

ORDER

COURT DETAILS

Court	LAND & ENVIRONMENT COURT OF NEW SOUTH WALES
Class	1
Registry	Level 4, 225 Macquarie Street, Sydney
Case number	10939 of 2011

TITLE OF PROCEEDINGS

Applicant	PHILLIP JAMES JOHNSTON
Respondent	WARRINGAH COUNCIL

DATE OF ORDER

Date made or given	16 February 2012
Date entered	21 FEB 2012

TERMS OF ORDER MADE BY THE COURT

The Court notes that the parties or their representatives have reached agreement at a conciliation conference held pursuant to s 34 of the *Land and Environment Court Act 1979*, presided over by Commissioner Fakes on 5 December 2011, as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions) as set out in the document marked "A" annexed hereto entitled Agreement Between The Parties which is dated 14 February 2012 and executed by the parties' legal representatives.

By consent, the Court makes orders in accordance with the document marked "A" annexed hereto.

SEAL AND SIGNATURE

Court seal	
Signature	
Capacity	Leonie Walton Acting Registrar
Date	16 MAY 2012

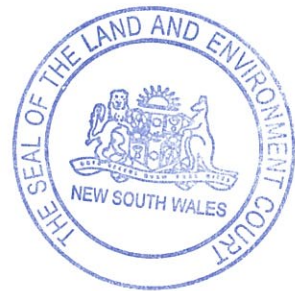


NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name	Warringah Council – Respondent
Legal representative	Stephen Patterson Wilshire Webb Staunton Beattie Lawyers
Legal representative reference	SP:TF:JP: L7580
Contact name and telephone	Stephen Patterson (02) 9299 3311



AGREEMENT BETWEEN PARTIES

Section 34(3)(a) and (b)

COURT DETAILS

Court	Land and Environment Court of NSW
Class	1
Case number	10939/2011

TITLE OF PROCEEDINGS

Applicant	Phillip James Johnston
Respondent	Warringah Council

FILING DETAILS

Filed for	Phillip James Johnston, Applicant
Legal representative	Gary Green, Pikes Lawyers
Legal representative's reference	RJB:LY: J347/110508
Contact name and telephone	Ryan Bennett, (02)9262 6188



AGREEMENT BETWEEN PARTIES – Section 34(3)(a) and (b) *Land and Environment Court Act 1979*

- a) The parties have reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions).
- b) The terms of that agreement are as follows:
 1. The appeal is upheld.
 2. DA 1655/2010 is approved.

3. The Development Application submitted to Warringah Council and as amended for use of land described as 38 Myoora Road, Terrey Hills (and also referred to as "301 Mona Vale Road, Mona Vale") as a retail plant nursery is approved, subject to the conditions contained in annexure 'A'.
 4. The Applicant is to pay the Respondents costs arising under s97(b) of the *Environmental Planning and Assessment Act 1979* in the amount of \$5,000.00 within 21 days of the date of these Orders.
- c) Pursuant to s34(3)(a) and (b) of the *Land and Environment Court Act 1979*, the Parties request that the Commissioner dispose of these proceedings in accordance with the terms of the decision set out in paragraph b above.

SIGNATURES

Signature of legal
representative

Capacity

Date of signature

Solicitor for the Applicant

Signature of legal
representative

Capacity

Date of signature

Solicitor for the Respondent





GENERAL CONDITIONS

CONDITIONS THAT IDENTIFY APPROVED PLANS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Architectural Plans - Endorsed with Council/L&E Court stamp		
Drawing No.	Dated	Prepared By
Site Plan and Signage Plan	23/1/2012	<i>Botanica</i>

Engineering Plans - Endorsed with Council/L&E Court stamp		
Drawing No.	Dated	Prepared By
Stormwater Management Plan D01 to D03 Revision E	3 February 2012	<i>Northern Beaches Consulting</i>
Stormwater Management Plan D02 Revision C	3 February 2012	<i>Northern Beaches Consulting</i>
Stormwater Management Plan D03 Revision C	3 February 2012	<i>Northern Beaches Consulting</i>
Longitudinal Section C01 Revision B	3 February 2012	<i>Northern Beaches Consulting</i>
Longitudinal Section Part 2 C02 Revision B	3 February 2012	<i>Northern Beaches Consulting</i>
Longitudinal Section Part 3 C03 Revision B	3 February 2012	<i>Northern Beaches Consulting</i>



Reports / Documentation - Endorsed with Council/L&E Court stamp		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management – Nursery – 301 Mona Vale Road	December 2011	P Johnston
Bushfire Report B111702	20/1/2012	<i>Australian Bushfire Protection Planners</i>
Any documentation submitted (and endorsed by Council) to satisfy a Deferred Commencement Condition requirement is to be fully complied with.		

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

The development is to be undertaken generally in accordance with the following:

Landscape Plans - Endorsed with Council/L&E Court stamp		
Drawing Number	Dated	Prepared By
Landscape Plan LP01 Sheet 1 Issue F	3/2/2012	<i>Botanica</i>

Reason: To ensure the work is carried out in accordance with the determination of the NSW Land & Environment Court / Council and approved plans.

2. Compliance with External Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

External Department, Authority or Service	E-Services Reference	Dated
<i>Energy Australia</i>	Response Energy Australia Referral	25/10/2010
<i>Road & Traffic Authority</i>	Response RTA Referral	11/11/2010

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)



Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of External Department, Authority or Bodies.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement.

4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

7.00 am to 5.00 pm inclusive Monday to Friday

8.00 am to 1.00 pm inclusive on Saturday,

No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all



times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Landscaped Open Space

Landscaped open space within the front setback north-east of the carparking area, extending to the north-eastern boundary with No.40 Myoora Road (Lot 180 DP 752017) shall be widened to 15.0 metres from the front boundary with Mona Vale Road.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure minimal compliance with WLEP 2000.



6. Site Level Details

Corresponding site levels are to be shown on the approved Site / Parking Plan to match the amended site levels shown on the Stormwater Management Plan D01 to D03 dated 23/1/2012, by *Northern Beaches Consulting*

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure corresponding approved plan details for construction.

7. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**

**Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website http://www.humanrights.gov.au/disability_rights/buildings/good.htm*

****Note:** the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.



8. Bonds

(i) Security Bond

- A bond (determined from cost of works) of \$1,000 and an inspection fee paid of \$230.00 as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

(ii) Construction, Excavation and Associated Works Bond (Pollution)

- A Bond of \$1,000 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Council infrastructure.

9. On-site Stormwater Detention

An On-site Stormwater Detention system must be designed and constructed in accordance with Council's current On-site Stormwater Detention Technical Specification, and generally in accordance with the concept drainage plans prepared by *Northern Beaches Consulting Engineers*, drawing numbers 111215 D01 to D03, dated 23/1/2012.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The design of the OSD system and associated drainage plans must address the following:

- i. Design and sizing of the onsite stormwater detention system must allow for the roof catchment areas to drain directly to the onsite stormwater detention system
- ii. Design and sizing of the onsite stormwater detention system must allow for the carpark and driveway catchment areas to be impermeable

- iii. A catch drain must be constructed from pit P6 to northern wall of the OSD basin to direct surface runoffs into the OSD basin
- iv. Pavement design of the gravel carpark, driveway, permeable nursery sales and pot display areas must be provided
- v. Pavement design demonstrating the nursery sales and pot display areas are permeable must be provided

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's current On-site Stormwater Detention Technical Specification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

10. **Stormwater Quality Management System**

A stormwater quality management system must be designed and constructed to achieve the stormwater quality management objectives outlined in the Northern Beaches Stormwater Management Plan. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

11. **On Site Waste Water Management**

The applicant must provide a wastewater report prepared by a suitably qualified waste water consultant detailing how wastewater will be managed on site in accordance with AS 1547-2000, and Environment and Health Protection guidelines onsite sewage management for single households (Department of Local Government 1998). This is to include waste water from the existing house, the commercial shed and the swimming pool.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Compliance with standards

12. **Nutrient Control**

Stormwater runoff from the nursery and storage bays is to be directed to a stormwater nutrient control basin located on the premises. This basin is to be less than 300mm in depth and incorporate *macrophytic* planting to assist in the control of nutrient runoff from the site.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate

Reason - Prevent nutrient laden run-off



CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

14. Sydney Water Quick Check

The approved plans must be submitted to a *Sydney Water* Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.



Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Vehicle Crossings

The provision of 1 vehicle crossing 4 metres wide in accordance with *Warringah Council Drawing No A4-3330/ 1 Normal* and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be

restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

16. Layback Construction

A layback 4 metres wide (excluding the wings) is to be constructed in accordance with *Warringah Council Drawing No A4-2276* and specifications.

Reason: To ensure suitable vehicular access to private property.

17. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

18. Entry Gate Construction

The access gate is to open inwards to the site. The main gate is to be retrofitted to ensure it cannot open out over the road reserve of Mona Vale Road.

Reason: Management of encroachments over public land under the *Roads Act*.



19. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.

- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

20. Trees and / or Landscaping

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

- **Existing trees which must be retained**

All trees not indicated for removal on Landscape Plan -		
Drawing Number	Dated	Prepared By
LP.01/F Sheet 1	3/2/12	Botanica

All tree protection is to be in accordance with AS 4970-2009 Protection of Trees on Development Sites;

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

21. Carparking

A minimum of 14 parking spaces are to be provided on site, including 1 staff parking space, plus one (1) truck loading bay. The parking spaces are to comply with "AS/NZS 2890.1:2004 Parking facilities - Off-street car parking", including the provision of one (1) disabled person's parking space complying with "AS/NZS 1428". Parking and loading spaces are to be signposted and delineated as detailed on the approved plans.

Reason: Car parking requirement



CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

22. Authorisation of Legal Documentation Required for On-site Stormwater Detention

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To create encumbrances on the land.

23. Registration of Encumbrances for On-site Stormwater Detention

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land.

24. Restriction as to User for On-site Stormwater Detention

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval.

25. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.



Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

- a) Australian/New Zealand Standard AS/NZS 3500.3:2003 - Plumbing and drainage - Stormwater drainage
- b) Australian/New Zealand Standard AS/NZS 3500.3:2003/Amdt 1:2006 - Plumbing and drainage - Stormwater drainage
- c) National Plumbing and Drainage Code.)

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

26. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Warringah Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction.



27. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system.

28. Creation of Positive Covenant and Restriction as a User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Warringah Council for authorisation.

A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land.

29. Completion of Works

Within 4 months of commencement of this consent all works are to be completed generally in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Final Occupation Certificate.

Reason: Prevent default on conditions of consent.



30. Required Tree Planting

Species	Location	Minimum Pot Size
All species as per the approved plans	As indicated on Landscape Plan Dwg No LP.01/F dated 3/2/12 prepared by <i>Botanica</i>	As detailed on the Landscape Plan

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To maintain environmental amenity.

31. On Site Waste Water Management Certification

Prior to the release of the occupation certificate, certification from a suitably qualified waste water consultant must be provided demonstrating that the on site wastewater management complies with the wastewater report, AS 1547-2000, and Environment and Health Protection guidelines onsite sewage management for single households (Department of Local Government 1998).

Reason: Compliance with Standards

31A No Stopping Signage

No Stopping signage is to be installed along the site's entire Mona Vale Road frontage.

Details to be provided to the Certifying Authority prior to the issue of the Interim Occupation Certificate

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

32. Signs/Goods in the Public Way

No signs or goods are to be placed on the footway or roadway adjacent to the property. Including nursery items, pots, banners, signs or the like along Mona Vale Road reserve or Myoora Road reserve

Reason: To ensure pedestrian safety and to protect the streetscape.

33. Display Areas Adjacent the Public Way

No nursery items, garden furniture, sculptures, pots, banners, signs or the like are to be placed within the landscaped setback along Mona Vale Road where that area has not been designated as the "Display Area", in accordance with the approved plans Dwg No LP.01/F dated 3/2/12 prepared by *Botanica*.

Reason: Streetscape amenity and traffic safety.

34. Vehicle Loading/Unloading

All loading and unloading operations shall be carried out wholly within the confines of the site and within the approved loading areas, at all times. No loading/unloading of vehicles (including customer /staff vehicles or delivery trucks) is to occur within the Mona Vale Road reserve.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity.

35. Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

36. Vehicle Parking

All staff parking, delivery, customer and resident parking is to be provided on-site within the designated car parking area. Vehicles associated with the retail plant nursery



operations are not to park on Mona Vale Road.

Reason: Safety.

37. **Site Parking**

Under no circumstances are any of the designated parking or loading spaces, shown on the approved plans, to be used for storage/display of miscellaneous items or prevented from being used for vehicle parking.

Reason: Parking requirement.

38. **Non-Smoking Area**

Smoking by staff/customers is not to occur on the south-west side of the display shed.

Reason: To reduce the amenity impacts of smoke drift on the private open space of adjacent land.

39. **Forklift Operations**

The hours of operation are restricted for the use of any forklift / tractor / heavy machinery to:

Monday to Friday: 9am to 5pm

Saturday: 9am to 2pm

The forklift may only be used on site outside these hours for emergency safety issue use if required.

Reason: To maintain amenity to adjacent land.

40. **Nursery Hours of Operation**

The hours of operation for the Retail Plant Nursery are restricted to:

Monday to Friday : 9am to 5pm

Saturday : 9am to 5pm

Sunday: 9am to 5pm

No trading or nursery operations are to be conducted on the following Public Holidays – Christmas Day, Boxing Day, Good Friday, Easter Sunday.

Reason: To maintain amenity to adjacent land.

41. **Plan of Management**

The Plan of Management shall be strictly adhered too as part of the Retail Plant Nursery Operations, subject to the conditions of consent. The Plan of Management, approved plans and conditions of consent are to be kept available on site for reference by staff and made available for an Inspection Officer of Council upon request as required.



Reason: To ensure Management of the site.

42. Dwelling Occupancy

The existing dwelling house occupation shall be restricted to a caretaker/employee of the Retail Plant Nursery. (Occupation may include the co-habitation of family members of the caretaker/employee). Suitable lease arrangements are to be made to ensure that should the caretaker/employee cease to be employed for duties involved with the retail plant nursery then the lease will cease within a standard period for the termination of such rental lease.

Reason: To maintain land use occupation in accordance with this consent.

43. Water Health Control

Stagnant rainwater within the empty nursery pots and containers is to be emptied on a weekly basis as per the Plan of Management, to prevent mosquito nuisance and the spread of mosquito borne pathogens.

Reason: Environmental Health.

44. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction fit out work has been completed all silt and sediment fences, rubbish, building debris, waste material and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim / Final Occupation Certificate.

Reason: To ensure site management to prevent vermin.



45. Hours of Illumination

Illumination of signage at the subject premises shall cease between the hours of 8.00 pm and 6.00 am daily.

Signs must not flash, move or be constructed of neon materials.

Reason: To ensure residential premises are not affected by inappropriate or excessive illumination.

46. Items Displayed and Sold from the Premises

Items displayed and sold from the premises are to be restricted to items ordinarily or incidentally sold, and inclusive of a Retail Plant Nursery.

Reason: To ensure consistency with the land use approval.

47. Retail Plant Component on the Premises

The Nursery Sales Display component as shown on the plans Dwg No LP.01/F dated 3/2/12 prepared by *Botanica* shall be exclusively used as an area for plants and not converted to any alternative product display area.

Reason: To ensure consistency with the land use approval.

48. No Approval for any Additional Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64) other than the signage detailed on the approved plans and within the designated locations specified on the plans. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any additional signs that require consent.

Reason: Control of signage.

