

ITEM NUMBER: 18.3

CONFIDENTIAL REPORT

GLENELG FOOTBALL CLUB LOAN UPDATE

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;**

Recommendation – Exclusion of the Public – Section 90(3)(d) Order

1. That pursuant to section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 289/24 – Glenelg Football Club Loan Update in confidence.
 2. That in accordance with section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 289/24 – Glenelg Football Club Loan Update on the following grounds:
 - d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which 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.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.
 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: 18.3

Subject: GLENELG FOOTBALL CLUB LOAN UPDATE

Summary

To provide Council with an update on the progress of the Glenelg Club Loan since the resolution of Council on 24 April 2024.

This report also recommends the approval of an extension of the current financial assistance to the Glenelg Football Club from 30 June 2024 to the 30 September 2024 being that the Glenelg Football Club continue to not be charged interest on existing borrowings.

Recommendation

That Council:

1. notes the Deed of Forgiveness of Debt with the Glenelg Football Club;
2. approves the extension of the current financial assistance to the Glenelg Football Club from 30 June 2024 to the 30 September 2024 (or earlier based on settlement) being that the Glenelg Football Club continue to not be charged interest on existing borrowings; and
3. authorises the Mayor and Chief Executive Officer to execute the Deed of Forgiveness of Debt for the Glenelg Football Club as provided as Attachment 1 to this report.

RETAIN IN CONFIDENCE - Section 91(7) Order

4. That having considered Agenda Item 18.3 – Glenelg Football Club Loan Update in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report and minutes be retained in confidence for a period of six months and the Chief Executive Officer is authorised to release the documents when the Audited Financial Statements are presented to Council.
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Background

In 2023 Council established a working group, consisting of members of both Glenelg Football Club and City of Holdfast Bay, to ensure the Club's long-term sustainability. Part of the role of this group was to establish the financial capacity of the Club to make repayments of its loan once the final South Australian National Football League (SANFL) disbursement was received in October 2023. The outstanding balance of the loan owed to Council is currently \$1,029,922.

Council on 23 April 2024 resolved the following:

That Council:

1. *notes it has received and considered the request from Glenelg Football Club for debt forgiveness on 50% of its outstanding debt with Council;*
2. *approves the debt forgiveness proposal from the Glenelg Football Club;*
3. approves the extension of the current financial assistance to the Glenelg Football Club to 30 June 2024 being:
 - a) that the Glenelg Football Club continue to not be charged interest on existing borrowings;
 - b) *that the current lease and licence be held over at an annual rental of \$40,000 pa (including GST);*
4. *approves the extension of the Glenelg Football Club Working Group until the matter is resolved, including the continued appointment of Councillors Abley, Smedley and Snewin to the Working Group; and*
5. *authorises the CEO to execute any documents required to action this resolution.*

Report

The Glenelg Football Club has been liaising with its Financer regarding the loan and has had a positive response, however the Financer is requiring a Deed of Forgiveness of Debt to be signed by both parties before it provides approval. A Deed of Forgiveness of Debt has been drafted by the club's lawyers which has been reviewed by our lawyers and is attached for Members' information.

Refer Attachment 1

This Deed requires a common seal and therefore a formal Council resolution is required before the Deed can be signed. Once the Deed is signed the Financer requires at least two weeks to process its formal approval before settlement, therefore an outer date of 30 September 2024 has been included in the Deed. Hopefully it can be processed quicker with a settlement date in mid-September.

As the process to source funding has taken longer than the planned 30 June 2024, it is recommended that an extension of the current financial assistance to the Club, the continuation of not charging interest on existing borrowings from 30 June 2024 until 30 September 2024 (or earlier based on settlement) be endorsed.

Budget

No impact on Council's operational budget, however the settlement will have a positive cashflow impact of \$514,961 in the 2023-24 financial year.

Life Cycle Costs

Not applicable

Strategic Plan

Wellbeing – Supporting local community organisations that encourage engagement with demographics

Council Policy

Not applicable

Statutory Provisions

Local Government Act 1999, section 143

Written By: Chief Executive Officer

Chief Executive Officer: Mr R Bria

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Attachment 1

Deed of forgiveness of debt

City of Holdfast Bay

Glenelg Football Club Inc

Glenelg Footballers' Club Inc

DATE

PARTIES

City of Holdfast Bay ABN 62 551 270 492 of Brighton Civic Centre, 24 Jetty Road
Brighton SA 5048

Glenelg Football Club Inc ABN 94 586 591 723 of c/- Norman Waterhouse, Level
11, 431 King William Street Adelaide SA 5000

Glenelg Footballers' Club Inc ABN 16 235 784 104 of c/- Norman Waterhouse,
Level 11, 431 King William Street Adelaide SA 5000

BACKGROUND

- A. Glenelg Football Club Inc (**GFC**) has an outstanding debt with the City of Holdfast Bay (**Council**) in relation to the construction of the GFC function centre located at Stratarama Stadium, Brighton Road, Glenelg East, South Australia 5045.
- B. The outstanding debt is \$1,029,922.
- C. On 2 April 2024, GFC sent a letter to Council seeking to resolve the outstanding debt by offering to pay \$514,961 in full and final satisfaction of the outstanding debt.
- D. On 23 April 2024, Council resolved to forgive 50% of the outstanding debt in consideration of GFC making payment of \$514,961.
- E. Council acknowledges GFC requires finance to facilitate the payment of \$514,961.
- F. Glenelg Footballers' Club Inc (the **Venue**) has guaranteed the payment of the outstanding debt and enters into this deed in its capacity both as guarantor and as the licence holder of a Club Licence issued under the *Gaming Machines Act 1992*, and the entitled recipient of gaming machine entitlements thereunder (**Gaming Machine Entitlements**).

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed:

Claim means any claim, demand, action or cause of action, whether in contract, tort, equity or under statute, and any loss, cost, expense or Liability arising from or in connection with such claim, demand, action or cause of action.

Council means City of Holdfast Bay.

Forgiven Debt means \$514,961 being 50% of the Outstanding Debt that Council agrees to forgive. In other words, Council agrees to absorb 50% of the Outstanding Debt.

Gaming Machine Entitlements is defined in Background paragraph E.

GFC means Glenelg Football Club Inc.

Liabilities means liabilities, losses, damages, actions, causes of action, arbitrations, claims, orders, judgments, outgoing costs (including legal costs calculated on a solicitor and own client basis) and expenses, whether present or future, actual or contingent.

Outstanding Debt means the entire amount owing to Council by GFC namely, \$1,029,922.

Outstanding Liability means the agreed amount of \$514,961 that the Club will pay to Council representing 50% of the Outstanding Debt.

Venue means Glenelg Footballers' Club Inc.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- 1.2.1 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.2 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.3 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.4 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.5 a provision is not construed against a party only because that party drafted it;
- 1.2.6 an unenforceable provision or part of a provision may be severed, and the remainder of this deed continues in force, unless this would materially change the intended effect of this deed.

1.3 Background

The Background forms part of this deed and is correct.

2. RELEASE OF DEBT

- 2.1 The parties acknowledge and agree that their intention by entering into this deed is to release and forever discharge the Forgiven Debt in consideration for GFC paying the Outstanding Liability to Council.

- 2.2 Subject to this deed, to the extent permitted by law, as and from the receipt of the payment of the Outstanding Liability:
- 2.2.1 Council agrees that it will unconditionally and irrevocably release GFC from all Claims it may have or can or may have against GFC in relation to the Outstanding Debt; and
- 2.2.2 Council represents and warrants that it will not undertake any action to enforce the Outstanding Debt owed to Council by GFC.
- 2.3 The parties acknowledge and agree to, in full and final settlement of the Outstanding Debt, that:
- 2.3.1 GFC will pay Council the Outstanding Liability; and
- 2.3.2 upon receipt of the Outstanding Liability, Council will forgive 50% of the Outstanding Debt (being the Forgiven Debt).
- 2.4 Until such time that the Outstanding Liability has been paid, the Venue represents and warrants that it will not grant any security to any third party over its Gaming Machine Entitlements.

3. FINANCE AND PAYMENT

- 3.1 Council acknowledges that payment of the Outstanding Liability is going to be made with the assistance of finance.
- 3.2 GFC must pay the Outstanding Liability by Electronic Bank Transfer to the Council's account, the details of which are:

Name:	City of Holdfast Bay
Reference:	[Loan Repayment]
BSB:	[065-100]
Account No:	[10032196]

- 3.3 The Council will provide GFC with the name and contact details of a person who can verify the account details specified in clause 3.2 by telephone as a precondition to payment of any respective settlement sums payable under this deed.

4. TERMINATION

- 4.1 The Council may terminate this deed immediately by notice in writing to the other parties, if the Outstanding Liability is not paid in full on or by 30 September 2024 (or such later date which may be agreed by the Council in writing).
- 4.2 Each of GFC and the Venue acknowledge and agree that the Council may terminate this deed immediately by notice in writing to GFC, if the Venue is in breach of clause 2.4 at any time prior to the payment of the Outstanding Liability in full.

5. MISCELLANEOUS

- 5.1 This deed may be altered only in writing signed by each party.

- 5.2 Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this deed.
- 5.3 A party must not assign or otherwise deal with this deed or any right under it without the written consent of each other party.
- 5.4 This deed:
- 5.4.1 constitutes the entire agreement between the parties about its subject matter;
 - 5.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.
- 5.5 A waiver of a provision of or right under this deed:
- 5.5.1 must be in writing signed by the party giving the waiver;
 - 5.5.2 is effective only to the extent set out in the written waiver.
- 5.6 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this deed is not a waiver of that power or right. An exercise of a power or right under this deed does not preclude a further exercise of it or the exercise of another right or power.
- 5.7 Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this deed, remains in force after the expiration or termination of this deed.
- 5.8 This deed may be executed in counterparts. All executed counterparts constitute one document.
- 5.9 This deed is governed by the law in South Australia. The parties irrevocably submit to the non exclusive jurisdiction of the courts in South Australia.
- 5.10 A notice, demand, consent, approval or communication under this deed must be in writing, in English and signed by a person authorised by the sender, and hand delivered or sent by pre paid post or electronic mail to an address of the recipient specified in this deed, or otherwise as provided in writing by the recipient to the sender. At the date of this deed, addresses for notices are set out in the Party Details.
- 5.11 The parties bear their own costs in preparing this deed and any document required by it.

EXECUTED as a deed

THE COMMON SEAL of the **City of Holdfast Bay** was affixed in the presence of :

.....
Roberto Bria, Chief Executive Officer of the City of Holdfast Bay

.....
Amanda Wilson, Mayor of the City of Holdfast Bay

Dated

Signed by Glenelg Football Club Inc:

.....
David Whelan, President of the Glenelg Football Club Inc

.....
Justin Scripps, Chief Executive Officer of the Glenelg Football Club

Dated:

Dated:

In the presence of:

.....
Witness signature

.....
Witness name

Signed by Glenelg Footballers' Club Inc:

.....
President of the Glenelg Footballers Club Inc

.....
Chief Executive Officer of the Glenelg Football Club

Dated:

Dated:

In the presence of:

.....
Witness signature

.....
Witness name

