ITEM NUMBER: 12.3

CONFIDENTIAL

ADJOURNED REPORT – GLENELG FOOTBALL CLUB

Pursuant to Section 83 (5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

d. **commercial information of a confidential nature (not being a trade secret) the disclosure of which -**

- **(i)** **could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and**
- **(ii)** **would, on balance, be contrary to the public interest.**

Item No: **12.3**

Subject: **ADJOURNED REPORT – GLENELG FOOTBALL CLUB**

Date: 22 November 2016

Written By: General Manager Business Services

General Manager: Business Services, Mr I Walker

SUMMARY

At its meeting on 8 November 2016 Council adjourned consideration of Report No: 285/16 pending a further workshop on the matter. Elected Members held a confidential workshop on 15 November 2016 and, accordingly, the matter is returned to Council for consideration.

RECOMMENDATION

1. **That Council re-affirms its commitment to support Glenelg Football Club in its objective of long-term sustainability.**

2. **That Council puts the following proposal to Glenelg Football Club, SANFL and ANZ in order to release funds and reduce the club's overall indebtedness:**

   a. **the balance of the first tranche of sale proceeds held by SANFL ($162,000) be immediately released to the club and applied to repay Council's secured debt and the proceeds from the club's *Save the Tigers* debt demolition campaign (approximately $80,000) be immediately applied to repay ANZ's loan facilities; and**
   b. **the parties agree enter into negotiations as soon as practicable to reach agreement on the application of future tranches of SANFL sale proceeds ($1.75 million).**

3. **That Council prefers Option 3 as outlined in Report No: 285/16 (Council negotiates a sharing arrangement with ANZ Bank). Council appoints BRI Ferrier to assist in its negotiations with ANZ and authorises the Chief Executive Officer and Mayor to sign any agreements with Glenelg Football Club, Glenelg Footballers Club, SANFL and ANZ that provides:**

   a. **a sharing of future SANFL sale proceeds to be applied in the proportion of $\frac{4}{5}$ to repay Council's secured debt and $\frac{1}{5}$ to repay ANZ's secured debt; and**
   b. **where permitted under the terms of the SANFL's arrangements with Glenelg Football Club, the SANFL sale proceeds be paid directly to Council and ANZ; and**

c. neither Council or ANZ will take any action to enforce rights under their loan and security interests without first advising and discussing with the other.

4. That the loan tranches to the Glenelg Football Club funded by back-to-back loans from the LGFA be renewed as they mature at the prevailing LGFA interest rate without adding a 0.50% credit margin and loan tranches funded by Council reserves be immediately rolled over at prevailing LGFA interest rates without the 0.50% credit margin.

5. That Council waive rent payable under the Lease for a term of one year as from 1 December 2016 provided the amount waived is applied by Glenelg Football Club to reduce Council's secured debt.

COMMUNITY PLAN

A Place with a Quality Lifestyle
A Place that Provides Value for Money

COUNCIL POLICY

Not Applicable.

STATUTORY PROVISIONS

Not Applicable.

BACKGROUND

At its meeting on 8 November Council adjourned consideration of Report No: 285/16 pending a further workshop on the matter. Elected Members held a confidential workshop on 15 November 2016 and the matter is now returned to Council for consideration.

REPORT

Subsequent to discussions at the workshop, the recommendations in Report No: 285/16 have been amended to deal solely with the matter of the Clubs' loans and SANFL proceeds.

BUDGET

This report has an impact on Council's 2016-17 budget which assumes that the Clubs would resume repaying principal and interest when the current interest-only arrangement expires, and that the Clubs would continue paying rent under the Lease.

LIFE CYCLE COSTS

This report does not have any direct full life-cycle cost implications.

ITEM NUMBER: 17.1

CONFIDENTIAL

GLENELG FOOTBALL CLUB

Pursuant to Section 83 (5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

d. commercial information of a confidential nature (not being a trade secret) the disclosure of which –

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and

(ii) would, on balance, be contrary to the public interest and the benefit or detriment to a third party in the matter of *Glenelg Football Club (Report No: 285/16)* outweighs the public interest at this time.

Item No:	**17.1**
Subject:	**GLENELG FOOTBALL CLUB**
Date:	8 November 2016
Written By:	General Manager Business Services
General Manager:	Business Services – Mr I Walker

SUMMARY

Council has received a report on the financial position of Glenelg Football Club from its independent investigative accountant and is in a position to determine its strategy.

RECOMMENDATION

1. **That Council prefers Option 3 as outlined in this Report No: 285/16 (Council negotiates a sharing arrangement with ANZ Bank) and instructs its working party to negotiate an arrangement with ANZ to share the SANFL sale proceeds on a basis of ⅘ to Council and ⅕ to ANZ Bank (excluding the balance of the first tranche currently held by SANFL) but, if this cannot be successfully negotiated, the working party is authorised to negotiate a sharing of not less than ⅔ to Council and ⅓ to ANZ Bank.**

2. **Subject to reaching agreement with Glenelg Football Club and ANZ Bank on terms set out in point 1 above, the balance of the first tranche of the sale proceeds held by SANFL ($162,000) be released to the Club and applied to repay Council's loan, and the proceeds from the Club's 'Save the Tigers' debt demolition campaign be applied to repay ANZ Bank's loan.**

3. **That Council waive rent payable under the Lease for a term of 3 years subject to the amount waived being applied by the Club to repay Council's loan principal and the Club negotiating in good faith to return tenancy and management of the cricket club rooms to Glenelg District Cricket Club for the remainder of the Lease, such waiver arrangement to be reviewed by Council at the end of the 3-year term.**

4. **That the loan tranches to the Club funded by back-to-back loans from the LGFA be renewed as they mature at the prevailing LGFA interest rate without adding a 0.5% credit margin and loan tranches funded by Council reserves be immediately rolled over at prevailing LGFA interest rates without the 0.50% credit margin.**

COMMUNITY PLAN

A Place with a Quality Lifestyle
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COUNCIL POLICY

Not Applicable.

STATUTORY PROVISIONS

Not Applicable.

BACKGROUND

At its meeting on 13 September 2016, Council received a verbal update on discussions with Glenelg Football Club and resolved that it:

1. *Notes the status of discussions with Glenelg Football Club.*
2. *Notes receipt of a letter from Glenelg Football Club dated 12 September 2016 and agrees that the initial $250,000 proceeds from SANFL be used by the Club in accordance with SANFL terms to satisfy the club's debt of City of Holdfast Bay 2 Confidential Council Minutes 13/09/16 $88,000 to the Australian Tax Office and the balance to be held by the SANFL pending determination by Council.*
3. *Council agrees to engage BRI Ferrier as an investigative accountant and that the report be provided to Council in confidence. Legal advice will be sought on the receipt of that report. The investigative accountant report is to remain in strict confidence until Council has considered and determined what action to take.*

BRI Ferrier ('BRIF') presented its findings to a confidential elected member workshop on 20 October 2016 and, at its most recent meeting on 25 October 2016, Council resolved:

1. *That Council receives and notes in confidence the BRI Ferrier investigative accountants' report on the Glenelg Football Club and Glenelg Footballers Club.*
2. *That Council provides direction at its next meeting (8 November 2016) in terms of recommendations for moving forward, following any advice provided by the Audit Committee on 31 October 2016 or the working party.*
3. *That Council release in confidence the BRI Ferrier investigative accountants report on the Glenelg Football club and Glenelg Footballers Club to the joint working party for consideration.*

REPORT

BRIF Report

The Council working party (comprising Mayor Patterson, Councillors Smedley and Wilson, and General Manager Business Services) met on 25 October and discussed the options put forward by BRIF.

The BRIF Report sets out the financial position of the Glenelg Football Club and Glenelg Footballers Club (together referred to as 'the Clubs'). It also sets out the position of the secured loans to the Clubs from Council ($2.3 million) and ANZ Bank ($1.1 million including overdraft and credit card). It is not intended to repeat or summarise the BRIF Report other than to note it is in the interests of Council (and ANZ Bank) for the Clubs to continue as a going-concern for at least the next 7 years in order for the SANFL proceeds to be received and applied to reduce debt. Council has previously resolved to work with the Clubs to achieve this and to recognise the Clubs as an important community organisation.

Refer Attachment 1
(previously provided under separate cover)

BRIF has put forward 4 options to consider:

1. Seek repayment of Council's debt from the SANFL proceeds in accordance with the Deed of Priority.

2. Pay out ANZ Bank's commercial bill and business loan (amounting to $937,500) and seek assignment of ANZ's security (over the Footballers Club) or put in place its own security and enter into a deed of priority with ANZ Bank (this option could include ANZ accepting a loss on recovery of its loans).

3. Agree a basis of sharing the SANFL proceeds with ANZ Bank.

4. Cease support and enforce security (BRIF does not recommend this option).

Legal advice

Legal advice has been obtained subsequent to receiving the BRIF Report. KelledyJones noted that a preferred approach would have been for Council to instruct a law firm to engage BRIF to ensure legal privilege in Council's dealing with the report. Whilst the BRIF Report has been retained in confidence by Council, it is still subject to a Freedom on Information ('FOI') request. KelledyJones advises that further legal advice be obtained if the BRIF Report is subject to an FOI request. In addition, KelledyJones noted the importance of Council giving consideration to its security position more generally but also to avoid any suggestions or speculation about maladministration as defined in the *Independent Commissioner Against Corruption Act.*

Lynch Meyer was asked to provide more specific advice on the BRIF Report and recommended that, unless already done, Council undertake a review of the formal documentation granting the sale proceeds entitlement from SANFL (Council has previously obtained a copy of the letter from SANFL that sets out its commitment). Lynch Meyer also cautioned against the option of Council paying out the ANZ loans and, on seeking further clarification, advised that this was a reluctance to increase in Council's risk exposure as a matter of principle and, without being able to review the ANZ documentation, is not a first preference.

Options

BRIF's first 3 options above have been examined and are discussed in further detail below, along with some minor variations.

It is worth noting that Council's loan comprises a number of tranches of different maturity dates and fixed interest rates (average 6.6% pa). A number of tranches are funded by Council through back-to-back loans from the LGFA and on-lent to the Clubs on identical terms plus a 0.50% credit margin. These mature through 2017. Other tranches are funded from Council's reserves and can be easily re-negotiated. If loans were re-negotiated at prevailing rates, the cost of funds would reduce to around 4.0% pa.

All loan tranches are 'interest only' (ie the Clubs are not making any repayment of principal) as agreed by Council, however this arrangement begins to expire soon with one tranche due for repayment of principal and interest in February 2017, followed by other tranches during 2017.

A variation on the options is to waive some or all of the rent payable under the Lease (currently around $70,000 pa indexed annually at CPI) and convert into a repayment of Council loan principal. Whilst this is essentially exchanging rent for loan principal, it provides a visual benefit of reducing Council's loans. Council has previously provided a reduction or waiver of rent payable by other tenants facing difficult times.

BRIF was also asked to construct a model to provide a comparison of the impact of each option. The model is 'high level' and is necessarily based on broad assumptions with inherent uncertainty about future events. However, they do provide a useful indication of the financial impact of each option.

Option 1: SANFL proceeds applied to repay Council's debt

This option assumes that the SANFL proceeds (after payment of the Clubs' ATO liability) is paid to Glenelg Football Club and, in reliance of Council's Deed of Priority, are then directed to repay Council loans ahead of ANZ Bank.

The key assumptions are:

- Interest rate on Council loan tranches are reduced from current average 6.6%pa to around 4.0% pa in line with prevailing lending rates from the LGFA;

- The Clubs' lower interest costs are applied to further repay loans;
- The Clubs continues to pay rent under the Lease with Council;
- The Clubs meet interest commitments under ANZ facilities but do not repay any principal.

If the Clubs' lower interest costs were applied to repay Council's loans, then after all SANFL proceeds are received in October 2023, the Clubs' debt would be $59,000 owing to Council and $937,000 owing to ANZ. Council's loan could be fully repaid if a small portion of rent was waived and applied to loan principal.

Although ANZ is not currently exerting pressure on the Clubs, it can be expected to seek a reduction in its loan facilities particularly as Council is obtaining the same and there is a view that ANZ would not support this option.

Alternatively, if the Clubs' lower interest costs were applied to repay the ANZ loans, then the Clubs' debt at the end of 2023 would be $374,000 owing to Council and $622,000 owing to ANZ. Again, if Council's loan could be fully repaid if some of the Clubs' rent was waived and applied to repay Council's loan.

Option 2: Council increases loan to Club for it to repay ANZ Bank

This option assumes the ANZ facilities are repaid by the Clubs, at a discount, funded by an increased loan from Council. As a result, ANZ would assign its security to Council. For the purpose of modelling this option, the increase in Council's loan is $700,000 (to repay the ANZ facilities of $937,000).

The proceeds from SANFL would all be directed to repay Council's loans and, as with Option 1, Council would reduce the interest rate on all loan tranches and the Clubs' reduced interest cost is applied to further repay Council's loans.

After all SANFL proceeds are received in October 2023, the Clubs' debt would be $861,000 owing to Council. This could be reduced to $341,000 if all rent was waived and applied to loan principal.

Under this option, Council would increase its loans to the Clubs and assume a higher level of risk to be the Clubs' sole lender and assuming all lending risk, although this would be offset by the Clubs' overall lower debt service costs.

Council would also become the lender for the Clubs' gaming machines which may not sit well with the community. There is merit in retaining ANZ as a lender to share risk.

This option assumes that ANZ will accept a write-down on its loans to the Clubs and that the Clubs will accept the proposal. It is understood that ANZ is not exerting any material pressure on the Clubs and may have an expectation of debt recovery either through a combination of the SANFL proceeds and financial support from SANFL and/or Council.

Members of the Clubs' boards have previously indicated a reluctance to consider this option as the Clubs would need to establish transaction banking facilities with another bank, resulting in additional costs and a management distraction, as well as a perceived concern by some members of the Clubs' board of having Council as sole lender (ie loss of the natural balance currently existing between Council and ANZ).

Option 3: Council negotiates a sharing arrangement with ANZ Bank

This option assumes Council and ANZ negotiate an arrangement under which both lenders benefit from a reduction in loan principal from the SANFL proceeds.

Key assumptions are:

- Interest rate on Council loan tranches are reduced from current average 6.6%pa to around 4.0% pa in line with prevailing lending rates from the LGFA.
- The Clubs' lower interest costs are applied to further repay Council loans.
- The Clubs continues to pay rent under the Lease with Council.

If the SANFL proceeds (after the first tranche) were shared 2:1 in Council's favour (and broadly proportionate to current loan balances), then after all SANFL proceeds are received in October 2023, the Clubs' debt would be $678,000 owing to Council and $296,000 to ANZ Bank. Council's loan could be further reduced to $158,000 if all rent was waived and applied to loan principal.

A variation on this option is that the SANFL proceeds were shared 4:1 in Council's favour (broadly designed so that Council and ANZ result in a more equal debt outstanding at the end of the SANFL proceeds distribution). Under this scenario, Council's loan in October 2023 would be $430,000 and ANZ $552,000. Again, Council's loan could be reduced further through a partial waiver of rent.

This option is more likely to be accepted by the Clubs and ANZ Bank as all parties receive a proportionate benefit. Unlike Option 2 it avoids the undesirable outcome of Council being in a position of financing the Clubs' gaming machines.

In addition to the above options, Council can implement strategies to invest in the precinct (noting the joint development of the Glenelg Oval masterplan) that will improve facilities for football and other sports, resulting in improved use and financial viability.

Recommended option

All scenarios provide an overall reduction in the Clubs' debt levels as a result of the SANFL proceeds and lower interest rates on Council's loans. Council's loan outstanding at the end of the modelling period 2023 is reduced and its security position improved. It should be noted that 2023 is not an end point and the Clubs' business and financial performance beyond 2023 is expected to provide improved capability to service its debt.

Option 3 (negotiating a sharing arrangement with ANZ) is recommended for the following reasons:

- Unlike Option 2, it will not increase Council's immediate debt exposure nor put it as a lender for gaming machines or place a burden on the Clubs to negotiate new banking transaction facilities
- It will significantly reduce the Clubs' debt profile including Council's outstanding loan
- It is more likely to be accepted by the Clubs and ANZ
- It does not preclude consideration of Option 2 at a future date if circumstances change
- It shares the risk with ANZ
- Unlike Option 1 which can provide similar outcomes, it provides both Council and ANZ a formalised structured arrangement.

Specifically, it is recommended that:

- Council pursue the 4:1 sharing option with ANZ but, if that is not acceptable to ANZ, Council accept a 2:1 sharing arrangement.
- The remaining balance of the first tranche of the SANFL proceeds currently held by SANFL (approximately $162,000) be released to the Club and applied to repay Council's loan principal whilst the proceeds from the Clubs' 'Save the Tigers' debt demolition campaign (approximately $80,000) be applied to repay the ANZ loan (this is equivalent to a 2:1 sharing).
- Council's loan tranches that are funded by back-to-back loans from LGFA be renewed when they mature at prevailing LGFA 10-year interest rates (currently 4.0%pa) excluding Council's usual 0.5% credit margin.
- Council's loan tranches funded by its cash reserves (ie. not through back-to-back loans from the LGFA) be renewed immediately at prevailing LGFA 10-year interest rates excluding Council's usual 0.5% credit margin.
- Rent payable by the Clubs (approximately $70,000 indexed at CPI) be waived for an initial term of 3 years (with a review by Council after 3 years) subject to the amount waived being applied to repay Council's loans and the Club negotiating with the Glenelg District Cricket Club to return tenancy and management of the cricket club's clubrooms for the remaining term of the Lease.

BUDGET

This report has an impact on Council's 2016-17 budget. The budget assumed that the Clubs would resume repaying principal and interest when the current interest-only arrangement expires, and that the Clubs would continue paying rent as per the Lease.

LIFE CYCLE COSTS

This report does not have any direct full-life cycle costs however an increased investment in the Glenelg Oval precinct will improve facilities and increase future maintenance costs and depreciation charges.