

Report to Full Council 18/08/2022 – Layham Road Project

The first set of 38 questions below were Councillor questions discussed in the meeting of 22nd June 2022. Proposed by Councillor Beggerow, seconded by Councillor Loftus it was agreed that questions 1 - 3 are to be answered by a solicitor, questions 4 - 25 to be deferred to the Projects Officer for answering and questions 26 - 38 to be sent to the Football Foundation to be answered. All councillor questions throughout this document are copied and pasted and not altered in any way.

Questions 1-3 were passed to a solicitor to confirm per the contract and their report is appended towards the end of this document.

There are several questions highlighted in blue which are repetition, refer to earlier questions noted in the red text. The response from the Projects & Finance Officer for question 4 – 25 had already been received before the motion above, as per the additional document that was read by councillors during the suspension of the meeting.

All the questions received for the meeting of 22nd June, with the Projects & Finance Officer's responses, were put to the Football Foundation (FF) for comment. Any further information they thought relevant is detailed below in blue. Upon receipt of further questions, these were all put directly to the Football Foundation who have advised that they have no further comments at this stage. They advised that whilst they expect queries throughout any project, the Football Foundation has delivered hundreds of these projects nationally and advised they have never come across such a forensic level of scrutiny applied to the minor details (or potential future, hypothetical scenarios) of the funding opportunity by an applicant. Any further comments would replicate information available via the documents already shared with councillors.

A further email with repeated documentation, the full FF framework and a project statement from the Projects & Finance Officer was received by Councillors on 29th July 2022. In this email any new questions relevant to the project and to the officer, not questions for the Football Foundation, solicitors or repeated questions were requested to be received by 8th August and the answers are detailed after the solicitor's report towards the end of this document.

The Projects & Finance Officer now has no further comments to add regarding the project up to this point.

Key:

Green text = Projects & Finance Officer's comments

Blue text = Football Foundation's comments

Brown text = further responses from 2 councillors in emails after the meeting on 22nd June and after the Projects & Finance Officer had already responded per the additional document in the meeting.

1. Could the Council by signing the Joining Agreement as an additional client be compelled in future stages of the process to accept a contract with a 3G pitch provider that contains Rubber Crumb Infill?
No. Quite clearly as per the report at the end of the last Full Council agenda, the Football Foundation have confirmed that the pitch infill choice would need to be determined by Stage 3 (Tendering the Project) whereby we would deliver a clear brief and examination of choices to provide a preferred infill, as for the suppliers to then cost out for us. This is confirmed by the "AGP Framework Delivery Process Map" that confirms that "during stage 3 AGP Suppliers submit Guaranteed Maximum Price (GMP) 1st Stage tender. RLF completes tender evaluation based on Most Economically Advantageous Tender (MEAT) criteria and issues report and recommendation to you and the FF for approval."
2. Would the Council be liable to pay any costs if at the end of stage 3 of the process they did not enter a Pre-Contract Services Agreement with the selected Contractor ?
Potentially. As per the report at the end of the last Full Council agenda, if we were to be the party to pull out at any stage, which we are entitled to do, The Football Foundation may decide to seek to recover the costs of the exploratory work. The amount the Football Foundation have told us all along that they put into the process up to stage three is up to £20,000.
3. Would the Council be liable for any costs if at stage 5 the Football Foundation did not offer the Council a grant at the expected level, the consequence of which resulted in the Council not being able to issue instructions to the contractor to proceed into the delivery stages ?
Potentially. As per the report at the end of the last Full Council agenda, if we were to be the party to pull out at any stage, which we are entitled to do, The Football Foundation may decide to seek to recover

the costs of the exploratory work. The amount the Football Foundation have told us all along that they put into the process up to stage three is up to £20,000. The Council would then need to consider if it is able to meet the gap to proceed in another way for example sponsorship or donors or a loan. This is part of the standard risk management of a project and the Football Foundation will be open with their expected contribution. This will all be part of the consultation process whilst applying for the grant.

At this point the Council would have entered into a PCSA agreement and therefore would have paid the appointed pitch supplier a sum to undertake the detailed design and prepare the planning applications which would be a commitment of circa £10k + any additional site-specific surveys required to support the planning application. This cost would be in addition to the circa £20k already referred to which would comprise fees paid by the Foundation for the desktop study, initial site surveys and fees paid to RLF for them to prepare the tender documentation / cost management services to that point in time.

4. May the council enter into this arrangement? Which includes a paid contract with a management company, given the covenant on the Layham Road Sports Ground? Are we allowed to arrange for the use of that land for to be for commercial purposes? What is the definition of commercial purposes? The definition of commercial is “concerned with or engaged in commerce” by “making or intending to make a profit”.

Yes – see previous legal advice, but it is important to note that the covenant is about the land being used for the public which is largely in reference to the access over the land. Granting a long lease for exclusive use rather than public use could be construed as breach of the 1981 covenant, but if the public would still be able to access the land, then the solicitors advised that they think the risk of a successful action for breach is low.

Also, based on this advice from solicitors, the Council has already resolved to follow this path (minute HTC21.171 in the meeting of 20th May 2021), if it is deemed viable and if there are interested parties upon tendering. (It may well be that because it is such small fry, that nobody is interested in managing the site, therefore it may still be managed in house by the Town Council.) It is highly likely that if at all, it would be managed by Abbeycroft who are not-for-profit, and conversations with them, or any management party, and solicitors advice already received agrees that the covenant would be written into any contract and passed down in a lease or contract.

In the case of such a large proportion of the grounds being unavailable for playing on and that this large proportion will apparently be for commercial use (as agreed by council) by a management company, may the council go ahead with this arrangement?

5. What may we do and not do to raise the money for the shortfall between grants/ donations and costs? As per the business case – there are private donors sponsorships and loans that can be explored beyond reallocating Council reserves. The costs are all detailed up to the current situation in the business case.
Is a council limited as to whom we can apply to for funding, or partner with for funding, or to provide a service to the public? For example: can we receive money from individuals who might later expect special treatment or advertising/ promotion? Can we receive money from the Football Club? Are we allowed to receive money from the Football Foundation? And on what basis? The Football Foundation are expecting a lot of publicity for their contribution. What might we not know that we don't know we are not allowed to do?

6. What are our rights should costs increase due to delays caused by partners? This would be a standard clause in any agreement and would not be different to if we entered into an agreement for anything of a construction nature. All tenders/quotations have a life for the costs to be honoured and any increases due to delays cause by partners would have to be absorbed by the partner. Clause 3.1 Article 15: Agreement of the Construction Phase Terms of the FF's framework documentation appendix D states “the amount of the Contract Sum attributable to the Sub-Structure Works and such amount and the Contract Sum shall be agreed prior to the Contractor commencing any part of the Supply & Installation Works;”, and clause 4.1 further states that “that the “tender price” obtained in a competitive award exercise shall be the Guaranteed Maximum Price (GMP).” That is the beauty of working on a competitive tender process which incorporates GMP.

We had, what I believed, was a standard agreement for the cemetery project, where costs escalated and additional payments and bills came up throughout the project. For example: the addition of another 'middle' organisation which started to want money for doing what we might have thought a 'Project Manager' would do. Costs of construction are increasing even now with materials difficult to access. When would we know this GMP? What do we not know we don't know?

7. What will happen if FF do not give us enough money, what will we be liable for if we pull out because we can't afford it?

This is the same as question 3 above – same answer applies. The Council would then need to consider if it is able to meet the gap to proceed in another way for example sponsorship or donors or a loan. This is part of the standard risk management of a project and the Football Foundation will be open with their expected contribution. This will all be part of the consultation process whilst applying for the grant.

The question 'what will we be liable for if we pull out because we can't afford it' is not answered here. What do we not know we will be liable for?

8. Can you explain the term 'clawback period' and what will that mean for us?

A clawback is a provision which can be included in the terms of an incentive award which allows the company to reclaim value that the participant has received in respect of the award after that value has been delivered to them. Clawbacks generally act as insurance policies in the event of fraud or misconduct, a drop in company profits, or for poor performance.

I.e. if the conditions of the clauses set out below in the Terms and Conditions are not met for the 21 year clawback period, the Football Foundation would be within its rights to seek to recover its invested costs.

The definition of the clawback period is on page two of the General Terms And Conditions paper and in this contract means the period of 21 years from the date of acceptance of the Grant.

In this agreement, the clawback clause would potentially be used if the security of tenure lapsed or we sold the land or failed to use the AGP as intended:

- Clause 3.2 of the General Terms And Conditions referred to tenure. A copy of the title register of the land has already been sent to the FF to satisfy this clause.)
- Clauses 5.1 and 5.3 of the General Terms And Conditions refers to the use of the facilities. "The purpose of the Project, the arrangements for management and community use of the Facilities and the purpose for which the Facilities are used shall be as set out in the Application and the Grant Agreement and shall not be changed throughout the Clawback Period without the prior written consent of the Foundation."
- Clause 10.1 refers to advertisement of the Football Foundation as main contributor by erecting signage at the site and in all communications surrounding the project will acknowledge the support received from the Football Foundation.
- Clause 11 – project monitoring: The Project and the Facilities shall be closely monitored by the Foundation throughout the Clawback Period to ensure that the aims and objectives specified in the Application. At any point audits, spot checks etc may be undertaken.
- Clause 12 – accounts and records: "if all or any part of the Grant is awarded for the purchase of Grant Assets the Organisation shall maintain a detailed register of the Grant Assets throughout the Clawback Period and shall supply the Foundation with a copy of this annually, or when new assets are acquired or disposed of (whichever is the sooner)."
- Clause 13 - Mortgage, Disposal, Lease, or Change of Use of Facilities (Capital Funding Only)
"subject to the terms of any charge or charges to which the Foundation shall previously have consented, the Organisation shall not without the prior written consent of the Foundation's Chief Executive: 13.1.1 transfer, sell, lease, licence or otherwise dispose of all or any part of the Facility; 13.1.2 grant any charge, mortgage or other form of security or encumbrance over all or any part of the Facility; or 13.1.3 cease to use the Facility for the purposes previously approved by the Foundation."
- Clause 14 - Cessation or Suspension of Grant and Termination (all Grants)
- Clause 16 – "Unless otherwise agreed by the Foundation in writing, the Organisation must notify the Foundation in writing of any legal actions, claims or proceedings made or threatened against it (including any actions, claims or proceedings made or threatened against members of its governing body or staff) during the Clawback Period. Such notification shall be made as soon as practicable and in writing."
- Clause 24 – "The Funders shall have all rights conferred on the Foundation by the Grant Agreement including without limitation all rights to information, inspection, disclosure, access and clawback."

I have read the 'clawback' points in the documents, but I want to understand what that means for us as a council. I see that there are a few activities which someone on the council is committed to by this action for at least 21 years to come. This will mean that councillors who have not agreed this action taken by us, will need to fulfill obligations. What are they? Are there any others? Maintenance, hygiene,

monitoring as well as paperwork. May we push back on any of these apparent obligations? Can we delegate them to anyone else? Might we be taking the financial risks, whilst another party fails to action their delegated duties? What do we not know that we don't know? Can we commit to things we are not aware of yet?

9. Will we have to do due diligence, background checks on any and all sponsors/ donors/ gifters of money to this project and have contracts with them?

Clearly. This is obviously part of the normal financial processes and anti-money laundering requirements by any organisation.

Is that by us or FF?

10. What is the cost and what is required of us regarding disposal of the pitch at the end of its life?

See email sent to all councillors on 16th June. Removal and disposal of the existing surface and infill and professional fees are included in the estimations of regeneration that the Football Foundation provide i.e. the £200,000. This will be covered by the sinking fund as per the business case.

How do we get rid of a lot of useless product? Do we know how that is done yet? What will that cost us? What is the process? Do we know of any pitches which have come to end of their lives and a council has had the duty to dispose of them? Can this £200k be broken down please to indicate the costs of each part of this regeneration process?

11. What will happen if the pitch material is banned?

That is entirely dependent on the situation at the time if it were to occur. A solicitor would not be able to say different as there are two entirely hypothetical scenarios after the fact of installation:

- 1) Legislation comes in to say that any new constructions may not use the material – this would mean that the material would remain until the next renewal of the pitch, at which point different materials would need to be used to replace.
- 2) If the legislation banning the material deemed the material to be so hazardous that it would require immediate removal and replacement, insurance would cover this.

If the pitch material is banned and requires removal, do we have anything in writing from the insurer that our insurance would cover this? What is the basis for saying our insurance would cover us?

I did not say “our insurance would cover this” I said “insurance would cover this” – insurance that we don't yet have or have not yet looked into as currently it is hypothetical as we aren't progressing with the framework currently. Perhaps the FF will be able to comment on what other council's have done if they've had similar concerns.

What is the council's duty if the material is banned in any case?

I believe the original answer stands to answer for this question. No further comments can be made on this hypothetical scenario at this stage.

12. Can the council request that particular materials only are used in the construction of the AGP?

YES – this has already been answered by The Football Foundation and at Stage 3 this is where we would *dictate* discuss and agree (*amended after FF rightly pointed out as per other answers, that we make joint decisions, dictate was a strong use of word*) our requirements.

Why did we not enter into this project on that basis then? It seems quite late in the day to only now have found out that their preferred materials, and the materials which their preferred suppliers mostly use, contain forever chemicals and pose risks to people and the environment, require special handling, will require hygiene and cleaning regimes for all users etc. what else do we not know about the products available? Which presumably the FF and their suppliers do know?

13. What will partner organisations be liable for? Insurance? Maintenance? Renewal?

No – they are funders and contractors – the asset will belong to the Town Council upon completion and all associated insurances maintenances, renewals will fall to the Town Council as per any asset purchased. Should a management company be contracted, then any passdown of maintenance and insurances will be considered in their contract. Renewal will remain responsibility of the Council.

So, while we lose any income we already make from the hire of the playing fields, and pay a management company to run it, and make money for themselves, we remain liable for any and all costs related to our asset?

A management company will not necessarily need to be funded, depending on the level of activity and their costs (as yet currently estimates due to current unknowns) and there is no mention of them keeping all profits to themselves either – this will be discussed, tendered and managed as the Council sees appropriate, once we know if the pitch can even be installed there. As per the original answer, all management and maintenance costs would be considered and passed into a contract. See business case for further detail.

14. What legal advice will we need going forward?

That's a moot point as it's not something that you know until it crops up. The only thing I can think of that may potentially require advice would be on the contract with management company if it is too complicated for me to deal with comfortably.

15. In this relationship with FF and a third party management company, who is liable for injuries caused by the facilities we have purchased?

Once constructed, the Football Foundation's part is played and they will be only involved in the monitoring and evaluation of the project. The asset will belong to HTC and if managed by a third-party company, then dependant on the level of service agreement the contract enters into, will depend on the level of liability of each party. Ultimately, the Town Council and any management company will both have public liability insurance in place.

16. At the end of the clawback period, who pays for the pitch to be disposed of and land returned to 'natural' state?

This is the same as question 10 and the same answer is see email sent to all councillors on 16th June. Removal and disposal of the existing surface and infill and professional fees are included in the estimations of regeneration that the Football Foundation provide i.e. the £200,000. This will be covered by the sinking fund as per the business case.

The pitch will be replaced before the end of the clawback period and hopefully at the end of the clawback period the pitch is still being utilised and will continue to be so for long after the 21 years. The clawback period is simply the time stated by the FF as their monitoring and availability to clawback funds if we do not meet the clauses. Beyond that time, we are released of our obligations and it simply means we do as we will with it.

This is not the same question. If the council wanted to return the pitch area to grass, I presume that it would be our responsibility. Is that the case? What would be the cost of that? Are we only offering a management contract to cover a period of 21 years? Any future council could be looking at a bill to return the pitch to grass. Is any of the FF's grant to cover the cost of that, for example? Is this in the business case? Again, can we have a breakdown?

17. If the land is found to be not suitable (eg flooding) will we be liable for any costs and what might they be?

This is the same as question 2. The answer being as per the report at the end of the last Full Council agenda, if we were to be the party to pull out at any stage, which we are entitled to do, The Football Foundation may decide to seek to recover the costs of the exploratory work. The amount the Football Foundation have told us all along that they put into the process up to stage three is up to £20,000.

Then is there anyway that we can find that out before we begin the process?

Not if we then want the funding from the FF to progress the project – they need to be involved in the planning process and they will undertake the testing of the area on our behalf. It would likely cost HTC a lot more to do these tests themselves and would take longer and would not necessarily be to the specification of the Football Foundation. They have been asked to comment further.

18. Can we progress the pavilion ahead of the pitch? Can we separate the two and progress with one or the other? Would this mean that we cannot take advantage of the FF offer?

Of course we can if we so chose, this is a HTC project through and through. This question has already been covered in the supporting information at the end of the agenda for the Full Council meeting on 16th June. The FF have already advised that if we were to split the projects, the pitch would continue on the path with them as expected, but the funding they'd be able to provide towards the pavilion would be unlikely to exceed £25k. The joint project allows the Football Foundation to consider the pavilion as part of the "on the pitch" investment, whereas if they were not a joint project, the Football Foundation would not view the pavilion as such, hence the reduced expectation of the grant.

Are there any penalties to be paid regarding the pitch if they are not progressed together? Or might there be other conditions attached? I understand that the FF had some conditions which needed to be met around the design and build of the pavilion, how do these affect us with any change to the projects being joined together.

Penalties? We are currently not in any frameworks or committed to any spend on the pitch so if the project is separated there is no impact at this stage. The impact will come when it comes to funding of the pavilion as per the answer above. The FF conditions were around sizing and fulfilling

the FA regulations for matchplay changing rooms. These were always going to be complied with anyway so there is no affect.

19. When the playing fields cannot be used for playing on, does anyone have a right to complain to the council for change of use or similar?

There will still be plenty of available space for “playing on” the fields. The pitch will not take up the entire fields as can be seen in the plan.

Are we exposing ourselves to risk of complaint? Would someone who currently uses the grounds for their leisure and health have good grounds to complain?

No further comments on this. Emails on 28th June also confirmed: the available space is where there is currently available space around and excluding that which is earmarked for the new pitch (if it is even possible to place it there) and potential revision to car parking. I.e. the open space where the two rugby pitches are marked up, as you are well aware, rugby is not playing constantly in those spaces, and when not in use by rugby club or any other organised party, is free for anybody to use. So that space would be used no differently to currently. There is also the space behind the tennis courts which has no proposed changes made to it, so this will still be open space for any use at any time. Indeed, where there is currently the old hockey pitch (behind the tennis courts) that the rugby club often use for training on a Monday/Tuesday/Wednesday night, you will have seen in the programme of use that these sessions would instead take place on the all-weather pitch so that area would be freed up completely and thus no change to the use or availability of space where a Monday/Tuesday/Wednesday night training or football training on a Saturday is concerned (other than the loss of grass for a bigger car park, which incidentally, will benefit any hirers of the grounds as currently the car park is often full when there is an organised event/match/gathering at LRSG). The facilities enhance the sports ground which is what LRSG is, hence its name and therefore there is no change of use, just enhanced use, to the best of my knowledge at this stage, given we have been able to reach the appropriate stage to make the full official pre-planning application discussions with BDC yet (without the FF preliminary technical studies we can't progress).

Is the available space for playing on based on your opinion or legal advice?

Available space is not my opinion nor a matter of legality, but quite simply a matter of fact derived from basic physics.

Can that advice / opinion be challenged by a member of public that might not agree?

There is no advice nor opinion offered as per the above. It would be hard to disagree with what is in front of you regarding available space, however as with absolutely everything that the council owns/provides/undertakes, anybody may make comment or complain about anything.

20. What is the benefit to the council and the (majority of) residents of Hadleigh of this contract with FF? Is the benefit only to the clubs who have contracts with the Town Council at Layham Road Sports Ground? And the management company who wins the tendering contract?

The answer to this question is the business case prepared.

In a nutshell though, the benefit is that Hadleigh would have an all weather pitch which would be able to be used by a multitude of clubs and individuals. It would allow the rugby and football clubs to progress to higher levels within their regulatory bodies and it would allow other clubs and users a space to train on that is not grass. There is plenty of interest and support from users of a variety of clubs and other users in Hadleigh – see appendices f-l of the business case. These are not limited to sports clubs. Having a management company would release the management from an ill-equipped council provision (who, should the pitch and facilities be used as anticipated and planned for) would have to hire a new member of staff and they would be able to be based on site (if not all the time, then some of the time) within a group of similar facilities with marketing experience and an existing customer base which the Council currently does not have, as per the business case.

Is it the case that a 3G pitch is not one of the regulatory bodies' criteria for progression/accreditation for either HUFC or HRUC? But rather: for HUFC, the pitch is seen as a means to enable achieving the actual criteria (such as a women's team)? And for HRUC, the 3G pitch is not necessary for progression, but the new pavilion is desperately needed for continuation of the club, not necessarily for progression/further accreditation?

I did not specify what was required for what entity to progress with their bodies and did not state that it was one of the regulatory body's requirements, merely as the answer above says, the project (as a whole) will allow them to do so as it would create more capacity, a better playing surface for training and some matches than the current offer and I reiterate again that attracting players requires attractive facilities which this project will provide.

Does the council receive anything other than a grant towards a huge financial outlay? As with other

developments in and around Hadleigh, will the council or people who do not play football, (because it is the football club who will benefit most from this facility) see any contributions to sport or healthy activity elsewhere in the town? Compensating if you like for the loss of space to the pitch? Encouraging others who have absolutely no interest or who are not catered for so far? Women's sports coaching? Setting up a women's football academy? Is there any room to ask for this as part of the deal?

21. How much money will this all cost? Is there anything missing from the business documents which we should expect to pay normally? What is our duty as a council?

See business case.

22. What are the council's general obligations under this contract?

See the document entitled General Terms and Conditions.

23. Will any individual/s be liable for any money/ be held personally responsible at any time if anything goes wrong?

No, this project is being undertaken by Hadleigh Town Council. Councillors are not personally liable for the work the Council undertakes. The Council has adequate insurance and will continue to do so with annual reviews undertaken.

24. Who will conduct the tender processes for management company and build? HTC or FF?

The management company solution has nothing to do with the Football Foundation so will be entirely HTC led.

The build will be a joint venture between both parties and the tender process will be led by the FF for the pitch, but HTC for the pavilion, with the expertise of the architects leading on HTC's behalf.

The tender process for the 3G FTP will be led by Robinson Low Francis (RLF) who are the appointed Framework Management Consultant (FMC).

25. How much would they charge to hold our hand/ advise us throughout this whole process?

Nothing – that is the point of the framework – that is exactly what the framework will do for, hold our hand and walk us through the process.

26. Can HTC specify the pitch solution has to use organic infill (ie. non-rubber crumb) before Stage 3? If so, how and where do we do that?

Yes, by research, conversation with the Technical Manager at the Football Foundation and the Projects & Finance Officer. However, it would be prudent not to enter into this decision without first knowing if the technical specifications suit our position at Layham Road.

Just to reiterate some of the points made in the previous email back on the 15th May – particular regarding the level of risk given the current lack of testing of alternatives infill options.

- There are alternative organic infill options to rubber crumb being explored and the Foundation is conducting research into these currently.
- However, they are new and untested in this country and so there are uncertainties around their longevity, life-cycle costs, maintenance needs and player experience.
- None will perform as well as rubber crumb (the standard infill used for 3G pitches)
- As discussed above, we may consider an alternative if deemed necessary, but they will come with a level of risk to the applicant given the lack of testing to-date.

27. If we do so, are suppliers who propose rubber crumb or other polluting solutions excluded from the tendering process? I.e. would a rubber crumb proposal be filtered out completely, or would it just mean the supplier got a low score or one 'Fail' on one criterion, and could still in be the running due to high scores on other criteria (eg. cost)? In the FF Alliance contract (between the FF and suppliers – not the contract with HTC) it says: "Unless otherwise specified in the Concept Design Document, the Performance Infill shall be End of Life Tyre (ELT) granulate [ie. rubber crumb]".

Yes – the town council will have the right to determine the criteria with the FF as per the email from FF on 27th May. We do not have to accept any tenders at all as always, and the project may be closed at any point, but the FF may recover its costs to date at that point under the clawback clause. As per the Concept Design Document quotation in the question, it is "unless otherwise stated", so it would be made very clear in the tender documents that it is stated that Hadleigh Town Council does not wish to use ELT infill and the tenderers will need to provide the cost for the alternatives. This will incur additional costs tot eh suppliers tenders but that will just need to be factored in to the overall project.

28. HTC doesn't want rubber crumb. Where is the Concept Design Document set, at what point in the process? And who writes the CDD? How does HTC get its requirements into the CDD? Who approves it, and what happens if HTC does not want to approve it?

At stage 3 as per the Framework Delivery Process documentation. The FMC will write the CDD and this will then be approved by the FF and HTC. If HTC do not wish to approve it they will simply work with the FF and FMC to revise the CDD.

29. As I understand the contract, both the HTC and the FF have to approve the bid recommended by the FMC in order to progress beyond Stage 3. Is this correct?

That's correct, both parties at every stage are joint partners in approvals. The "AGP Framework Delivery Process Map" that confirms that "during stage 3 AGP Suppliers submit Guaranteed Maximum Price (GMP) 1st Stage tender. RLF completes tender evaluation based on Most Economically Advantageous Tender (MEAT) criteria and issues report and recommendation to **you and the FF for approval.**"

The FMC is Robinson Low Francis (RLF) - a national construction and property consultant which has a dedicated AGP Framework team based in its offices in Birmingham. RLF has worked on three successive AGP frameworks over an eight year period and was appointed as FMC for the current Framework via a full OJEU tender process. During stage 3 the FMC will:

- Ensure the brief and feasibility is robust
- Produce a budget estimate for your project
- Produce the Employers Requirements document
- Gather and review Health & Safety information
- Issue the 1st Stage tender documents to the suppliers
- Review and report on tender returns
- Formalise the appointment of the Supplier based on the PCSA
- Perform the role of Employer's Agent, Cost manager and CDM Advisor during the Construction phase

30. As I understand the contract, if the HTC and FF do not both approve the recommended bid at Stage 3, HTC is liable for all of the FF costs incurred to that point in Stages 1, 2, and 3. Is this correct? Are there any other liabilities if we walk away at the that point? Would those costs include:

- the costs of FF staff and FF-appointed consultants and their work (The Engagement Manager, the Framework Managing Consultant, the Technical Project Manager)?
- the costs incurred by the Survey Company?
- the costs incurred by suppliers doing 'pre-contract' work?

This is the same as questions 2 and 17. Same answer applies.

31. The only environmental assessment criterion to be used in the selection process that I could find was this: "Environmental Considerations – A commitment to act responsibly within communities in which they work, by reducing travel, ensuring efficient working practices and sourcing local materials". Are there any other environmental criteria used in the process?

This question is very vague and unclear. What document is it referring to and what process?

Can you also give an answer to Q. 31:

The text was taken from the Guide to the Framework Alliance Contract for Delivering Artificial Grass Pitches (FAC-1), page 42.

In another FF document, A Guide to the Artificial Pitch Framework, it lists 'Environmental Considerations' as the first 'Framework Objective' for suppliers (see page 10). But when you dig into what that means, all I can find with are commitments to 'reduce travel', 'efficient working practices' and 'source local materials'.

32. Could HTC and/or the FF use the Direct Award mechanism in the contract to assign the contract to a supplier who was not recommended by the Framework Managing Consultant?

Direct Award Contracts (DACs) occur when a contract is awarded to a contractor without competition, or where there is a material change to an existing contract. This will not be the case as it is only applicable in extreme circumstances but HTC would be best to get as many competitive tenders as possible as this is a lesser known field (alternatives to rubber crumb) and it is part of our regulations. The FMC is only going to be recommending and the FF have already made it very clear that HTC and the FF will make joint decisions throughout the process.

33. What are HTC's potential risks and liabilities if the Environmental Agency objects to the pitch due to a

rubber crumb solution (as at Bishops Stortford)? See: <https://www.eastherts.gov.uk/latest-news/2022/3g-pitch-grange-paddocks-given-green-light>

HTC have already resolved, minute number HTC22.164 of the Full Council meeting on 16th June 2022, **not** to agree to the use of rubber infill so this question is null and void as the Council will not be entering into any agreement or contract to use rubber infill.

The questions were about the potential risks and liabilities if the Environmental Agency object and/or of planning permission is refused. They are worth answering regardless of what resolutions the council has passed regarding rubber crumb – such resolutions can be easily overturned, especially after 6 months. At Stage 3 in the FF process, it might be that the council is under pressure to accept a recommended rubber crumb bid, and may well give in, as may have happened elsewhere. And planning permission might be refused on other grounds. It would be good to have full answers to these questions.

The Projects Officer has no further comments to make on this subject than those explained throughout, this is a hypothetical question at this stage and the risks and liabilities of planning permission being refused has been answered under other points in this document. There appears no correlation between the original question here and the second as they are entirely different questions. Refer to questions 2, 17 and 30. The risk remains that the planning permission would not be granted at which point the liability remains that the Council may be required to pay the Football Foundation back for their invested costs to that point.

34. What are HTC's potential liabilities if planning permission is refused?

Refer to questions 2, 17 and 30.

The questions were about the potential risks and liabilities if the Environmental Agency object and/or of planning permission is refused. They are worth answering regardless of what resolutions the council has passed regarding rubber crumb – such resolutions can be easily overturned, especially after 6 months. At Stage 3 in the FF process, it might be that the council is under pressure to accept a recommended rubber crumb bid, and may well give in, as may have happened elsewhere. And planning permission might be refused on other grounds. It would be good to have full answers to these questions.

The Projects Officer has no further comments to make on this subject than those explained throughout, this is a hypothetical question at this stage and the risks and liabilities of planning permission being refused has been answered under other points in this document. There appears no correlation between the original question here and the second as they are entirely different questions. Refer to questions 2, 17 and 30. The risk remains that the planning permission would not be granted at which point the liability remains that the Council may be required to pay the Football Foundation back for their invested costs to that point.

35. What are HTC's potential liabilities and risks if the EU (and UK) bans microplastics such as rubber crumb: before Stage 3? After Stage 3 but before completion? After completion?

Refer to question 11 for the specific answer, however also refer to question 33, this is also a null and void question as HTC have already resolved that it **will not** be using rubber crumb infill.

36. In your opinion, are there particular aspects of the contract that should the council be particularly aware of?

Not in my opinion. This is a framework that is tried and tested by hundreds of places around the entire country; we are not any different to anybody else that has used it previously and the FF are a body that is backed by the government.

Worth just noting this point for reassurance, that we have delivered numerous 3G FTP's all over country with different Councils. We can provide examples if required to support this.

37. What are the potential implications for the ownership of the land and any covenants the council has on it?

There is no potential implications for the ownership of the land. The land is owned by HTC and has the HM Land Registry title as proof. The question about covenants can be answered by previous solicitor advice. The grounds will still be accessible to the public and any covenant is able to be assed down in contracts and leases to third parties, such as happens with the rugby club agreements presently.

38. What does the agreement say about what happens under the following circumstances, and in particular what are the risks and liabilities for HTC under those circumstances:

- The income from the use of the pitch is insufficient?

This is part of the monitoring process over the 21-year period and the Football Foundation would aid the Council in how to get sufficient income if that was the case. The Town Council would be at risk of not meeting clause 11 - monitoring and the FF could instate the clawback clause if HTC had not fulfilled their duties to generate sufficient income.

- Any of the clubs that are seen as the main users of the pavilion and pitch (ie. Hadleigh United Football Club or Hadleigh Rugby Club) fold/dissolve prior a). prior to the completion of the project or b). after completion?

What is the actual question here? The agreement is not to do with clubs that use the pitch and pavilion, the agreement is a design and construction agreement with HTC so the risks are held by HTC and that's why we have got supporting letters from the said clubs for the project, see appendices f and l of the business case. As a matter of fact, as described by the clubs themselves to councillors in public forums of meetings, and as per the business case, these developments will enhance the clubs, their reputations and their league statuses allowing them to compete better and work their way up leagues whereas if the facilities are left as is, then HTC will be more liable in aiding their dissolution.

- Any of the main clubs that are envisaged as the main users of the pitch and the pavilion (ie. Hadleigh United Football Club or Hadleigh Rugby Club) relocate themselves to another venue a). prior to the completion of the project or b). after completion?

Again, the agreement is not to do with clubs that use the pitch and pavilion, the agreement is a design and construction agreement with HTC so the risks are held by HTC and that's why we have got supporting letters from the said clubs for the project, see appendices f and l of the business case. As a matter of fact, as described by the clubs themselves to councillors in public forums of meetings, and as per the business case, these developments will enhance the clubs, their reputations and their league statuses allowing them to compete better and work their way up leagues whereas if the facilities are left as is, then HTC will be more liable in aiding their dissolution.

- The Football Foundation closes or dissolves at any point during the project or after?

Then the laws of dissolution of a charitable foundation would apply. This is a very very unlikely scenario.

Questions 1-3 from the top of this document were relayed to the solicitors have provided the below report:

REPORT ON LEGAL IMPLICATIONS OF THE FOOTBALL FOUNDATION'S PROCUREMENT PROCESS IN RESPECT OF THE LAYHAM ROAD SPORTS GROUND PROJECT

1. This report has been commissioned by Hadleigh Town Council in respect of the proposed construction of a 3G pitch (the Project) with the aid of a Football Foundation Grant, where the works are to be procured under the Football Foundation procurement AGP (artificial grass pitches) framework arrangements.
2. Hadleigh Town Council resolved on Wednesday 22 June 2022 to explore the commitment it is due to give by signing the various documentation supplied by the Football Foundation to initiate the Project.
3. Gotelee Solicitors LLP has been instructed by the Town Clerk, Ms Wendy Brame, to provide legal advice in connection with 3 questions posed by the town councillors. Gotelee Solicitors LLP has been provided with copies of the Council's draft minutes of the meeting of 22 June 2022, a copy of the form of joining agreement, a copy of the general terms and conditions of grant issued by the Football Foundation, the flow chart prepared by the Football Foundation showing the key stages in the procurement process, plus a copy of the framework alliance contract supplier framework for artificial grass pitches which has been prepared by Withers LLP on behalf of the Football Foundation and other funders.
4. There is no indication in the procurement documents of the level of grant that might be awarded, and the grant application itself will be a separate agreement.
5. The questions the town councillors have posed are: -
 - A. Could the Council by signing the joint agreement as an additional client be compelled in future stages of the project to accept a contract with a 3G pitch provider that contains rubber crumb

infill?

- B. Would the Council be liable to pay any costs if at the end of stage 3 of the procurement process, the Council did not enter into a pre-contract services agreement with the selected contractor.
- C. Would the Council be liable for any costs if at stage 5 the Football Foundation did not offer the Council a grant at the expected level, the consequence of which resulted in the Council not being able to issue instructions to the contractor to proceed to the delivery stages

Advice and Responses

6. **Question A. Could the Council, by signing the joint agreement as an additional client, be compelled in future stages of the Project to accept a contract with a 3G pitch provider that contains rubber crumb infill?**

Response to question A.

- 6.1 The joining agreement template is a short contract between the Football Foundation and the Town Council linked to the main framework agreement. The joining agreement provides that the Town Council will become an additional client under the framework alliance contract and is therefore obligated to observe the additional client's obligations as if it were the Client. This document provides the 'gateway' into the framework agreement and to the Football Foundation's procurement process using the Foundation's previously selected potential suppliers for artificial pitches where the contract award is on the Framework terms and conditions.
- 6.2 After signing the joining agreement stage 1 of the procurement process will commence. The signing of the joining agreement is a contractual commitment by the Town Council to proceed with the Project in line with the procurement process. Entering into the Joining Agreement does not bind the Council to accept the final tender design & build contract at final tender price until after the end of stage 4, and on reaching stage 5, although there is an 'expectation' of a final design and build contract award in the event of a most economically advantageous compliant tender that qualifies for grant aided being received at stage 4 and where a grant is then awarded. However, signing the joining agreement does not guarantee that the Football Foundation will fund the design and build phase of the project (nor the pre-contract services agreement (PSCA) stage if the Project does not proceed to Stage 5), neither does it obligate the Council into accepting the final tender at stage 5.
- 6.3 The background to the question A appears to be that some members of the Council have concerns as to the fitness of rubber crumb as a suitable fill material as there are apparent health and environmental concerns with the use of this material.
- 6.4 The framework agreement has a complex specification mechanism that does not specifically excluded rubber crumb as a potential fill (depending on site conditions etc). However, we would highlight the following parts of the framework for careful consideration as we are not technically qualified to comment upon the specification in detail or on the merits of infill materials. If the Council decides to join the framework and the Football Foundation's initial due diligence on the suitability of the Project site for grant aid is positive, the Council will, if it wishes to progress the project, need to enter into the PSCA and as part of those services will have access to the duly appointed technical expert (and Employer's agent) in the field to advise and guide the Council as to the Council's (as employer) requirements specific to the Project (see schedule 5 part 2 of the Framework agreement), on the suitability of the specification taking into account survey information (based on schedule 5 of the Framework Agreement) and tender evaluation.
- 6.5 The provisional specification within the documentation pack appears to meet vigorous standards summarised as follows:

Volume 2 part 2 of the Framework agreement sets out the Employers i.e the Council's requirements developed with the technical consultants (specification) to be attached to the JCT design and build agreement with the chosen supplier at stage 5.

Appendix B is the specification divided into 13 sections of which the following sections may be relevant to the infill materials

- Section 03 Formation drainage and subbase construction which includes requirements for the compliance with
- Section 04 football turf
- Code of Practice for Design Specification and Testing for Outdoor Synthetic Sports Areas
- SAPCA Quality Control Protocol for Sports Performance infills
- 2019 Code of Practice for sampling of Performance infills used with synthetic turf surfaces.
- the FIFA quality programme or football turf Handbook of requirements
- The FA Guide to 3G Football Turf Pitch and Design Guide
- FIFA testing and Certification
- Excluded materials for the football turf at listed at listed at section 5.5
 - o Inhalable dust content must be very low or low (BS EN15051)
 - o Effective free metal and free fibre must be zero
 - o PAH content as per the table in the document referred to
 - o Heavy metal migration levels as per the table in the document referred to

6.7 We **recommend (before signing the joining agreement)** that the Council ask the Football Foundation to confirm how many pitches procured under the AGP Framework Agreement have resulted in rubber crumb being used in their construction to gain a further appreciation of the issues and of the extent of any risk that rubber crumb fill might be the 'most economically advantageous tender' and thus a framework compliant tender. There may be other similar questions that the Council might wish to raise.

7. **Question B** *Would the Council be liable to pay any costs if, at the end of stage 3 of the procurement process, the Council did not enter into a pre-contract services agreement with the selected contractor?*

Response to question B

- 7.1 Potentially yes. By signing the joining agreement, the Council is committing itself (as an additional client) to pursuing the Project through the various stages. It does not commit the Council to entering into the final stage JCT design and build contract 2016 with the preferred supplier, but there is a commitment as an additional client to enter into the pre-contract services agreement (PSCA) with the selected contractor at stage 3 at its own cost, if the feasibility and initial site investigation stages mean the site appears suitable for the delivery of the Project. The PCSA costs and any further survey costs to be incurred by the Council however are only eligible for grant aid if the project reaches stage 5 (the design and build contract and grant award stage) but not otherwise.
- 7.2 The documents suggest that the Football Foundation will be funding stage 1 (the feasibility report) and stage 2 (initial surveys) (to the tune of circa £20,000) at the Foundation's own risk, but only if the project does not proceed to the next stage on the basis that the site assessed as unsuitable, and on the understanding that the Council has committed to the project as an additional client by signing the Joining agreement. The framework procurement process assumes that if the feasibility and initial investigation is satisfactory, there will be a PCSA between the Council and the preferred supplier to carry out detailed design and planning work at the Council's cost, funded out of the Council's own resources at that point.
- 7.3 There does not appear to be any formal documents covering this 'pre grant aid' as this is not covered in the Joining Agreement. We **recommend** that the 'pre-grant funding' terms offered by the Football Foundation are set out in a side letter to the joining agreement, with any repayment terms for the Foundation's abortive costs (preferably capped) if the Council wishes to exit the Project where the site is otherwise assessed as suitable for advancement to the next stage, but where the Council decided not to proceed to award the expected PCSA and wishes to terminate the Project for its own reasons.
- 7.4 Therefore, based on the current information, the Council is at risk of abortive costs incurred by the Football Foundation being re-charged to it, if the site is assessed as suitable for progression to the next stages of the Project if the Council does not comply with its obligations in the framework agreement as an additional client and proceed to the next stage of signing the PCSA.

8. **Question C** *Would the Council be liable for any costs if, at stage 5, the Football Foundation did not offer the Council a grant at the expected level, the consequence of which resulted in the Council not being able to issue instructions to the contractor to proceed to the delivery stages*

Response to Question C.

- 8.1 Yes. The Council would be liable to pay the costs incurred as additional client under the framework agreement for the PCSA and any extra surveys that may be needed but is not obliged to proceed with the Design and Building contract for supply and installation of the Project Works if the price for those works is not acceptable to the Council. This will then require a notice 'not to proceed' to be served on the contractor and to settle up for the costs incurred under the PCSA. As no separate grant agreement will be entered into at this stage with the Football Foundation the Council is liable to pay these costs out of its own resources. However, if the grant agreement with the Football Foundation is entered into at stage 5 (on the basis that the Project is proceeding to design and building contract), then these costs will form part of eligible project costs. The Council is also liable to insure the site during the pre-construction services period at its own cost.
- 8.2 Given the risk of PCSA costs being incurred after joining the Framework it is **recommended** that enquiries of the Football Foundation are to ascertain the success rate for applications grant aid made at stage 5 the risk of a Project passing through stage 1-4 to assess the level of risk of not qualifying for a final grant at that stage.
- 8.3 In terms of the Council's fiduciary duties to the taxpayer to spend monies wisely and in accordance with its powers, the Council must exercise its powers reasonably and rationally and in good faith.
- 8.4 Key considerations for the Council include
- Need for the project and consultation outcomes;
 - The public sector equality duty;
 - Life of the project and estimated total cost of the project and method and terms of funding;¹
 - Value for money;
 - Whether there is a reasonable and robust procurement process that meets the Council's own standing orders
 - Professional advice;
 - Control over the project expenditure and budget setting;
 - Return on investment; (social and financial)²
 - Exit and termination provisions.
- 8.4 The power to provide recreational facilities including pitches is found in s.19 of the Local Government (Miscellaneous Provisions) Act 1976
- 8.5 The power to enter into contracts (i.e to provide these facilities) is to be found in s.111 of the Local Government Act 1972 where the council is empowered to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 8.6 We are advised by the Town Clerk that although there is no indication of the expected level of the Football Foundation grant in any of procurement documents supplied, that the Town Clerk's enquiries indicate that the maximum Football Foundation grant is 80% subject to eligibility criteria and that the anticipated grant level for the Project would be around 60-70% of the total project cost. The grant figure will only be known when a Grant offer letter arrives. We will comment separately on the grant terms and conditions, if required, but normally these are treated as non-negotiable and are designed to protect the Football Foundation's financial investment in the community facility for the duration of the grant period. The grant repayment obligations will be secured by way of legal charge over the pitch, as well as the usual contractual remedies for breach of contract.
- 8.7 We **recommend** that if not already obtained that further information on the expected total budget that will be required to procure, design and build a 3G pitch in the locality, what percentage of grant in relation to total project is likely to be available, and what amounts the Council will need to provisionally earmark out of its own resources for the PCSA, and for the Design and Build stage.

¹ The Council should note the Football Foundation grant is a completely separate agreement from the framework agreement and the grant may be repayable if the extensive terms and conditions for the funding are not met during the 21-year period of the grant agreement. It is also unclear in the documents provided what percentage of the overall Project costs will be grant aided and whether for example match funding is required for any elements of the Project.

² • the grant conditions restrict the amounts that can be charged to end users

9. Conclusion

- 9.1 By signing the Joining Agreement the council is entering into a contractual commitment to enter into a procurement process on the terms of AGP Framework Agreement. We have **recommended** in this report that further information from the Football Foundation is obtained before the Council takes the decision as to whether to enter into the joining agreement with the resultant obligations and to help assess risk.
- 9.2 In relation to the questions asked, there will be a degree of financial outlay required on the part of the Council out of its own resources to commit to the Project but, subject to the Council being satisfied on the key considerations before completing the Joining Agreement, there appears to be reasonable exit points during the whole process and no obligation to commit to the provision of a pitch that does not conform with the Framework standards or if a grant is not awarded by the Football Foundation requirements.

Gotelee Solicitors LLP 9-8-22

The recommendations in points 6.7, 7.3 and 8.2, were put to the Football Foundation for comment, and referred to their senior level, whose response to the three recommendations is:

- Every scheme is reviewed by the panel on its own merit, and therefore we cannot provide success rates on this basis. The Football Foundation is committed to progressing this proposal to application stage with the project partners and subject to council approval, would fund the initial desktop surveys and site-specific surveys, as well as the project framework management consultant fees – these are stages 1-3 of the project – and therefore these initial stages are at risk to the Football Foundation.
- In terms of 3G pitches that don't use rubber infill, these are very limited at this stage – alternative options such as organic infills are at a very early stage in terms of testing and this option would be at the applicant's risk. Outside of a limited number of pitches currently being trialled, all Football Foundation funded 3G FTPs utilise rubber crumb infill.
- Football Foundation Grant Terms and Conditions are attached (see previous emails and documentation sent for document reference "18. FF T&Cs")

Reference recommendation point 8.7, this information is in the business case following in depth conversations with the Football Foundation and RFU contacts.

It is important to note the concerns regarding the level of pushback at this early stage, considering the feasibility checks are not even done yet – ultimately, the Football Foundation are proposing to invest in the Town Council's (so the Town's) facilities for the benefit of the community. As has been repeatedly advised throughout this period, there are many areas of the project that can only be discussed in depth and figured out once the initial feasibility stages are undertaken.

New questions posed on the day of the Full Council meeting on 22nd June, therefore were not considered during the meeting:

1. During the design phase if there is no final agreement is there a 'longstop date' when the Council is not obliged to continue negotiations leading to construction, for example it does not agree the final project details and costs or is there some procedure which might be invoked against the Council on any ground including that it has not been 'working collaboratively'?
2. Legal questions that HTC might consider:
 - To what extent does entering into the proposed contract with the FF at this stage limit the councils ability to later
 - Withdraw completely?
 - Veto unacceptable infill or other features of the development?
3. What rights, if any, does HTC have as landlord, once the agreement is signed?
4. To what extent is HTC responsible for any outstanding debts and obligations flowing from the contract with the FF should HTFC go into administration at any time?

A further question as part of an email string with the P&FO, received on 26th June:

1. As part of their training the Rugby club use a scrum machine that weighs around $\frac{3}{4}$ of ton , will they

be able to use that on the 3g pitch ?

I have no idea, I am not adept with rugby training equipment and this has not been made aware to me that it might need consideration during any of the multitude of discussions with the Chairman of the Rugby Club. They have provided their support as per appendix I with the business case so at this point I can only surmise that they either think it's ok themselves or won't use that particular piece of equipment on the all weather pitch. Once we know the specifications of the pitch proposed, in due course, and the actual specifications of that said machine, a discussion about this item can be had with the rugby club.

Further questions posed by a councillor in an email to the Town Clerk, received on 4th July:

1. To what extent is HTC responsible for any downstream physical or financial damage to the river Brett occurring as a result of the new artificial pitch?
2. How many of the six suppliers listed can actually supply organic infill, or offer another solution that does not involve microplastics?
3. Can we get suppliers that do supply organic infill added to the FF list?
4. Why does the FF say (in an email to HTC) organic infill is untested in the UK, when they reportedly tested it at Newmarket Town FC in 2016? See:
<https://www.eadt.co.uk/sport/historic-day-for-newmarket-town-fc-as-750k-revamp-at-2275310>
<https://surfaceperformance.com/fifa-testing-new-artificial-grass-pitch-newmarket-town-fc/>
Brookfield Community School, Fareham, January 2022. It is reported: "The Football Foundation advised residents at a community engagement meeting that there are no cost-efficient alternatives to using the [rubber crumb] infill." See: <https://www.portsmouth.co.uk/news/politics/councillors-clash-over-proposals-to-build-new-3g-football-pitch-at-school-3536137>
5. Was organic infill in one of the tenders for Brookfields, but not selected by the consultant due to expense?
6. Hough End, Manchester, March 2022: The FF has agreed with Manchester City Council that the site "will be the first Cork Infill 3G Facility brought forward in partnership with The Football Foundation nationally and will become a test bed for future investment into 3G facilities." See: https://www.manchester.gov.uk/news/article/8986/plans_to_develop_hough_end_approved
Hadleigh Town Council would like similar – eg. organic infill. How can we guarantee now that we will get this?

At Doric Park in Trowbridge they seem to be going for a rubber crumb pitch through the FF scheme, with the FF outlining in design documents how the rubber crumb leakage will be 'mitigated'.
Is this true? Were alternatives asked for?

7. Apart from Hough End in Manchester, are there other examples of non-rubber crumb pitches provided by the FF under this scheme?

Following the further email to Councillors on 29th July 2022 one question received before the deadline:

1. What's the alternative to using the Football Foundation and their framework, to build a pitch?
Alternative measures are to undertake all the preliminary work, fundraising and build costs ourselves. This would be advised against. The cost would be more than the cost for the Football Foundation to for the build project as we would have to employ consultants, pay out for all the preliminary works that the FF will undertake on our behalf initially (up to the value of £20,000), and would have to raise additional funds as Football Foundation would not support the full amount of investment, only a maximum grant of £25,000.

Other questions regarding the project that the Projects & Finance Officer thought of, since 2nd August, may not have been covered previously:

1. In the business case it implies that the Council may be asked to apply for £200k CIL money from Babergh. When might this happen?
Babergh District Council run two bid rounds each year. The next is open for applications between 1st

October 2022 and 31st October 2022. This would be the ideal time to apply for their funding as the decision would not be notified until March 2023 (see schedules for funding applications overleaf).

Bid Round 1 for the year	
May	Open 1 st – 31 st May
June/July/August	Bids validated screened and assessed against prioritisation criteria
August	Information collated for production of CIL Expenditure Programme ready for presentation to Cabinet
September	Consideration of CIL Expenditure Programme by Cabinet. Letters issued confirming outcome of bids to applicants
Bid Round 2 for the year	
October	Open 1 st – 31 st October
November /December/January	Bids validated screened and assessed against prioritisation criteria
February	Information collated for production of CIL Expenditure Programme ready for presentation to Cabinet
March	Consideration of CIL Expenditure Programme by Cabinet. Letters issued confirming outcome of bids to applicants

2. What is the process to be for councillor and public appraisals of the project going forward as we will no longer have a sub-committee or a working group?

The Projects & Finance Officer believes that best way forward for the project to run more smoothly and timely, and to for all councillors to be appraised fairly and fully which is important given the scale of the project/s, is to report monthly directly to Full Council. All decisions have always had to go to Full Council anyway and this allows for full flow of information to all councillors equally. The public will also then have fewer meetings to have to attend, read minutes or figure out what went where when they want to view decisions and reports relating to the project. There is already a good network in place with the governing bodies and representatives of the primarily users of the pitch who have the expertise and knowledge to assist with the project when needed.

A question was received after 8th August but before this document was finalised, so has graciously been included:

1. I am assuming the business case doesn't include any additional costs (either up front or maintenance costs) for using an organic infill on the pitch, because the cost estimates were made before the council resolved not to use rubber crumb. Is that right?

Absolutely, because we do not know exact costs of anything yet given that we haven't undergone the viability or tender process so additional costs are as yet unknown. As with any *draft* business case, every number in the business case is an estimate; the cost of the installation of an all-weather pitch being a round estimate based on conversations with the Football Foundation.

In Conclusion

Councillors have now been provided with all the relevant information and documentation and responses from the Football Foundation and solicitors. The project is currently at an impasse and as such Councillors are being asked to vote whether to proceed or not.

Motions:

- a. To receive the comments from the Projects & Finance Officer, Football Foundation, and solicitors.
- b. To agree to sign the Football Foundation Framework to progress the project as a whole, whilst noting that the tender will need to include alternative infill solutions, not rubber crumb.
- c. To agree to split the elements of the project and shelve the all weather pitch until after May 2023 but progress with the pavilion in the meantime. Note: this way to progress would ultimately cost the Town Council more overall as the Football Foundation have already advised that the pavilion would only be able to attract up to £25k grant funding as their funding is focussed "on the pitch".