter Garden scheme at a cost of £175k.
- 3.5 Subject to member decision to approve this work, the element of the contract with Vinci relating to the Winter Garden will be finalised with a planned completion date of March 2019.

4.0 Consultation

- 4.1 The development of this programme has been steered by a Member Project Board and has been subject to quarterly progress reports to the Scrutiny Committee.
- 4.2 The Council's heritage advisor and Historic England have been consulted throughout the design process.
- 4.3 Subject to the need to fund some urgent repairs, the design has been driven by the needs of the agreed Business Case with input from both the external business advisor (DCA) and the operational management team of Tourism & Enterprise.
- 4.4 The Partnership Group and Eastbourne DIG have been briefed throughout the development of the design.

5.0 Corporate plan and council polices

5.1 The Devonshire Park Project is a key element contributing to the Prosperous Economy theme and represents the biggest public sector cultural investment in the south-east.

6.0 Business Case

- The 2015 Business Case set out a range of improvements to the financial performance of the site, totalling a net annual increase in income of £814,000. DCA proposed that the key drivers for change were:
 - An accessible visible, quality, visitor attraction, efficiently operable - 10%
 - Theatre/live entertainment business working main venues harder - 20%
 - Conference/events transform performance in the 'distinctive venue' market - 40%
 - Catering & visitor spends essential quality offer & significant income driver - 30%

These drivers have informed the design and cost decisions.

A full update and review of the Business Case has confirmed the following that this target is achievable, although the mix of income streams may differ from the

original Business Case

- 6.3 The original Business Case assumed the outsourcing of the catering and bars. Following a full procurement no offers were received. Three of the shortlisted tenderers withdrew due to internal company issues not related to the opportunity at Devonshire Park, the other two tenderers decided not to proceed.
- 6.4 Following an analysis of options it was decided (and reported to the Project Board of 18th January 2018) to remain with an in house service for up to 3 years. This would allow the Council to review whether to go to the market again with the benefit of a fully constructed site, trading experience including the Buccaneer and for the LTA (which has let a short term catering contract) to come to a view on whether or not to combine its contract with the council's.
- The capital budget for the overall scheme assumed some investment by the appointed external caterer in the fit out of the two cafes. This cost of will now fall to the Council and totals £100k. This is included in the revised cost for the overall scheme set out below.

7.0 Scheme Costs

- 7.1 In 2015 a capital budget of £44m was approved for the scheme. This included design and project management fees together with construction costs.
- 7.2 A successful bid to the South East Local Enterprise Partnership has attracted £5m funding. The LTA have also contributed £625k towards the various tennis related investments. Both of these grants have been received in 2017/18 financial year.
- 7.3 It became apparent in late 2016 that the scheme faced substantial cost increases in respect of the Southern Buildings Contract and Tennis related expenditure.

7.4 Southern Buildings Contract –

This contract includes the Congress Theatre, Welcome Building, Winter Garden and the Public Realm. This work was tendered as one package with the option of the Winter Garden being removed or reduced in scope.

The proposed contract price returned by Vinci substantially exceeded the budget. The key reasons for the tender exceeding the budget were identified by the project manager and quantity surveyor as:

- The scale and complexity of the scheme with a mix of new build and refurbishment and the risks attached to work in heritage buildings
- An overheated construction market, particularly in London, as clients sought to complete and schemes with a component of EU funding
- The main contractor finding it difficult to attract substantial key subcontractors at competitive prices due to Eastbourne's location and the competition from projects in London and other major centres in the southeast;
- Nervousness on the part of all contractors about the impact of Brexit on

- imported material prices and the supply of labour and sub-contractors. This nervousness has since been proved well founded with contractors struggling to manage materials costs and obtain sub contractors;
- Scope increase and clarification of quality for elements of the scheme since the original budget was developed in autumn 2015.
- 7.5 In order to avoid further delays to the scheme it was decided to proceed with some preliminary works from December 2016 to April 2017, while a substantial Value Engineering exercise was carried out to reduce the tendered scheme to a more affordable sum. This early work gained momentum for the project and in particular meant certain works could be carried out before the summer 2017 International Tennis Tournament. However, it was recognised that working in advance of all the Value Engineering work being completed was a less efficient process.
- 7.6 A detailed value engineering process was undertaken to try and bring the contract back to budget.

The first round of value engineering identified a long list of over 150 items for potential value engineering. From this process a consolidated set of six core options were identified:

Option 1 - Value Engineer the current proposals so that the "full" scope is delivered more efficiently with reductions across all buildings and public realm but Welcome Building floor area maintained

Option 2 - Reduce down the Welcome Building design removing the two upper floors but lift core retained (stair core not required), lifting the conference rooms to Floral Hall level and completing slightly reduced works in the Winter Garden and Congress Theatre

Option 3 – hybrid of Option 1 and 2 where the Welcome Building is reduced in scale by some degree at upper levels but conference halls remain at basement level. There are then reduced scopes across the Congress Theatre, Winter Garden, and Public Realm

Option 4 - Build the Welcome Building and works to Congress Theatre as designed and do not undertake any works in the Winter Garden

Option 5 - Build the Welcome Building and works to Winter Garden as designed and do not undertake any works in the Congress Theatre

Option 6 - Retender all or part of the works in hope of securing a more competitive tender price from the open market

7.7 Detailed consideration of the above options and potential sub-options/hybrids resulted in the decision to proceed with preferred option that prioritised the Welcome Building and essential works to the Congress Theatre with works to the Winter Garden contained to improving the heritage front and relocating the

kitchen. The Public Realm works scaled back to create a pedestrianised frontage and address levels and access issues.

- 7.8 **Tennis Building, Courts and Irrigation** while the court construction works were within budget, it became apparent that the whole of the irrigation system would have to be replaced rather than extended. The old system was obsolete and incapable of supporting the maintenance of international standard courts. This work has future proofed the investment in the new courts. The Tennis Building was originally planned to be a refurbishment of existing buildings. However, in negotiations with the LTA it became clear that this route would not meet the needs of the international player governing bodies and that the quickest and most cost effective option was a modular building which could be in place for the June 2017 tournament. The building has also provided a number of high quality rooms for hire.
- 7.9 At the Project Board of 9th May 2017 it was reported that project costs had increased to £49.7m primarily as a result of the issues identified above. The main items making up this increase of £5.7m are set out in Table 1 below:

	Description	Cost
		£'000s
1	Tennis:	
1.1	New tennis players facilities rather than basic refurbishment of existing building in order to meet the needs of the LTA	1,700
2	Southern Buildings Contract :	
2.1	Main contractor's preliminaries, overheads and profit higher than anticipated at RIBA Stage 3	500
2.2	Main contractors allowance for increased costs to the end of the project – Increase over some of the inflation allowances made in October 2015	250
2.3	Early works by main contractor off site workshops with design team and on site installing UKPN substation, underground services diversion works, investigations, and early site presence from December 2016 to April 2017, some non-productive working as a result	500
2.4	Full strip out replacement of all mechanical and electrical services in the Congress Theatre rather than substantial replacement as evident that it offered better long term value in use and would provide a contractor warranty for all works – increased scope from RIBA stage 3 and contractor's price higher than anticipated	2,000
2.4	Replace Congress Theatre auditorium seating rather than refurbish existing as provided better long term value for money	300
2.5	Wardrobe lift to allow safe access of costume containers to the Congress Theatre for large shows	50
2.5	External works and drainage to the North of the Congress theatre/ Welcome building ramp and access road area	500
3	Other works:	
3.1	Increase in scope of repairs to Racquet Court Roof due to extent of disrepair in order that the building would be watertight and so capable of use	200
3.2	Requirement for early separate electrical works contract to relocate services from over the Congress Banqueting suite to suit specific operational needs	250
3.3	Increase in cost of EBC Office move to the Point to include IT/	25

Electrical costs ; IT costs excluded at RIBA Stage 3	
Total Increase Costs December 2015 to May 2017	£ 6,275
Application of Contingency on Construction and Fees	(502)
Net Increase £'000s	£ 5,700

The application of the external funding of £5.6m referred to above, which had not been budgeted for initially, allowed the overall budget to be maintained at £44m.

- 7.10 At the May 2017 Board meeting the following key risks were identified:
 - potential problems with ground conditions when the Welcome Building foundations are excavated
 - pressure on the materials supply chain due to the impact of Brexit on the sterling exchange rate
 - the risk of hidden problems in the Congress and Winter Garden
 - the need to design a scheme for the Winter Garden which balanced heritage, essential works and business case.
- 7.11 Since commencing work on the Southern Building contract additional costs totalling some £5.7m have arisen. The key categories of construction cost increases are set out in Table 2 below. A number of the costs are linked to risks identified at the May 2017 Board, particularly the Welcome Building ground conditions and hidden problems in the Congress and Winter Garden.

Table 2

Item	£ '000s
1. Site Issues	
1.1 Welcome Building – ground conditions/piling/soft spots	415
1.2 Contamination – spoil/asbestos/lead paint	150
1.3 Complex access to Congress ceiling void & additional fire safety	120
measures	
1.4 Winter Garden west apse found to be severely dilapidated	217
2. Design development	
2.1 Welcome Building - need to strengthen basement due to ground	900
conditions and provide improved drainage	
2.2 Congress - ceiling access and hoist issues	316
2.3 Congress – not possible to implement removal of draught lobby	100
2.4 Utilities and statutory body additional costs	185
2.5 additional works in the area of Court 2 to address levels and drainage	199
3. Value Engineering savings added back as not achievable	
3.1 Congress - ensure new number of toilets was sufficient to meet	400
customer need	
3.2 Congress – need to replace main entrance doors	100
4. Risk & Contingency allowance	1,297

5.	Allowance for predicted Extensions of Time/Disruption Costs	1,000
6.	Contractors overheads, profit and Insurance	320
7.	Enabling Works – additional traffic safety & temporary drainage	59
	Total £'000s	£5,778

7.12 A full review of the entire scheme has now been carried out covering construction costs, fees and client direct costs (IT, new furniture etc). As part of this review a part of the contingency held outside of the contract has been applied to recognise the increase in construction costs and fees. This identifies a total projected gross spend of £53.8m, which when the grant income of £5.6m is applied is reduced to a net spend of £48.2m. This position is set out in Table 3 below. This budget includes the proposed works to the Winter Garden and a limited contingency. While the scheme is now clearer in terms of both design and site conditions the full picture will not be known for another 12 months.

Table 3

ITEM	9 th MAY 2017 £000s	Ist MARCH 2018 £000s
1.Utilities & Development Costs	627	663
2.Enabling Works	271	343
3.Devonshire Park Theatre Boiler	131	130
4.Southern Building Contract (Excluding Winter Garden)	32,197	37,975
4a. Winter Garden	2,300	2,150
5. Racquet Court and Kitchen	1,325	1,270
6. Tennis Building Courts and Irrigation	3,377	3,454
7.Client Direct Costs Fit-Out, Furniture and Equipment (inc Wayfinding)	1,573	1,557
8.Professional Fees and Development Costs	4,505	5,637
8a. Professional Fees Tennis Building		238
Contingency (held outside of contract)	3,390	500

10.Inflation	Included	Included
TOTAL COST £ 000s	49,696	53,817
External Contribution	(5,625)	(5,625)
TOTAL NET COST Cost £000s	44,071	48,192

8.0 External Funding

- 8.1 As noted above grants totalling £5.6 m have been received from SELEP and the LTA.
- The project team worked with a fundraising consultant who specialises in the arts and heritage sector. He identified that of the main public sector funding sources (Arts Council, Heritage Lottery Fund and Coastal Communities Fund) only the latter was worth pursuing, as the others were heavily oversubscribed. A bid to the CCF is being developed.
- 8.3 The consultant also identified a target for fundraising from grant giving trusts, companies and high net worth individuals. However, he also noted two key obstacles to gaining any of this funding:
 - the need to establish a trust to act as recipient to any grants
 - the need to change the theatrical programme to one that was less commercial and more community/developmental based – this would have a considerable negative impact on the Theatres income.

The project team considered that the impact of these issues together with the staffing headcount needed to make bids for grants outweighed any potential benefit. Opportunities for sale of naming rights should continue to be pursued. This decision was supported by the Project Board.

9.0 Summary of Financial Implications

9.1 Should Cabinet decide to increase the capital programme by £4.2m in order to deliver the whole scheme then to the extent that contributions cannot be obtained externally the Council will need to borrow this sum. The cost of borrowing long term is in the region of 2.5% and capital repayments over 50 years would amount to £80k per annum in the first year. Therefore a total additional cost of £ 180k per annum will need to be factored into its medium term financial plan or until new capital receipts can be applied to reduce borrowing need. The Cultural VAT exemption, which the Council has established can be applied to performances at the theatres, will save the Council between £250k and £500k per annum as theatre tickets will no longer be treated as a taxable supply.

10 Legal Implications

10.1 It is understood that the works proposed in this report in relation to the Winter Gardens were included in the original scope of the contract awarded to Vinci.

Any changes to the original scope of work fall (i.e. removing or adding work) will need to be dealt with through a variation agreed under the contract terms. Vinci can decline a Variation under the contract in certain circumstances.

Contract variations are initiated through a Contract Administrator's Instruction and formalised by them issuing a Confirmed Acceptance of a Variation Quotation prepared by Vinci. Focus Consultants are the Council's Contract Administrator for this purpose.

The contract sets out how the Contract Sum will be amended to take into account the Variation. No allowance is made under the Variation procedure for any effect on the regular progress of the works or any other direct loss or expense for which the contractor may be reimbursed under any other provision of the contract.

The contractor may make a separate claim for direct loss or expense where a Variation has a material affect on the regular progress of the works (clause 4.24-4.25). In doing so they must have made reasonable and proper efforts to avoid or reduce such loss and/or expense and have given notice of the event which causes loss and/or expense to the Council within 7 days of the contractor becoming aware of the same and details of such event and its effect upon the progress of the works having been supplied by the contractor within a further 21 days.

Reimbursement of the contractor for loss and/or expense under clauses 4.23 to 4.25 shall be deemed to be full compensation for the contractor in respect of the matters for which the compensation is paid and the Council has no further liability to the contractor in respect of such matters arising under the Contract or generally at law.

11.0 Equality analysis

11.1 An Equality and Fairness Analysis was produced at the time of the original Cabinet report. This confirmed that the project would substantially improve access to buildings and services across the site. This priority has been maintained throughout the design process. EDIG continue to be consulted as the scheme develops.

12.0 Conclusion

12.1 Whilst the redevelopment scheme has faced substantial cost pressures it will address both the backlog repair issues of the site and deliver a complex of buildings which meet the needs of 21st Century users.

Appendices

Nil

Background papers

The background papers used in compiling this report were as follows:

Nil

To inspect or obtain copies of background papers please refer to the contact officer listed above.