

CONFIDENTIAL MATTERS

STAFF REPORTS

***Matters which cannot be
delegated to staff***

16. CONFIDENTIAL MATTERS**16.1 NAWMA BOARD MEMBERSHIP****Why is this matter confidential?**

Subject to an order pursuant to Section 90(3)(a) of the Local Government Act 1999, this matter is confidential as the attachment contains information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

The information provided in the attachment is an assessment made by the selection panel regarding individual applicants meeting / not meeting the criteria / selection needs as provided to the panel by NAWMA. There are a number of council staff and residents that have nominated for the positions detailing their expertise and personal history. It would be unreasonable to disclose this information concerning the personal affairs of the applicants.

Process**A. COUNCIL TO MOVE MOTION TO GO INTO CONFIDENCE**

No action – this motion passed in open section

B. COUNCIL TO DECIDE IF ITEM 16.1 SHOULD BE DISCUSSED IN CONFIDENCE

(Contact Person: Sam Green)

Purpose

To resolve whether agenda item 16.1 should be considered in confidence.

STAFF RECOMMENDATION

That the Council continue to remain in confidence and under Section 90(2) of the Local Government Act 1999 and, with the exception of those staff members present, the public continue to be excluded from attendance at the meeting in order to consider in confidence agenda item 16.1.

Options**Option 1**

That the Council continue to remain in confidence and under Section 90(2) of the Local Government Act 1999 and, with the exception of those staff members present, the public continue to be excluded from attendance at the meeting in order to consider in confidence agenda item 16.1.

Option 2

That the Council does not consider item 16.1 in confidence under Section 90(2) of the Local Government Act 1999 and allows the public to hear the matter.

Analysis of Options

Option 1

Option 1 would exclude the public from attendance at the meeting whilst agenda item 16.1 is discussed. This pertains to Section 90(3)(a) of the Local Government Act 1999.

Option 2

Option 2 would allow the public to remain in the gallery whilst item 16.1 is being discussed, showing openness and transparency, which is a fundamental principal of the Council's operations.

NAWMA Board Membership – applicant list

Applicant	Relevant Experience	Selection Panel Comments	Recommend
Sam Green (Employee)	<ul style="list-style-type: none"> City of Playford General Manager Previous Board member of Waste Care SA Local government Manager— waste contracts & services 	Very strong background in local government, and believe that relevant experience with waste management services contracts, and experience on the Regional Subsidiary Board for Waste Care SA, will be a great benefit to NAWMA.	Yes
Carol Muzyk (Resident)	<ul style="list-style-type: none"> 22 years local & state government Extensive experience in Environmental Management and Env impact assessments Previously EPA – senior officer CDAP member DPAC environmental specialist 	High level experience at state and local government through regulation and environmental management. Currently no members on the Board with this type or level of experience.	Yes
Ron Watts (Resident)	<ul style="list-style-type: none"> Small to medium business Previous Elected member Previous Chairperson of NAWMA Board Previous Manager of Business Enterprise Centre (NABEC) 	Previous experience in small to medium business sector and other relevant experience would add value to the NAWMA Board.	Yes
Shaun Kennedy (Employee)	<ul style="list-style-type: none"> City of Playford General Manager Human Resources and Organisational development 	Excellent experience in the commercial sector with human resources and organisational development.	Yes (Deputy)
Michael Caruso (Resident)	<ul style="list-style-type: none"> Business management Consultant for business coaching 	Good experience with small to medium business management and consultancy. However, there are already some members on the Board with this type of skill set, and may not add value to the Board at this stage.	No

D. COUNCIL TO DECIDE WHAT IS TO BE KEPT IN CONFIDENCE AFTER THE COUNCIL MEETING

(Contact Person: Sam Green)

Purpose

To resolve which aspects of agenda item 16.1 are to be kept confidential after the Council meeting.

STAFF RECOMMENDATION

The following aspects to be confidential subject to an order pursuant to Section 91(7) of the Local Government Act 1999 on the basis that it relates to Section 90(3)(a) of the Local Government Act 1999:

- Attachment for Item 16.1
- Discussion for Item 16.1

OptionsOption 1

The following aspects to be confidential subject to an order pursuant to Section 91(7) of the Local Government Act 1999 on the basis that it relates to Section 90(3)(a) of the Local Government Act 1999:

- Attachment for Item 16.1
- Discussion for Item 16.1

Option 2

The Council determines to consider certain aspects of agenda item 16.1 in confidence and others in public.

Option 3

The Council determines that all items be made public for agenda item 16.1.

Analysis of OptionsOption 1

This item is excluded from the public on the basis of the consideration of information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

Option 2

The Council may determine that certain aspects of agenda item 16.1 remain in confidence; therefore the Council may choose alternative aspects that remain confidential.

Option 3

The Council may determine that all items become available to the public to ensure openness and transparency.

E. COUNCIL TO DECIDE HOW LONG ITEM 16.1 IS TO BE KEPT IN CONFIDENCE
(Contact Person: Sam Green)

Purpose

To resolve how long agenda item 16.1 is to be kept confidential.

STAFF RECOMMENDATION

Under Section 91(7) of the Local Government Act an order be made that the Attachment, and Discussion, for Item 16.1 having been dealt with in confidence under Section 90(2) of the Local Government Act, shall be kept confidential until the next scheduled annual review of confidential items.

Options

Option 1

Under Section 91(7) of the Local Government Act an order be made that the Attachment, and Discussion, for Item 16.1 having been dealt with in confidence under Section 90(2) of the Local Government Act, shall be kept confidential until the next scheduled annual review of confidential items.

Option 2

The Council determines a different timeframe for any "in confidence" aspects of agenda item 16.1 to remain in confidence.

Analysis of Options

Option 1

This option determines the length of time that item 16.1 should retain its confidential status. Therefore the Council would review the confidential status of item 16.1 at its annual review of confidential items.

Option 2

The Council determines a different timeframe for any "in confidence" aspects of agenda item 16.1 to remain in confidence.

CONFIDENTIAL MATTERS

STRATEGIC PLANNING COMMITTEE REPORTS

***Matters which cannot be
delegated to a Committee or staff***

16. CONFIDENTIAL MATTERS**16.2 VIRGINIA NURSERY FUTURE OPTIONS****Why is this matter confidential?**

Subject to an order pursuant to Section 90(3)(i), this matter is confidential because it relates to sensitive matters related to current enforcement proceedings.

Process**A. COUNCIL TO MOVE MOTION TO GO INTO CONFIDENCE**

No action – this motion passed in open section

B. COUNCIL TO DECIDE IF ITEM 16.2 SHOULD BE DISCUSSED IN CONFIDENCE

(Contact Person: Sam Green)

Purpose

To resolve whether agenda item 16.2 should be considered in confidence.

STAFF RECOMMENDATION

That the Council continue to remain in confidence and under Section 90(2) of the Local Government Act 1999 and, with the exception of those staff members present, the public continue to be excluded from attendance at the meeting in order to consider in confidence agenda item 16.2.

Options**Option 1**

That the Council continue to remain in confidence and under Section 90(2) of the Local Government Act 1999 and, with the exception of those staff members present, the public continue to be excluded from attendance at the meeting in order to consider in confidence agenda item 16.2.

Option 2

That the Council does not consider item 16.2 in confidence under Section 90(2) of the Local Government Act 1999 and allows the public to hear the matter.

Analysis of Options**Option 1**

Option 1 would exclude the public from attendance at the meeting whilst agenda item 16.2 is discussed. This pertains to the following Sections of the Local Government Act:

As per Section 90(3)(i) of the Local Government Act 1999.

Option 2

Option 2 would allow the public to remain in the gallery whilst item 16.2 is being discussed, showing openness and transparency, which is a fundamental principal of the Council's operations.

C. BUSINESSS DECISION**16.2 VIRGINIA NURSERY FUTURE OPTIONS**

(Responsible Executive Member: Shaun Kennedy)
(Contact Person: Michael White)

See Attachment No: 1. Map 1 – Virginia Nursery Location
2. Map 2 – Site and allotment layout
3. Copy of May 2010 report
4. Objectives for Primary Production Zone

Why is this matter before the Council or Committee?

This is a matter which cannot be delegated to a Committee or staff

Purpose

This matter is related to a resolution of the previous Council in relation to the Virginia Nursery. It is appropriate for the current Council to be given the opportunity to give consideration to reasonable options that could be pursued. Compliance proceedings have been put on hold until Council has determined its position on this report.

STAFF RECOMMENDATION

- 1) Advise the Virginia Nursery that Council is prepared to give consideration to a privately funded Development Plan Amendment which investigates whether policies should be introduced to the Development Plan to support any of the following uses of the site (Lot 415 Gawler Road, Virginia):
 - a retail nursery use;
 - a cafe use;
 - a pet store use;
 - general retailing;
 - a landscape supply depot use; and
 - any other use or uses,
 - subject to the processes in the 'Non-Government funded Development Plan Amendment policy'. Consideration may also include the introduction of policies for the adjacent land associated with Virginia Nursery (Lot 426 Gawler Road, Virginia).
- 2) Defer current compliance proceedings (ERD-12-19) for so long as :
 - a) The Virginia Nursery agrees to progress the DPA and related processes in accordance with the 'Non-Government funded Development Plan Amendments Policy'.
 - b) A Development Plan Amendment, if agreed by Council, is undertaken in a timely manner in accordance with agreed, reasonable timelines.
 - c) There are no further breaches of the Development Act, 1993.
- 3) That Council authorises the CEO to reactivate compliance action (including the current compliance proceedings) if any aspect of resolution 2 is not complied with or the CEO deems that the Virginia Nursery is not acting in good faith.

STRATEGIC PLANNING COMMITTEE – VOTE WAS TIED

- 1) Advise the Virginia Nursery that Council is prepared to give consideration to a privately funded Development Plan Amendment which investigates whether policies should be introduced to the Development Plan to support any of the following uses of the site (Lot 415 Gawler Road, Virginia):
 - a retail nursery use;
 - a cafe use;
 - a pet store use;
 - general retailing;
 - a landscape supply depot use; and
 - any other use or uses,
 - subject to the processes in the 'Non-Government funded Development Plan Amendment policy'. Consideration may also include the introduction of policies for the adjacent land associated with Virginia Nursery (Lot 426 Gawler Road, Virginia).
- 2) Defer current compliance proceedings (ERD-12-19) for so long as :
 - a) The Virginia Nursery agrees to progress the DPA and related processes in accordance with the 'Non-Government funded Development Plan Amendments Policy'.
 - b) A Development Plan Amendment, if agreed by Council, is undertaken in a timely manner in accordance with agreed, reasonable timelines.
 - c) There are no further breaches of the Development Act, 1993.
- 3) That Council authorises the CEO to reactivate compliance action (including the current compliance proceedings) if any aspect of resolution 2 is not complied with or the CEO deems that the Virginia Nursery is not acting in good faith.

Relevance to Council PlanGoal 1: Community Wellbeing

Objective 1.1 A community with access to quality services for all

Goal 2: Economic Prosperity

Objective 2.2 Local jobs for local people

Objective 2.3 A better place to do business

Goal 4: Organisational Excellence

Objective 4.1 Decision making in the best interests of the City

Objective 4.4 Balancing community need with available resources

Relevance to Public Consultation Policy

Public consultation is not required in relation to this report.

Background

A closed informal briefing was provided in regard to this matter to Council on 24 July 2012. The information that follows provides further detail in regard to Virginia Nursery and the options that may be available. Attachments 1 and 2 are aerial photographs of the general location of the nursery approximately 1.2 km from Virginia and the two allotments on Gawler Road Virginia.

Report in May 2010

The staff report in May 2010 discussed the purposes of the Development Plan relevant to the nursery which include guiding orderly development and providing certainty to the community. The report also indicated that the Development Plan provides guidance to the business community about the types of development that can be approved and where it should be located. A copy of this report is attachment 3.

Staff also sought direction from Council regarding unlawful activities at the Virginia Nursery, including:

- a fruit and vegetable shop (which has since shut down)
- a pet shop (which shut down around December 2011)
- a gift shop (which has expanded into the former fruit and vegetable area and now includes sales of kitchen wares)
- a café / restaurant operating outside the hours of operation of the nursery and access being allowed directly from the car park (contravening conditions of approval).

Council resolved in May 2010 that:

- "1) Council endorse that staff instigates compliance action in relation to the breaches to the Development Act, 1993 outlined in this report.
- 2) Council seek costs if any court action is successful".

Summary of recent development and compliance related to Virginia Nursery

Virginia Nursery has a history of compliance related problems, some of which is as follows:

- In 2002 the Nursery was established as a wholesale plant nursery and this land use was appropriate in the Horticulture zone at that time.
- An inspection in October 2002 identified that approximately 5000 square metres of covered and open areas had been set up for public display and retail sales.
- In 2003 a merit development application was lodged for a Retail plant nursery (shop), associated retail/ office/shade buildings and car park which had already commenced. Development Approval was granted in 2005.
- In 2005 another merit application was lodged for Retail nursery alterations (over 7400m² total in retail floor space was proposed). The use had already commenced.
- Development approval, with a limit of 7400m² in retail floor space was granted in 2006.
- A non-complying development application was considered and refused by Council in 2006 and overturned by the Environment Resources and Development (ERD) Court in 2008 subject to a range of conditions. Building rules consent was not sought by Virginia Nursery and as a consequence the planning approval has lapsed.

Development Applications have often been retrospective with development already undertaken on the site, resulting in compliance work being undertaken relating to various breaches related to development without approval between 2003 and 2010.

Some land use issues have been resolved, while several outstanding compliance matters remain. Since 2010, the *Fruit & Vegetable Shop & Pet Shop* matters have been resolved; the *Garden Accessories Shop* and *Retail sales area increase from 7400m² to 11400m²* are being assessed by Council; and compliance proceedings have been taken in the ERD Court in relation to the *Café* operating conditions.

As a result of the compliance proceedings, and the Nursery-initiated review proceedings, a comprehensive legal review of the Council's files and the buildings and activities on site suggests that the planning consent for the café/restaurant has lapsed (and that operation is now a wholly unlawful land use), and that it is arguable that the "master" retail plant nursery approval

granted in 2006 was never substantially completed and has also lapsed, rendering most of the buildings on site unlawful. In addition, whatever their legal status, it appears that the building housing the café, and the gift shop and kitchen-wares shop has never had a building rules consent.

The operators of Virginia Nursery have been informed of these matters in three letters regarding the matters in the above paragraph between January and April 2012. Neither the Nursery nor its legal representatives have responded to these issues to date.

Since 2003, approximately \$130,000 has been spent on legal costs, with corresponding amounts of staff time related to compliance work.

Planning Strategy and the Development Plan

The Planning Strategy set out in the 30 Year Plan for greater Metropolitan Adelaide strongly supports the protection of important primary production areas and includes the statement:

"Use measures, including planning controls to protect important primary production areas such as the Barossa Valley, Willunga Basin and Northern Adelaide Plains".

The majority of the Virginia Horticulture District, including the Virginia Nursery site, is specifically identified in the 30 Year Plan as an area of primary production significance which 'triggers' the policies in the Strategy regarding protection.

However, the nursery is a significant employer and one of the more significant enterprises in the region which also provides a significant tourism focus and provides a useful and well patronised service.

The current Development Plan zoning of the area where the nursery is located is Primary Production (formerly Horticulture). The full range of objectives for the zone is attached (see attachment 4). It is clear that the objectives support primary production, protection of primary production from encroachment by incompatible land uses and retention of the land for horticultural purposes.

A retail nursery can be considered on merit, but it is not favoured by the zone policies. Some of the activities that the nursery has established in conjunction with the nursery have been (and continue to be) non-complying such as the fruit and vegetable shop and pet shop. The café/restaurant use as established (contrary to the relevant planning consent) is also a non-complying use. A major concern with these activities, apart from the lack of approvals and lack of support in the Development Plan, is that they are located away from Virginia Township which has been established in the district for this type of activity. Development Plan policies for the Town Centre Zone include the following:

- a) "A centre accommodating a wide range of retail, office, administrative, community, cultural and entertainment facilities appropriate to the needs of the community."
- b) "Development of Precinct 32 Virginia Centre as a trade and service centre for the surrounding northern Adelaide Plains market gardening region."

Development Plan Amendment (DPA)

One possible direction for Council is to seek to establish Development Plan policies to support the existing activities and if desired an additional range of appropriate activities and / or expansion of the nursery.

Analysis of Issues

a) The possible advantages in undertaking a DPA include the following:

- A DPA acknowledges that at least some of the activities including the retail nursery have been approved by Council (or the courts) and are likely to be there for the long run.
- A more supportive policy environment may be advantageous in considering future development applications and enabling the business to develop and evolve.
- A more supportive policy framework may encourage the Virginia Nursery to pursue the development application process which would be advantageous to Council by reducing the need for monitoring and compliance.
- Money and effort may be better spent on ensuring an appropriate policy framework than in pursuing expensive litigation, although the costs may be sought from the Nursery if Council is successful in the litigation.
- The DPA can be funded, subject to agreement by the Virginia Nursery, through the non-government funded Development Plan Amendment process in accordance with the Council adopted policy.
- Council can revert to compliance if the Virginia Nursery does not adhere to the requirements of the Development Act (or increases its non-compliance) while the DPA is being undertaken.

If this process is followed Council as the next step will need to consider a Statement of Justification from the Virginia Nursery and the extent of the DPA in accordance with Council's 'Non-government funded Development Plan Amendment Policy'. For example, Council will need to consider whether the DPA would include the adjoining allotment and the types of uses that might be encouraged in addition to the existing retail nursery. The adjoining allotment has established greenhouses located on it and may be used to supply plants to the nursery. A car park was also approved by Council on a small portion of the allotment as part of an application but has not been constructed.

If the Council endorses the Statement of Justification (likely to be in September) in accordance with the policy the formal process under the Development Act commences as follows. A Statement of Intent is required to be approved by Council (likely to be in October) and the Minister for Planning; a draft DPA is prepared and reviewed by Council prior to public consultation and a public hearing; any changes are considered by Council and the DPA is forwarded for consideration by the Minister. It is important to note that the Minister has the final say regarding the approval of the DPA. The process could take 12 months or more to complete from the Statement of Intent stage.

b) The possible disadvantages of undertaking a DPA include the following:

- Commencing the DPA process could create the perception that Council is bowing to the Nursery's demands.
- Facilitating a DPA for the nursery doesn't set a good example for other business operators and does not provide support to existing businesses in Virginia Township which have established legitimately in accordance with the Development Act.
- Substantial time and effort on the part of Council and the administration is required to finalise the DPA even with private funding.
- The history of the current owner suggests that favourable zoning may not be enough to prevent further infringements and therefore may not avoid the requirement for future monitoring and compliance / enforcement procedures.
- A DPA may not enable all relevant forms of development that the Virginia Nursery identifies as desirable and there will need to be development applications, whether or not the Virginia Nursery fully supports the new zoning.
- Delay in finalising the enforcement process if the DPA does not proceed through to approval by the Minister.

- Cost to the Virginia Nursery for the DPA without the certainty it will be approved.
- c) The advantages of continuing the current enforcement procedures include the following:
- Shows to the community that Council is determined to ensure that applications are made for development in accordance with the requirements of the legislation and Development Plan.
 - Ensures that planning and safety / structural considerations are appropriately assessed through the consideration of applications.
 - Ensures that the Virginia Nursery is held accountable (to some degree) for infringements of the Development Act.
 - Enforcement may act as a deterrent for future infringements.
 - Doesn't prevent the preparation of a future Development Plan Amendment potentially with private funding.
- d) The disadvantages of continuing the current enforcement:
- While costs of court processes may be recovered, there are very likely to be administrative costs related to the enforcement which cannot be recovered through court processes. In addition, it is unlikely that 100% of court costs will be recovered (60 – 70% is more likely, even on a best case analysis).
 - May not be a popular move with the community given the nursery is well used and there may be a lack of understanding about the justification for court proceedings.
 - Could be perceived as a disincentive to business operators and as Council being anti-business.
 - Will need to continue to monitor the Virginia Nursery on an on-going basis to a greater degree with associated staff time and other costs.

Options

Option 1 – Undertake a Development Plan Amendment

- 1) Advise the Virginia Nursery that Council is prepared to give consideration to a privately funded Development Plan Amendment which investigates whether policies should be introduced to the Development Plan to support any of the following uses of the site (Lot 415 Gawler Road, Virginia):
 - a retail nursery use;
 - a cafe use;
 - a pet store use;
 - general retailing;
 - a landscape supply depot use; and
 - any other use or uses,- subject to the processes in the 'Non-Government funded Development Plan Amendment policy'. Consideration may also include the introduction of policies for the adjacent land associated with Virginia Nursery (Lot 426 Gawler Road, Virginia).
- 2) Defer current compliance proceedings (ERD-12-19) for so long as:
 - a) The Virginia Nursery agrees to progress the DPA and related processes in accordance with the 'Non-Government funded Development Plan Amendments Policy'.
 - b) A Development Plan Amendment, if agreed by Council, is undertaken in a timely manner in accordance with agreed, reasonable timelines.
 - c) There are no further breaches of the Development Act, 1993.
- 3) That Council authorises the CEO to reactivate compliance action (including the current compliance proceedings) if any aspect of resolution 2 is not complied with or the CEO deems that the Virginia Nursery is not acting in good faith.

Option 2 – Continue with current enforcement procedures

- 1) Council endorses continuation of the current compliance proceedings ERD-12-19.
- 2) Authorise such other additional or complimentary compliance action as the CEO from time-to-time considers appropriate, in the event that the present proceedings are insufficient to deal with any breaches of the Development Act at the site of Virginia Nursery.
- 3) Council seek costs in any court action in which the Council is successful (provided costs are available).

Analysis of Options

Option 1

The advantages and disadvantages of proceeding with a Development Plan Amendment have been clearly set out above under 'analysis of issues' in a) and b). In summary, the major factors are as follows:

- 1) A DPA would acknowledge the retail nursery, and possibly other existing uses of the site as legitimate, while possibly allowing for some additional activities and / or expansion
- 2) There is potential for Council to be perceived to be bowing to the nurseries' demands, not setting an example to other businesses and not providing support for businesses in the Virginia Township which are established in accordance with the current legislation.

It should be noted that applications for development approval would still be required for extensions or changes of land use (including the regularisation of existing unlawful uses) in the future under new planning policies. The DPA does not enable the nursery to avoid the usual processes.

Option 2

The advantages and disadvantages of proceeding with current enforcement procedures have been clearly set out above under 'analysis of issues' in c) and d). In summary, the major factors are as follows:

- 1) The compliance procedures would ensure that the nursery is held accountable for infringements of the Development Act and a deterrent is provided to future infringements both by the Nursery and by others.
- 2) The compliance may not be popular with the community and there may be a perception of Council being anti-business.

Furthermore, proceeding with current enforcement proceedings does not prevent Council from giving consideration to a DPA following completion of enforcement.

Financial Implications

Option 1 enables Council to consider the preparation of a Development Plan Amendment subject to a range of conditions. The preparation of a Development Plan Amendment would be subject to the Council's Non-Government funded Development Plan Amendment policy which enables funding by a private entity. Nevertheless, there will still likely to be time and effort required to take the DPA through Council and manage the DPA process.

Option 2 endorses continuation of compliance proceedings. While costs of court processes may be recovered, there are very likely to be administrative costs related to the enforcement which cannot be recovered through court processes. In addition, it is unlikely that 100% of court costs will be recovered (60 – 70% is more likely, even on a best case analysis).

Preferred Options and Justification

Option 1 is the preferred option. The justification is as follows:

- A DPA acknowledges that at least some of the activities including the retail nursery have been approved by Council (or the courts) and are likely to be there for the long run.
- A more supportive policy environment may be advantageous in considering future development applications and enabling the business to develop and evolve.
- A more supportive policy framework may encourage the Virginia Nursery to pursue the development application process which would be advantageous to Council by reducing the need for monitoring and compliance.
- Money and effort may be better spent on ensuring an appropriate policy framework than in pursuing expensive litigation.
- The DPA can be funded, subject to agreement by the Virginia Nursery, through the non-government funded Development Plan Amendment process in accordance with the Council adopted policy.
- Council can revert to compliance if the Virginia Nursery does not adhere to the requirements of the Development Act (or increases its non-compliance) while the DPA is being undertaken.



DEVELOPMENT COMPLIANCE MATTERS

(Contact Person: Greg Pattinson)

Why is this matter before the Council or Committee?

This report is presented to Council to seek direction on the extent of Councils' role in the follow up of compliance issues associated with the Virginia Nursery. Council staff have delegated authority to pursue compliance action against Virginia Nursery, however, there are likely to be substantial cost to Council which is currently not budgeted.

Purpose

To seek Council's direction on progression of compliance matters associated with Virginia Nursery.

STAFF RECOMMENDATION

- 1). Council endorse that staff instigates compliance action in relation to the breaches to the Development Act 1993 outlined in this report.
- 2). Council to seek costs if any court action is successful.

Relevance to Playford Community Plan and/or Organisational Excellence Plan

This matter has relevance to the following Economic Prosperity Goal, Strategic Priority and key focus area:-

"Goal To improve the economic prosperity of the region

Strategic Priority Urban Growth & Townships

Key focus area Land use planning

Various *Key Urban Growth & Townships Activities in 2009/10* also apply to this matter.

Relevance to Community Involvement Policy

There is no requirement to consult with the community on this issue, in accordance with Council's Public Consultation Policy.

Background

Virginia Nursery was initially established as a wholesale plant nursery. This form of land use is appropriate under Councils' Development Plan within the Horticulture Zone. In 2005 an application was lodged for alterations to the nursery and the

inclusion of a retail plant nursery. The approval was granted in September 2006. Since then additional applications have been lodged.

The current planning approval is for a 7400 m² retail plant nursery, cafeteria/coffee shop, office and associated car parking. The last proposal sought to utilise a portion of the approved plant nursery to include a fruit and vegetable shop. This was refused by the Council Development Assessment Panel, and appealed by the applicant in the Environment, Resources & Development Court. The ERDC dismissed the appeal (upheld Council's decision to refuse) and then the applicant appealed to the Supreme Court, again the appeal was dismissed.

Council has become aware, via community complaints, of alleged unlawful activity or breaches of the Development Act 1993 currently occurring at the Virginia Nursery site (see Table below), including the development of the fruit and vegetable shop declined by the Supreme Court.

Unlawful activity	Breach
1. Fruit and vegetable shop	Trading without development approval and/or contrary to existing approvals. Subject to prior appeal in Supreme Court of South Australia (dismissed)
2. Shop selling pets and or pet accessories	Trading without development approval and/or contrary to existing approvals
3. Area approved for the sale of "garden accessories" is being used as a shop (described on the site as a "gift shop") for the sale of items other than garden accessories	Trading without development approval and/or contrary to existing approvals.
4a. Cafeteria/coffee shop has been observed to be trading outside the hours of operation of the retail nursery	In contravention of condition 3 on the Development Plan consent granted by the Environment, Resources and Development Court on or about 2 June 2008 ("the planning consent")
4b. Cafeteria/coffee shop access is allowed directly from the carpark	In contravention of condition 4 on the Development Plan consent granted by the Environment, Resources and Development Court on or about 2 June 2008 ("the planning consent")

Analysis of Issues

The purpose of the Development Plan is to guide orderly development and provide direction to the community on the appropriate form of Development within a given area. This provides certainty to the community that if the appropriate form of development is proposed for a location, then it will be approved.

In a commercial perspective, the Development Plan also ensures that the underlying costs to business are equal across the City. Commercial businesses should be established in areas designated for commercial uses. Council has received complaints regarding the Virginia Nursery from similar businesses who have established in appropriate commercial zones. Those business owners have seen the Virginia Nursery flaunt planning rules applicable to the Horticulture Zone and continue to see the Nursery disregard the planning process.

In progressing these complaints, Council Planning staff members have raised the alleged breaches of the Development Act 1993 with the owner of Virginia Nursery.

Planning staff have also recently held discussions with the proponents' new Planning Consultant in regards to how to progress the current non-compliance issues. The Planning Consultant has put forward potential processes for Council to consider (see table below). Council Planning Staff have given no position in response to the proposed action of the proponent.

Released 24 May 2023

Priority	Unlawful activity	Breach	Proposed Proponent Action	Proposed Council Action
1	Fruit and vegetable shop	Trading without development approval and/or contrary to existing approvals. Subject to appeal in Supreme Court of South Australia (dismissed)	Lodge a Development Application for the Fruit and Vegetable Shop, for produce only grown on the subject land	Instigate Section 85 Notice requiring Virginia Nursery to cease the use of the Fruit and Vegetable Shop. <ul style="list-style-type: none"> Owner to reinstate that area of the land in accordance with the approved plans, or Submit a Development Application for consideration by CDAP Exhausted any possibility of obtaining approval for that use
2	Shop selling pets and or pet accessories	Trading without development approval and/or contrary to existing approvals.	Removal of the shop selling pets and/or pet accessories	Instigate Section 85 Notice requiring Virginia Nursery to cease the use of the shop selling pets and/or pet accessories. If D/A lodged, highly unlikely to be supported as it constitutes a 'shop' in Horticulture zone.
3	Area approved for the sale of "garden accessories" is being used as a shop (described on the site as a "gift shop") for the sale of items other than garden accessories	Trading without development approval and/or contrary to existing approvals.	Lodge a Development Application for gifts associated with nursery/gardening activities only, with a possible defining link to perishable goods, relative to exterior locations rather than interior locations	Instigate Section 85 Notice requiring Virginia Nursery to cease the use of the Gift Shop. If D/A lodged, highly unlikely to be supported as it constitutes a 'shop' in Horticulture zone.
4a	Cafeteria/coffee shop has been observed to be trading outside the hours of operation of the retail nursery	In contravention of condition 3 on the Development Plan consent granted by the Environment, Resources and Development Court on or about 2 June 2008 ("the planning consent")	Lodge a Development Application to vary/amend Condition 3 in regard to hours of operation of the cafeteria/coffee shop	Instigate Section 85 Notice requiring Virginia Nursery to cease trading outside the hours of operation of the retail nursery.
4b	Cafeteria/coffee shop access is allowed directly from the carpark	In contravention of condition 4 on the Development Plan consent granted by the ERD Court on or about 2 June 2008 ("the planning consent")	Lodge a Development Application to vary/delete Condition 4, in regard to access to the cafeteria/coffee shop occurring directly from the carpark	Instigate Section 85 Notice requiring Virginia Nursery to cease access to Cafeteria directly from carpark.

Options

Option 1

1). Council endorse that staff instigates compliance action in relation to the breaches to the Development Act 1993 outlined in this report.

2). Council to seek costs if any court action is successful

Option 2

Council endorses that no compliance action is taken regarding the breaches to the Development Act 1993 outlined in this report.

Option 3

1). Council seek to define the appropriate form of Development on the Virginia Nursery Site via a Development Plan Amendment.

2). Council negotiate with the owner of Virginia Nursery to fund the Development Plan Amendment.

Analysis of Options

Option 1

The Council establishes planning policy through the Development Plan. The Development Plan aims to achieve the orderly development of the City with appropriate forms of Development being located in the appropriate locations of the City. This provides certainty to individuals and equity, in that people are aware of what is allowed to be developed and where.

This Option clearly demonstrates that Council wishes that individuals within the City need to comply with the requirements of the Development Act and Councils' Development Plan.

It supports individuals and businesses that do the right thing by following appropriate procedures.

Option 2

This Option may bring warranted criticism to Council for not being consistent in applying the provisions of the Development Plan. The lack of consistency in enforcing appropriately located and zoned development could lead to other sources of challenge for Council. Taking no action may reduce the level of investment in the City by business as they do not have certainty that another business may establish in an area that is not appropriately zone, and has costs advantages for that new business.

Option 3

This option would allow Council to have an informed debate regarding the appropriate form and extent of development allowed by the Development Plan. The revision of the Development Plan may expand what is allowed at the site,

alternatively, more restrictive policies could be implemented. The Minister for Urban Development and Planning would need to approve the commencement and extent of the Development Plan Amendment.

Financial Implications

Option 1

The history of dealing with the Development of Virginia Nursery indicates that any compliance action taken by Council is likely to be challenged in Court. This is inherently expensive.

It is estimated that \$5,000 would be required for legal expenses if Virginia Nursery complied with any compliance action taken by Council. If they did not comply and Council was required to take Virginia Nursery to Court, the costs are likely to be in the vicinity of \$50,000 to \$70,000. The current 2010/11 legal budget for Planning and Building is \$50,000. If Council commenced compliance action additional funding would be sought through the Budget Review process to cover the cost of the compliance action.

Option 2

Nil, but extensive administrative support for the responding to ongoing complaints would need to occur across the development compliance planning area of Council.

Option 3

The cost of a Development Plan Amendment would be in the vicinity of \$40,000-\$50,000. Council staff would negotiate with the owner of Virginia Nursery to cover these costs in line with the Non Government Funded Development Plan Amendment Policy.

Preferred Option and Justification

Option 1 enables Council to be supported by legislation, but at the same time support the current zoning of the locality.

ATTACHMENT 4

Primary Production Zone**OBJECTIVES**

- 1 Economically productive, efficient and environmentally sustainable primary production.
- 2 A zone characterised by open rural areas, horticulture, glasshouses, vineyards, orchards and pasture.
- 3 A zone comprising primary production activities supported by primary production related industrial and commercial activities such as packing sheds, cold storage facilities and small-scale processing facilities.
- 4 Preservation and enhancement of the rural character and the retention of land for horticultural purposes.
- 5 Allotments of a size and configuration that promote the efficient use of land for primary production.
- 6 Protection of primary production from encroachment by incompatible land uses and protection of scenic qualities of rural landscapes.
- 7 Wind farms and ancillary development located in the zone, accepting that they may need to be sited in visually prominent locations to take advantage of natural resources such as wind.
- 8 Increased employment opportunities in primary production and related industries.
- 9 Development within the **Urban Buffer Policy Area 6** undertaken in a manner to minimise any negative impacts on the use of land within the urban area.

D. COUNCIL TO DECIDE WHAT IS TO BE KEPT IN CONFIDENCE AFTER THE COUNCIL MEETING

(Contact Person: Sam Green)

Purpose

To resolve which aspects of agenda Item 16.2 are to be kept confidential after the Council meeting.

STAFF RECOMMENDATION

The following aspects to be confidential subject to an order pursuant to Section 91(7) of the Local Government Act 1999 on the basis that it relates to Section 90(3)(i) of the Local Government Act 1999:

- Report for Item 16.2
- Attachment(s) for Item 16.2
- Discussion for Item 16.2
- Decision for Item 16.2

OptionsOption 1

The following aspects to be confidential subject to an order pursuant to Section 91(7) of the Local Government Act 1999 on the basis that it relates to Section 90(3)(i) of the Local Government Act 1999:

- Report for Item 16.2
- Attachment(s) for Item 16.2
- Discussion for Item 16.2
- Decision for Item 16.2

Option 2

The Council determines to consider certain aspects of agenda Item 16.2 in confidence and others in public.

Option 3

The Council determines that all items be made public for agenda Item 16.2.

Analysis of OptionsOption 1

This item is excluded from the public on the basis of the consideration of information that relates to sensitive matters regarding current enforcement proceedings.

Option 2

The Council may determine that certain aspects of agenda Item 16.2 remain in confidence; therefore the Council may choose alternative aspects that remain confidential.

Option 3

The Council may determine that all items become available to the public to ensure openness and transparency.

E. COUNCIL TO DECIDE HOW LONG ITEM 16.2 IS TO BE KEPT IN CONFIDENCE
(Contact Person: Sam Green)

Purpose

To resolve how long agenda Item 16.2 is to be kept confidential.

STAFF RECOMMENDATION

Under Section 91(7) of the Local Government Act an order be made that the Report, Attachment(s), and Discussion Item 16.2 having been dealt with in confidence under Section 90(2) of the Local Government Act, shall be kept confidential until the next scheduled annual review of confidential items, and that the Decision for Item 16.2 shall be kept confidential until staff have advised stakeholders of Council's Decision.

Options

Option 1

Under Section 91(7) of the Local Government Act an order be made that the Report, Attachment(s), and Discussion Item 16.2 having been dealt with in confidence under Section 90(2) of the Local Government Act, shall be kept confidential until the next scheduled annual review of confidential items, and that the Decision for Item 16.2 shall be kept confidential until staff have advised stakeholders of Council's Decision.

Option 2

The Council determines a different timeframe for any "in confidence" aspects of agenda Item 16.2 to remain in confidence.

Analysis of Options

Option 1

This option determines the length of time that Item 16.2 should retain their confidential status. This recommendation will ensure the Report, Attachments, and Decision for Item 16.2 remain confidential until the next scheduled annual review of confidential items, and that the Decision shall remain confidential until staff have had the opportunity to advise stakeholders of Council's decision.

Option 2

The Council determines a different timeframe for any "in confidence" aspects of agenda Item 16.2 to remain in confidence.

CONFIDENTIAL MATTERS

DISCUSSION ITEM

16. CONFIDENTIAL MATTERS**16.3 DEVELOPMENT OF COMMUNITY SERVICES IN NORTHERN PLAYFORD****Why is this matter confidential?**

Subject to an order pursuant to Section 90(3)(j) of the Local Government Act 1999, this matter is confidential as it contains information provided to Council on a confidential basis by another public authority and would therefore be contrary to public interest.

Process**A. COUNCIL TO MOVE MOTION TO GO INTO CONFIDENCE**

No action – this motion passed in open section

B. COUNCIL TO DECIDE IF ITEM 16.3 SHOULD BE DISCUSSED IN CONFIDENCE

(Contact Person: Sam Green)

Purpose

To resolve whether agenda item 16.3 should be considered in confidence.

STAFF RECOMMENDATION

That the Council continue to remain in confidence and under Section 90(2) of the Local Government Act 1999 and, with the exception of those staff members present, the public continue to be excluded from attendance at the meeting in order to consider in confidence agenda item 16.3.

Options**Option 1**

That the Council continue to remain in confidence and under Section 90(2) of the Local Government Act 1999 and, with the exception of those staff members present, the public continue to be excluded from attendance at the meeting in order to consider in confidence agenda item 16.3.

Option 2

That the Council does not consider item 16.3 in confidence under Section 90(2) of the Local Government Act 1999 and allows the public to hear the matter.

Analysis of Options

Option 1

Option 1 would exclude the public from attendance at the meeting whilst agenda item 16.3 is discussed. This pertains to Section 90(3)(j) of the Local Government Act 1999.

Option 2

Option 2 would allow the public to remain in the gallery whilst item 16.3 is being discussed, showing openness and transparency, which is a fundamental principal of the Council's operations.

C. BUSINESS DECISION**16.3 DEVELOPMENT OF COMMUNITY SERVICES IN NORTHERN PLAYFORD**

Why is this matter before Council for consideration?

To seek feedback from Council regarding the development of community services in Northern Playford for which there is an offer of funding from the Commonwealth which is scheduled to be announced on 6th of September.

Purpose:

To present on the provision of community and library services for the Northern Playford region, to be located at the Curtis Road Town Centre, and the associated offer of Suburban Jobs Program Funding from the Department of Sustainability, Environment, Water, Population and Communities.

Presenters:

Mr Sam Green, Mr Andrew Wroniak and Mr Ken Daniel

Duration:

30 Minutes

D. COUNCIL TO DECIDE WHAT IS TO BE KEPT IN CONFIDENCE AFTER THE COUNCIL MEETING
(Contact Person: Sam Green)

Purpose

To resolve which aspects of agenda item 16.3 are to be kept confidential after the Council meeting.

STAFF RECOMMENDATION

The following aspects to be confidential subject to an order pursuant to Section 91(7) of the Local Government Act 1999 on the basis that it relates to Section 90(3)(j) of the Local Government Act 1999:

- Discussion for Item 16.3

Options

Option 1

The following aspects to be confidential subject to an order pursuant to Section 91(7) of the Local Government Act 1999 on the basis that it relates to Section 90(3)(j) of the Local Government Act 1999:

- Discussion for Item 16.3

Option 2

The Council determines to consider certain aspects of agenda item 16.3 in confidence and others in public.

Option 3

The Council determines that all items be made public for agenda item 16.3.

Analysis of Options

Option 1

This item is excluded from the public on the basis of the consideration of information the disclosure of which would involve the unreasonable disclosure of information provided to Council by another public authority.

Option 2

The Council may determine that certain aspects of agenda item 16.3 remain in confidence; therefore the Council may choose alternative aspects that remain confidential.

Option 3

The Council may determine that all items become available to the public to ensure openness and transparency.

E. COUNCIL TO DECIDE HOW LONG ITEM 16.3 IS TO BE KEPT IN CONFIDENCE
(Contact Person: Sam Green)

Purpose

To resolve how long agenda item 16.3 is to be kept confidential.

STAFF RECOMMENDATION

Under Section 91(7) of the Local Government Act an order be made that the Discussion for Item 16.3 having been dealt with in confidence under Section 90(2) of the Local Government Act, shall be kept confidential until the next scheduled annual review of confidential items.

Options

Option 1

Under Section 91(7) of the Local Government Act an order be made that the Discussion for Item 16.3 having been dealt with in confidence under Section 90(2) of the Local Government Act, shall be kept confidential until the next scheduled annual review of confidential items.

Option 2

The Council determines a different timeframe for any "in confidence" aspects of agenda item 16.3 to remain in confidence.

Analysis of Options

Option 1

This option determines the length of time that item 16.3 should retain its confidential status. Therefore the Council would review the confidential status of item 16.3 at its annual review of confidential items.

Option 2

The Council determines a different timeframe for any "in confidence" aspects of agenda item 16.3 to remain in confidence.