

DA GRAMMAR SCHOOL Att 2 Response (DERM)



SCRC CORRESPONDENCE



B0399529

Department of Environment
and Resource Management

Notice

Amended Concurrence Agency Response

This notice is issued by the Department of Environment and Resource Management pursuant to section 3.3.17 of the Integrated Planning Act 1997 ("the Act").

Chief Executive Officer
Sunshine Coast Regional Council
Locked Bag 72
SUNSHINE COAST MAIL CENTRE QLD 4560

cc. Sunshine Coast Grammar School
C/- KHA
PO Box 6380
MAROOCHYDORE QLD 4558

Attention: Daniel Rundle

Attention: Andrew Stevens

DERM references: IC0307NAM0011_MAR3682
Assessment Manager ref.: MCU07/0031
Applicant reference: 050112

1. Application details

Assessment Manager reference: MCU07/0031
Date properly referred to DERM: 27 March 2007
Development approval for: Preliminary approval for a material change of use
Aspects of development: - Material change of use - Clearing vegetation (*Integrated Planning Regulation 1998* - Schedule 2, table 3, item 11)
Development descriptions: Master plan for the Sunshine Coast Grammar School
Property/Location description: Lots 1 & 2 on SP105547 (31 & 33 Gardenia Place, Forest Glen); and Lot 16 on SP169831 (372 Mons Road, Forest Glen)
- now described as Lots 16 & 17 on SP169831 and Lot 1 on SP169832 (372 Mons Road & 32 Gardenia Place, Forest Glen)

2. The Chief Executive, Department of Environment and Resource Management (DERM), concurrence agency response for the amended concurrence agency referral jurisdiction for the aspect of development involved with the application the subject of this Notice is to tell the assessment manager as follows:

2.1 Material change of use - Clearing vegetation
(*Integrated Planning Regulation 1998* - Schedule 2, table 3, item 11)

- Conditions must attach to any development approval, and those conditions are attached to this Notice. The applicant's agreement to the content of the amended concurrence agency response is attached.

3. General advice to assessment manager

Pursuant to sections 334 and 363 of the Act, a copy of a decision notice or negotiated decision notice issued by the assessment manager must be forwarded to DERM as a referral agency for the relevant application at PO Box 573, Nambour QLD 4560.

16
MCU 07/0031

Box 26053 R: 20

BCS 1431

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DA GRAMMAR SCHOOL Att 2 Response (DERM)

Notice
Amended Concurrence Agency Response

The State's Native Title Work Procedures provide that responsibility for assessment of native title issues for an IDAS application rests with the assessment manager. Therefore, DERM as a referral agency for the relevant application has not provided notification to native title parties.

4. **Additional information for applicants**

Contaminated Land

It is a requirement of the *Environmental Protection Act 1994* that if an owner or occupier of land becomes aware a Notifiable Activity (as defined in Schedule 3 and Schedule 4 of the *Environmental Protection Act 1994*) is being carried out on the land, or that the land has been, or is being, contaminated by a hazardous contaminant, the owner or occupier must, within 22 business days after becoming so aware, give written notice to the Department of Environment and Resource Management.

Aboriginal Cultural Heritage Act 2003

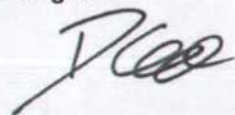
DERM also takes this opportunity to advise the Assessment Manager of the responsibilities of applicants under the *Aboriginal Cultural Heritage Act 2003*. The Assessment Manager may wish to include this information as an Advisory Note on the Decision Notice issued for the application.

Under section 23 of the *Aboriginal Cultural Heritage Act 2003* a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care"). Maximum penalties for breaching the duty of care are \$1,000,000 for a corporation and \$100,000 for an individual.

Applicants will comply with the duty of care in relation to Aboriginal cultural heritage if they are acting in accordance with cultural heritage duty of care guidelines gazetted under the *Aboriginal Cultural Heritage Act 2003*, available on the DERM website, or in accordance with an agreement with the Aboriginal party for the area or a cultural heritage management plan approved under part 7 of the *Aboriginal Cultural Heritage Act 2003*.

Applicants are also encouraged to undertake a search of the Aboriginal Cultural Heritage Database and the Aboriginal Cultural Heritage Register, administered by the Cultural Heritage Coordination Unit, DERM. Application forms to undertake a free search of the Cultural Heritage Register and the Database may be obtained by contacting the Cultural Heritage Coordination Unit on (07) 3239 3647 or on the DERM website www.derm.qld.gov.au/cultural_heritage

Delegate



Daniel Leo
Senior Planning Officer
Regional Planning and Coordination (Nambour)
Planning and Assessment – SEQ

14 October 2011

Enquiries:

Adele Barnes - Cook
Department of Environment and Resource Management
Centenary Square Building,
Currie Street, Nambour. QLD 4560
PO Box 573, Nambour. QLD 4560

Telephone + 61 7 5451 2426

Facsimile + 61 7 5451 2260

Email DACoordinationSEQNorth@derm.qld.gov.au

Website www.derm.qld.gov.au

Attachment

- DERM Amended Concurrence Referral Agency Response (Vegetation Management)
- Applicants agreement to the content of the amended concurrence agency response

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Department of Environment
and Resource Management

Integrated Planning Act 1997

DERM Permit ¹ number: Trackjob: IC0307NAM0011 elvas:2010/004266

Assessment manager reference:	MCU 07/0031
Assessment manager:	Sunshine Coast Regional Council
Date application received:	23 March 2007
Permit type:	Amended Concurrence Agency Response
Date of decision:	11 October 2011
Decision:	Conditions included in this Notice must attach to any development approval given by the Assessment Manager.
Relevant laws and policies:	<i>Integrated Planning Act 1997; Vegetation Management Act 1999; NRW Concurrence Agency Policy for Material Change of Use 20 November 2006 (MCU Policy); NRW Regional Vegetation Management Code 20 November 2006 (RVM Code); NRW Policy for Vegetation Management Offsets 20 November 2006.</i>
Jurisdiction:	<i>Integrated Planning Regulation 1998 - Schedule 2, table 3, item 11</i>

Development Description

Property/Location		Development
372 Mons Road, Forest Glen	Lot 1SP169832 Lot 16 SP169831	Material Change of Use

Reason for amended referral response

The application was originally refused in May 2010 as the application failed to provide information or solutions to satisfy Performance Requirements PR P.7 *Conserving remnant endangered regional ecosystems and of concern regional ecosystems* and P.8 *Essential Habitat* of the *Regional Vegetation Management Code for Southeast Queensland Bioregion 20 November 2006*(RVM Code).

The applicant has since provided information that is sufficient to satisfy Performance Requirements P.7 and P.8 of the *Regional Vegetation Management Code for Southeast Queensland Bioregion* through a vegetation offset on the applicants land known as the Sunshine Coast Grammar School. The assessment of the nominated offset complies with all relevant criteria under the policy for *Vegetation Management Offsets*.

¹ Permit includes licences, approvals, permits, authorisations, certificates, sanctions or equivalent/similar as required by legislation administered by the Department of Environment and Resource Management.

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Reasons for inclusion of conditions

In accordance with section 3.3.18(8) of the *Integrated Planning Act 1997*, the reasons for inclusion of conditions in this concurrence agency response are as follows.

The application has been referred to DERM for assessment because the clearing as a result of the MCU will occur in areas of mapped remnant vegetation shown on the certified Regional Ecosystem Map. Clearing of mapped remnant vegetation on freehold land is regulated by DERM under the authority of the *Vegetation Management Act 1999*.

DERM has assessed the application and determined that the application meets the requirements of the MCU Policy, Part P of the RVM Code and the Policy for Vegetation Management Offsets.

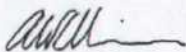
The certified regional ecosystem mapping (version 5.0) identifies that subject property supports areas of least concern Regional Ecosystem (RE) 12.9-10.14 and 12.3.5 and of concern REs 12.9-10.1 and 12.3.2. The subject properties are bordered to the west and east by mapped remnant vegetation. The application has identified that clearing for the development will be confined to that necessary to establish new school infrastructure and associated firebreaks. The total area of assessable clearing is approximately 1.08ha. This includes approximate 0.0964 ha in the least concern RE, 0.99ha of concern RE. All of the 1.08ha is identified as essential habitat for *Rallus pectoralis* and *Accipiter novaehollandiae*. To meet performance requirement P.7 and P.8 of the code, the application proposes an offset of two regrowth areas of 2.5ha and 0.6 ha totalling 3.1ha.

Development conditions will ensure that the development achieves the performance requirements for maintaining essential habitat and conserving of concern remnant vegetation as required by the RVM Code.

DERM VM has directed the assessment manager to include conditions in any development approval given for the application to ensure that—

- Clearing as a result of the MCU is limited to the extent necessary to establish necessary infrastructure and associated firebreaks.
- The application remains consistent with the MCU Policy and RVM Code, specifically PR P.7 and PR P.8
- The application remains consistent with the policy for Vegetation Management Offsets – 20 November 2006.

Delegate



Andrew Collins
Senior Vegetation Management Officer
Delegate, Chief Executive administering the *Vegetation Management Act 1999*,
Department of Environment and Resource Management

11 October 2011

Attachment 1 – *Referral Agency Response (Vegetation) Plan – RARP2010/004266*

Attachment 2 – *Covenant forms 20 and 31*

Attachment 3 – Copy of applicants agreement to content of amended response.

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Conditions

1. Covenant

1.1 The applicant will, upon Council's approval of the development application, have registered in the land registry, registration of the survey plan for the reconfiguration of the lot:

(a) A properly completed plan of survey:

- (i) Over the area of which is in accordance with the area identified as Area A1 and A2 in Attachment 1, Referral Agency Response (Vegetation) Plan – RARP2010/004266; and
- (ii) To the standards required by the Registrar of Titles for registration of an instrument of covenant over part of a lot; and
- (iii) That the Department of Environment and Resource Management agrees is in accordance with the area identified as Area A1 and A2 in Attachment 1, Referral Agency Response (Vegetation) Plan – RARP2010/004266; and

(b) A properly completed instrument of covenant:

- (i) In the form and including such terms as set out in Attachment 2 to this approval.

1.2 State of Queensland, represented by the Department of Environment and Resource Management, will not bear any of the costs associated with the lodging and registration of the instrument of covenant including:

- (a) the preparation of any documents;
- (b) the preparation of a survey plan suitable for registration;
- (c) legal fees; and
- (d) lodgement fees.

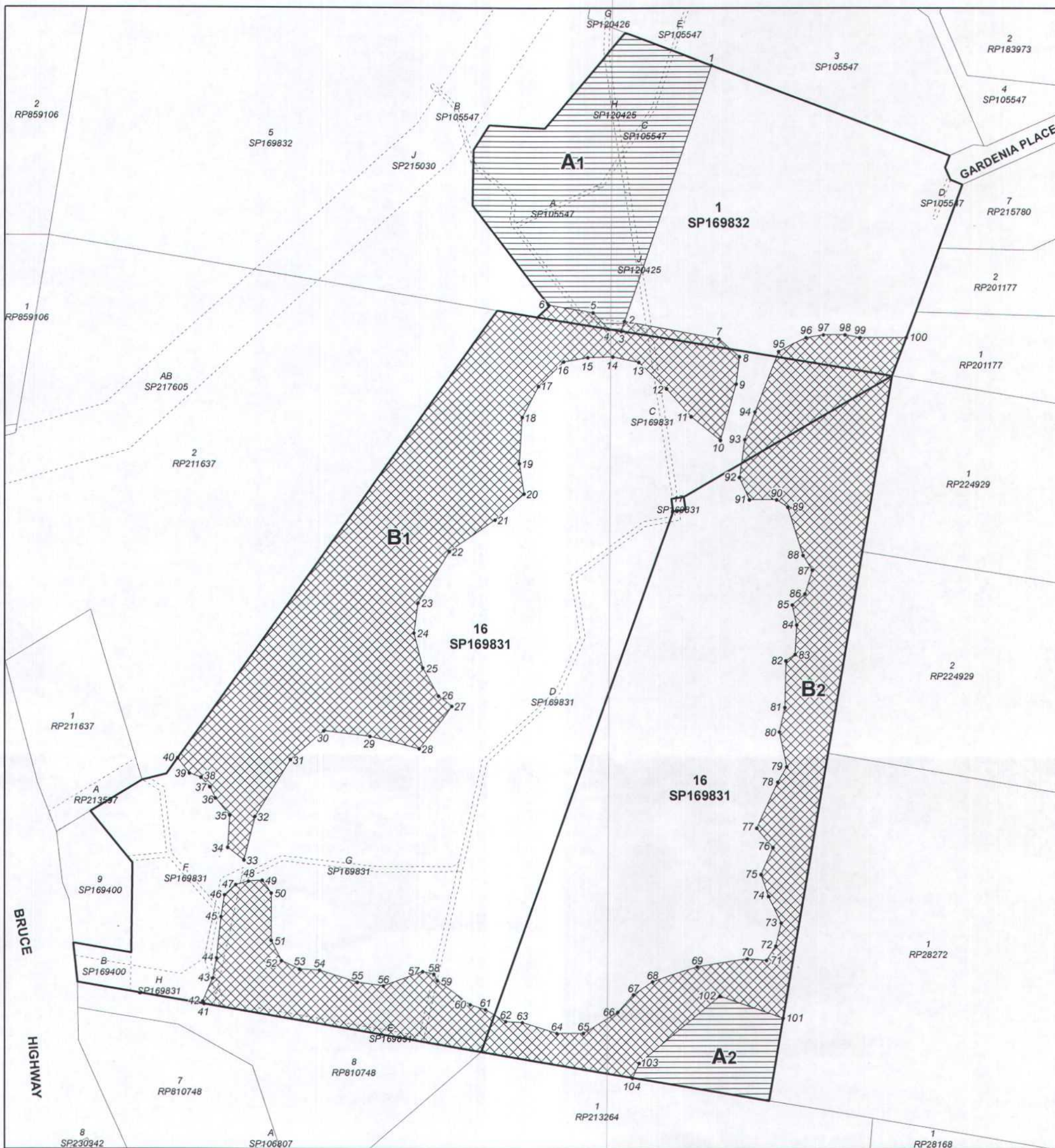
1.3 The applicant must comply with the terms of the registered covenant.

- 2. Clearing of remnant vegetation may not occur on the land subject to this approval until the Department of Environment and Resource Management sights or is provided with a copy of the receipt of the Registered Confirmation Statement, the Registered Covenant Dealing Number and the registered covenant required by Condition 1.
- 3. Vegetation clearing and establishing infrastructure within Area B1 and B2 on the Referral Agency Response (Vegetation) Plan RARP2010/004266 is prohibited, other than clearing for essential management as defined under the Sustainable Planning Regulation 2009.
- 4. The following Vegetation Management Plan for the Sunshine Coast Grammar School vegetation management offset must be implemented and adhered to by the Sunshine Coast Grammar School.

Sunshine Coast Grammar School Vegetation Offset Management Plan- 372 Mons Road, Forest Glen, Qld , July 2011.

End of Conditions

DA GRAMMAR SCHOOL Att 2 Response (DERM)



SCALE 1:3000 @ A3 paper size



Projection: UTM (MGA Zone 56) Datum: GDA94

Note: Derived Reference Points are provided to assist in the location of the Referral Agency Response boundaries. Responsibility for locating these boundaries lies solely with the landholder and delegated contractor(s).

The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.

Note: This plan must be read in conjunction with Referral Agency Response 2010/004266

LEGEND <ul style="list-style-type: none"> ● Derived Reference Points for GPS □ Subject Lot(s) ▨ Area A1 & A2 - Specific conditions apply - see Referral Agency Response 2010/004266 for details ▩ Area B1 & B2 - Specific conditions apply - see Referral Agency Response 2010/004266 for details 	Referral Agency Response (Vegetation) Plan Plan of all Areas A & B in Lot 16 on SP169831 and Lot 1 on SP169832		 	
	Trackjob No. IC0307NAM0011			
	CENTRE: GYMPIE LOCALITY OF FOREST GLEN	REGION: SOUTH EAST LOCAL GOVT: SUNSHINE COAST		RARP 2010/004266 Sheet 1 of 2 Sheets
	Map Reference: 9544	Compiled from: DCDB, PVMP & VMO Notes		
File Reference: 2010/004266	Prepared by: LMO	Date: 05 September 2011		

REFERRAL AGENCY RESPONSE (Vegetation) PLAN

Derived Reference Points
 Projection: UTM (MGA Zone 56)
 Datum: GDA(94)
 All GPS points continue sequentially when labels are missing

Point	Easting	Northing	Parcel	Point	Easting	Northing	Parcel
1	500929	7049051	A1	53	500602	7048335	B2
2	500860	7048848	A1	54	500618	7048334	B2
3	500858	7048840	A1	55	500648	7048325	B2
4	500847	7048842	A1	56	500669	7048322	B2
5	500835	7048855	A1	57	500700	7048334	B2
6	500800	7048861	A1	58	500709	7048331	B2
7	500936	7048834	B1	59	500712	7048326	B2
8	500952	7048820	B1	60	500738	7048308	B2
9	500949	7048798	B1	61	500750	7048304	B2
10	500937	7048754	B1	62	500766	7048294	B2
11	500913	7048773	B1	63	500779	7048294	B2
12	500894	7048795	B1	64	500807	7048285	B2
13	500872	7048816	B1	65	500828	7048285	B2
14	500851	7048820	B1	66	500855	7048302	B2
15	500831	7048820	B1	67	500868	7048316	B2
16	500812	7048816	B1	68	500883	7048326	B2
17	500792	7048797	B1	69	500918	7048337	B2
18	500779	7048772	B1	70	500958	7048344	B2
19	500777	7048736	B1	71	500974	7048342	B2
20	500781	7048712	B1	72	500981	7048354	B2
21	500757	7048692	B1	73	500985	7048372	B2
22	500721	7048666	B1	74	500975	7048393	B2
23	500696	7048626	B1	75	500969	7048411	B2
24	500693	7048602	B1	76	500979	7048432	B2
25	500700	7048574	B1	77	500966	7048447	B2
26	500712	7048552	B1	78	500982	7048483	B2
27	500723	7048544	B1	79	500990	7048495	B2
28	500697	7048510	B1	80	500984	7048523	B2
29	500658	7048519	B1	81	500988	7048543	B2
30	500621	7048524	B1	82	500989	7048580	B2
31	500595	7048500	B1	83	500996	7048585	B2
32	500567	7048455	B1	84	500997	7048608	B2
33	500558	7048421	B1	85	500994	7048624	B2
34	500545	7048431	B1	86	501004	7048633	B2
35	500546	7048456	B1	87	501010	7048651	B2
36	500535	7048470	B1	88	501003	7048663	B2
37	500531	7048479	B1	89	500990	7048702	B2
38	500524	7048486	B1	90	500982	7048707	B2
39	500515	7048490	B1	91	500960	7048707	B2
40	500505	7048501	B1	92	500952	7048725	B2
41	500526	7048308	B2	93	500956	7048755	B2
42	500525	7048310	B2	94	500964	7048776	B2
43	500533	7048328	B2	95	500983	7048824	B2
44	500536	7048344	B2	96	501005	7048835	B2
45	500540	7048376	B2	97	501019	7048837	B2
46	500543	7048394	B2	98	501036	7048837	B2
47	500551	7048402	B2	99	501048	7048835	B2
48	500561	7048405	B2	100	501084	7048835	B2
49	500572	7048405	B2	101	500987	7048297	A2
50	500580	7048395	B2	102	500936	7048314	A2
51	500580	7048358	B2	103	500872	7048261	A2
52	500587	7048342	B2	104	500867	7048250	A2

Note: Derived Reference Points are provided to assist in the location of the Referral Agency Response boundaries. Responsibility for locating these boundaries lies solely with the landholder and delegated contractor(s).

Note: This plan must be read in conjunction with Referral Agency Response 2010/004266

RARP
2010/004266
 Sheet 2 of 2 Sheets

DA GRAMMAR SCHOOL Att 2 Response (DERM)

QUEENSLAND LAND REGISTRY
Land Title Act 1994 and Land Act 1994

COVENANT

FORM 31 Version 3
Page 1 of 1

Dealing Number

Lodger (Name, address & phone number)

Lodger
Code

OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 and the Land Act 1994 and is used to maintain the publicly searchable registers in the land registry. For more information about privacy in NR&W see <http://www.nrw.qld.gov.au/about/privacy/index.html>.

1. Covenantor

2. Description of Covenant / Lot on Plan	County	Parish	Title Reference
------------------------------------------	--------	--------	-----------------

3. Covenantee

THE STATE OF QUEENSLAND (Represented by Department of Environment and Resource Management)

4. Description of Covenant (include reference to relevant section of legislation)

Pursuant to Section 97A (3)(b)(i) of the Land Title Act 1994 and the terms of the attached schedule A to preserve the vegetation in the Covenant Area.

5. Execution

The Covenantor being the registered owner of the lot described in item 2 covenants with the Covenantee in respect of the covenant described in item 4 and the attached schedule A.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Covenantor's Signature

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Covenantee's Signature

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Title Reference []

1. Definitions

1.1 In this Covenant -

“**Clear**” has the meaning given to it by the *Vegetation Management Act 1999* as amended from time to time.

“**this Covenant**” means the Form 31 entered into between the Landholder and the State and the Form 20 which contains these terms and conditions.

“**Covenant Area**” means that area referred to in Item 2 of the Form 31.

“**Essential Habitat Map**” has the meaning given to it by a **Regional Vegetation Management Code under the *Vegetation Management Act 1999* as amended from time to time.**

“**Event**” means any agreement or understanding entered into or accepted by and or circumstance permitted or suffered by the Landholder which effects a change of ownership, control or use of the Covenant Area, the exercise of power of sale under any Mortgage, the granting of a Mortgage, the appointment of a receiver, the death of a Landholder or any other circumstance which may allow or permit a person, other than the Landholder to own, control or use the Covenant Area.

“**Land**” means the lot or lots specified in item 2 of the Form 31.

“**Landholder**” means the Covenantor named in item 1 of the Form 31 and each of the person’s successors in title, transferees and assigns.

“**Property Map of Assessable Vegetation**” has the meaning given to it by the *Vegetation Management Act 1999* as amended from time to time.

“**Regional Ecosystem Map**” has the meaning given to it by the *Vegetation Management Act 1999* as amended from time to time.

“**State**” means the Covenantee specified in item 3 of the Form 31 including any delegated or authorised officer.

“**Vegetation**” has the meaning given to it by the *Vegetation Management Act 1999* as amended from time to time.

“**Vegetation Management Plan**” means the Vegetation Management Plan entered into between the Sunshine Coast Grammar School and the State entitled *Sunshine Coast Grammar School Vegetation Offset Management Plan- 372 Mons Road, Forest Glen, Qld , July 2011* and as amended or renewed as may be from time to time signed by the State and the Landholder. This Vegetation Management Plan can be searched at the Department of Environment and Resource Management office in 27 O’Connell St, Gympie.

Interpretation

1.2 A reference to this Covenant includes the Covenant as amended from time to time.

1.3 Where two or more persons comprise the Landholder, the Covenant binds each Landholder jointly and severally.

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Title Reference []

- 1.4 Each Covenant by a party not to do any act or thing includes an obligation not to permit the act or thing to be done and to use its reasonable endeavours to prevent the act or thing being done by a third party.
- 1.5 Each Covenant by the Landholder to pay or to be liable for any costs or other expenses of the State includes all reasonable costs, charges, payments and other expenditure of any nature and where applicable all reasonable legal costs (on a full indemnity basis) and expenses.
- 1.6 No rule of construction applies to the disadvantage of a party on the basis that it proposed or prepared this Covenant.
- 1.7 This Covenant is executed and delivered by each party as a Deed.

2. **Covenant runs with the Land**

- 2.1 Until this Covenant is released this Covenant burdens and runs with the Covenant Area and binds the Landholder and its successors in title to the Land and those with an interest in the Covenant Area.
- 2.2 The Landholder's obligations only bind the Landholder whilst the Landholder has an interest in the Covenant Area. However, the Landholder remains liable for obligations incurred during the period which it has an interest in the Covenant Area, after it ceases to have that interest.
- 2.3 Nothing in this Covenant renders the Landholder liable for any breach of this Covenant occurring when the Landholder no longer has an interest in the Covenant Area, providing that the Landholder has complied with its obligations in clause 5.

3. **Covenant Obligations**

The Landholder covenants, pursuant to the *Land Title Act 1994* section 97A(3)(b)(i) OR section 373A(4)(b)(i) of the *Land Act 1994* for the purpose of preserving the Vegetation located on the Covenant Area, to comply and adhere to the terms and requirements of the Vegetation Management Plan.

The Covenantor covenants, and agrees with the Covenantee, that:

- 3.1 Except as provided in clause 3.3, clearing of vegetation is not authorised in the Covenant Area.
- 3.2 Infrastructure and structures, including fences are not permitted in the Covenant Area.
- 3.3 Clearing of vegetation in the Covenant Area is allowed:
 - (a) by fire under the *Fire and Rescue Service Act 1990* to reduce hazardous fuel loads or an activity under the *Fire and Rescue Service Act 1990*, section 53, 68 or 69; or
 - (b) where it is necessary to remove or reduce the imminent risk that the vegetation poses to serious personal injury or damage to property; or
 - (c) in accordance with the Vegetation Management Plan; or
 - (c) to give effect to any subsequent development approvals for operational works that is the clearing of native vegetation.

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Title Reference []

4. Landholder's Obligations

- 4.1 If, at the time of execution of this Covenant, there exists a Property Map of Assessable Vegetation over the Covenant Area or a part of it, the Landholder hereby agrees, where the covenant area is identified as Category X on the Property Map of Assessable Vegetation, to the revocation of the Property Map of Assessable Vegetation by the State.
- 4.2 Before the State will agree to release this covenant, the Landholder acknowledges that the following must occur
- (a) The Covenant Area must be mapped as remnant vegetation on a certified regional ecosystem map, and where required, mapped as essential habitat on a certified essential habitat map.
 - (b) The Landholder agrees to take all necessary steps as may be required to accomplish this.

5. Notification of Change of Ownership or Control

- 5.1 The Landholder must, upon becoming aware of an Event, or the likelihood of the occurrence of an Event, forthwith notify the State in writing of the nature of the change, or potential change of ownership, control or use resulting from the Event and the name and address of any person who may own, control or use the Covenant Area as a result of the Event.
- 5.2 The Landholder must not permit any person to occupy or use the Covenant Area (or any part of the Covenant Area) without that other person executing and delivering to the State a deed in favour of the State confirming that other person's acknowledgement that it takes the Covenant Area subject to the terms and conditions of this Covenant as if in all respects that other person were named as the Landholder in this Covenant.
- 5.3 Where the Covenant Area is occupied by another person, the Landholder must give reasonable notice to that person of the State's right to enter the Covenant Area for any purpose authorised by this Covenant, including the right to enter and inspect or rectify breaches of this Covenant.

6. State's obligations

- 6.1 The State agrees to supply to any interested person a copy of the Vegetation Management Plan (excluding any confidential information) upon payment of the State's reasonable costs of retrieving and copying such document.
- 6.2 Unless otherwise expressly provided in this Covenant, the rights given to the State by this Covenant are permissive only and nothing in this Covenant imposes any duty of any kind on the State to anyone or obliges the State to perform any act or to incur any expense for any of the purposes set out in this Covenant.
- 6.3 Upon the registration of the Covenant Area as remnant vegetation on a certified regional ecosystem map by the Department of Environment and Resource Management, the State must do all such acts and things as are required to have this Covenant released from title.

7. State's right of access

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Title Reference []

Subject to clause 8, the Landholder hereby expressly authorises the State and the State's agents at any reasonable time, to enter, re-enter, traverse and leave the Covenant Area with all necessary plant and equipment for the following purposes –

- (a) to inspect and monitor the Covenant Area and vegetation on the Covenant Area at any reasonable time after the giving of notice in accordance with clause 8.
- (b) subject to clause 13.2, to make good any breach of the Covenantor's obligations at the cost and expense of the Landholder.

8. Notice of Entry

The State must give at least seven days' notice to the Landholder of any intention to enter the Covenant Area except in cases of emergency or when the State on reasonable grounds believes that the delay in giving such notice is prejudicial to its rights or responsibilities under this Covenant.

9. Amendment of Covenant

This Covenant may be amended at any time by amendment in writing executed by the Landholder and State, in accordance with section 97C of the *Land Title Act 1994* or section 373C of the *Land Act 1994*, and any other applicable legislation which may apply from time to time, and registered in the land registry.

10. Notice to Protect

The State may give the Landholder a notice requiring the Landholder to take reasonable measures on the Land to protect the Covenant Area in accordance with this Covenant, within a reasonable period stated in the notice. If the Landholder fails to comply with such a notice within the period stated in the notice, the State may, subject to clause 8, enter the Land and carry out the measures required by the notice at the Landholder's expense.

11. Rates and charges

Unless expressly agreed in writing, nothing in this Covenant affects any obligation of the Landholder to pay all taxes, rates, charges and levies lawfully imposed in respect of the Land and/or the Covenant Area.

12. Costs

- 12.1 Each party must pay its own costs of and incidental to the negotiation, preparation and execution of this Covenant. The Landholder is responsible for attending to the costs associated with registration of this Covenant, any costs of stamping this Covenant and the Vegetation Management Plan and the costs (if any) associated with mapping the Covenant Area as remnant vegetation in accordance with clause 4.2.
- 12.2 The Landholder undertakes to do all acts and things in a timely fashion as to ensure registration of this Covenant at the earliest possible time.

13. Default by Landholder

- 13.1 In the event of a breach by the Landholder of any of its obligations under this Covenant, the State may, in its absolute discretion, issue a written direction requiring the Landholder to remedy the non-compliance within 28 days or such other reasonable time as may be specified in the direction.

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Title Reference []

13.2 Where the State issues a direction in accordance with clause 13.1, the Landholder must comply with the direction within the time specified.

13.3 In the event that the Landholder fails to comply with the direction, the State or its agents may enter the Covenant Area and carry out planting, replanting, rehabilitation or remedial work to restore or preserve any vegetation harmed or threatened, or otherwise remedy the damage caused by the non-compliance by the Landholder with its obligations under this Covenant, as specified in the direction. The State may recover the costs of performing the work from the Landholder as a debt.

14. **Limitation of Liability**

The Landholder is only liable for default of this Covenant caused or contributed to by the Landholder or its servants or agents, or default which it permits or allows. The Landholder is not responsible for any damage to the vegetation on the Covenant Area caused by any natural occurrence or otherwise caused by something beyond the control of the Landholder.

15. **Settlement of disputes**

15.1 If a dispute arises in connection with this Covenant, the party instigating the dispute must give written notice to the other party of the existence of a dispute.

15.2 Once a notice of a dispute has been given under clause 15.1, the Landholder and the State undertake in good faith to use their best endeavours to cooperate to resolve the dispute within a period of 28 business days.

15.3 If a dispute cannot be cooperatively resolved within 28 business days, either party may take legal proceedings to resolve the dispute.

16. **Service**

16.1 Any certificate, demand or notice by or from the State to or upon the Landholder shall be sufficiently made, given or served if forwarded by certified post in an envelope addressed to the Landholder at the Landholder's last known address as advised in writing by the Landholder to the State.

16.2 The certificate, demand or notice if sent by post shall be deemed to have been served three days after posting at the address to which it is directed, whether or not it has actually been delivered and in proving to service by postage it shall only be necessary for the State to certify to that effect.

17. **Release and indemnity**

17.1 The Landholder irrevocably releases the State from, and waives, any claim, right, remedy, action, cause of action, loss, damage, expense or liability which the Landholder may have against the State in respect of this Covenant or its performance.

17.2 The Landholder indemnifies and holds the State harmless from and against any claim right, remedy, action, cause of action, loss, expense, or liability incurred, suffered or asserted by the State or anyone else in connection with performance of this Covenant by the Landholder or the breach by the Landholder or in connection with any negligence of the Landholder.

18. **Waiver**

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Title Reference []

18.1 Any alleged waiver of any breach of this Covenant is effective only if it is an express waiver in writing acknowledging the breach.

18.2 A waiver of a breach of the Covenant does not operate as a waiver of any other breach of the Covenant.

19. Severance

If any part of this Covenant is held to be invalid, illegal or unenforceable by a court having the jurisdiction to so hold, that part is to be considered to have been severed from the rest of this Covenant and the rest of this Covenant remains in force unaffected by that holding or by the severance of that part.

20. Trustee provisions

If the Landholder is a trustee of any trust under this Covenant or in respect of the Covenant Area, (the "Landholder's Trust"), whether disclosed or not:

- (a) the Landholder warrants that it has full power under the Landholder's Trust to enter into and perform its obligations and liabilities under this Covenant;
- (b) the obligations and liabilities of the Landholder under this Covenant extend to the fund and any other assets of the Landholder's Trust ("the Trust Fund");
- (c) the Landholder must on the written demand or direction of the State exercise all rights of indemnity that the Landholder may have against the Trust Fund and all beneficiaries and unit holders of the Landholder's Trust for the benefit of the State;
- (d) the Landholder is liable under this Covenant both in its personal capacity and as a trustee of the Landholder's Trust; and
- (e) the Landholder must produce the original trust deed (stamped if necessary) and any other documents evidencing the Landholder's Trust and the Trust Fund to the State within fourteen (14) days of written request by the State.

21. Governing Law

This Covenant is governed by the laws of Queensland. Any legal proceedings relating to this Covenant, may at the option of the State, be instituted, removed to, heard and determined in any court of competent jurisdiction in Queensland selected by and convenient to the State.

22. Moratorium Negatived

To the extent permitted by law, any statute extending or reducing the obligations of the Landholder or otherwise affecting the operation of this Covenant is excluded.

DA GRAMMAR SCHOOL Att 2 Response (DERM)

Notice to be returned with applicant's response to
Amended Agreement

Mr Dan Clowes
Litoria consulting
PO Box 461
Paddington Q 4064

Tony Collins
DERM
PO Box 383
Gympie Qld 4570
tony.collins@derm.qld.gov.au

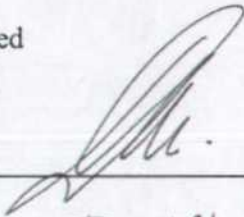
Dear Mr Collins

Application for Material Change of Use on Lot on 1 SP169832 and Lot 16 SP169831 Sunshine Coast Regional Council – Agreement to change referral agency response.

For the above application, I advise I:

- Agree to the content of the amended referral agency response.
- Disagree to the original referral agency response dated 26 May 2010 being replaced by the amended referral agency response.

Signed



Signature

Daniel Clowes .

Print name

28.9.2011

Date



Chief Executive Officer
Sunshine Coast Regional Council
Attn: Daniel Rundle
Locked Bag 72
SUNSHINE COAST MAIL CENTRE QLD 4560